

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

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

(APPELLATE JURISDICTION)

**Appeal No. 297 of 2018 &
IA Nos. 1245, 1246, 1250, 1327,
1507, 1558 & 1890 of 2018 &
IA Nos. 89, 1317 & 1884 of 2019**

&

**Appeal No. 300 Of 2018 & IA Nos. 1247, 1248,
1251, 1326, 1320, 1508, 1559 and 1891 of 2018 &
IA Nos. 90, 1318 & 1885 of 2019**

Dated: 20th December, 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 JAY MADHOK ENERGY PRIVATE LIMITED)

D-143, Defence Colony,
New Delhi-110024

)
) **...Appellant**

AND

**1. PETROLEUM AND NATURAL)
GAS REGULATORY BOARD,)
First Floor, World Trade Center,)
Babar Road, New Delhi-110001)**

**2. THINK GAS INVESTMENTS)
PTE LIMITED)
(AS LEAD MEMBER & ON BEHALF OF)
CONSORTIUM OF THINK GAS)
INVESTMENTS PTE LIMITED)
& THINK GAS DISTRIBUTION PVT LTD) **...Respondents****

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

Counsel for the Appellant(s) : Mr. Anip Sachthey, Sr. Adv.
Mr. Vineet Malhotra
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Mr. Shubhendu Kaushik

Counsel for the Respondent(s) : Mr. Prashant Bezboruah for R-1

Mr. Sajan Poovayya, Sr. Advocate
Mr. Piyush Joshi
Ms. Sumiti Yadava
Ms. Meghna Sengupta
Mr. Abhishek Prakash for R-2

JUDGMENT

Per Hon'ble Mr. B. N. Talukdar, Technical Member, (Petroleum and Natural Gas)

1. In Appeal Nos. 297 of 2018 and 300 of 2018, the Appellant, M/s Jay Madhok Energy Private Limited has challenged the decision of the Petroleum & Natural Gas Regulatory Board ("the Board") inviting bids for grant of authorization of laying, building, operating or expanding City or Local Natural Gas Distribution Network in the geographic area of Jalandhar (except area already authorized), Kapurthala District and SBS Nagar District and the geographical area of Ludhiana (except area already authorized), Barnala District and Moga District respectively in the 9th round of bidding along with the contents

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

of the letters of the Board dated 12.06.2018 addressed to the Appellant. Since facts in both the appeals are identical and the issues are the same, both the matters were heard together and accordingly dealt with in this order. Appeal No. 297 of 2018 will be treated as the lead appeal. Counsel for the parties have agreed that judgment in Appeal No. 297 of 2018 will cover and decide Appeal No. 300 of 2018 also.

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 No. 1, 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

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

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 Respondent No. 2 is the Think Gas Investments Pte Limited, which is the lead member of the Consortium of Think Gas Investments Pte Limited and Think Gas Distribution Pvt Ltd., having office at 306, Plot H-1, Garg Tower, Netaji Subhash Place, Pitampura, West Delhi, Delhi-110034. When the main appeal was filed in this Tribunal, this Company was not a party to the case, but later, was duly impleaded as per the orders of this Tribunal dated 12.10.2018 as the Respondent No. 2 for both the appeals, i.e., Appeal No. 297 of 2018 and Appeal No. 300 of 2018.

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

5. The gist of facts of the case is as under:

The Board on 23.07.2010 by its notification invited bids for grant of authorization for laying, building, operating and/or expanding city or local natural gas distribution network for the Geographical Areas (GAs) of Jalandhar and Ludhiana along with six others in its 3rd round of bidding. The last date for submission of bids was 18.02.2011. The Appellant accordingly, submitted its bid-cum-applications for the GAs of Jalandhar, Ludhiana and Kutch (East) on 18.02.2011.

6. On becoming the successful bidder, the Appellant received Letter of Intent (LoI) issued by the Board for the GA of Jalandhar on 08.08.2013 and for the GA of Ludhiana on 15.05.2015. The corresponding letter of grant of authorization was issued by the Board on 06.09.2013 for the GA of Jalandhar and for the GA of Ludhiana on 25.06.2015 for development of CGD network respectively.

7. According to Appellant, it was always clearly and unequivocally understood that the entire area of the district of Jalandhar and the areas contiguous thereto including the districts of

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

Kapurthala and SBS Nagar constitute one GA, i.e., Jalandhar GA. Similarly, the entire area of the district of Ludhiana and the areas contiguous thereto including the districts of Barnala and Moga constitute one GA, i.e., Ludhiana. The same is evident from the summary sheets vide GA Id Nos. 54 and 53 respectively updated/published on the PNGRB website for the 9th round of bidding. As per the PNGRB Regulations, 2012 as amended from time to time, the definition of "Authorised Area" reads as under :

"authorized area" means the specified geographical area for a city or local natural gas distribution network (hereinafter referred to as CGD network) authorized under these regulations for laying, building, operating or expanding the CGD network which may comprise of the following categories, either individually or in any combination thereof, depending upon the criteria of economic viability and contiguity as stated in Schedule A, namely: -

(i) geographic area, in its entirety or in part thereof, within a municipal corporation or municipality, any other urban area notified by the Central or the State Government, village, block, tehsil, sub-division or district or any combination thereof; and

(ii) any other area contiguous to the geographical area mentioned in sub-clause (i);"

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

8. As per the Appellant, the above definition allows the entire district along with the contiguous areas including the districts to be under one GA like Jalandhar and Ludhiana. While the Appellant was taking steps to carry out the activities in the GAs, on 15.12.2017, the Appellant received a letter from the Board wherein it was stated as under :

“PNGRB is in process of finalisation of list of GA for inviting bids for development of CGD Networks in future rounds. Accordingly, a tentative list based on the input received from pipeline operators has been prepared and enclosed as Annex-I. As you are aware that, though the definition of GA provides flexibility in terms of areas however PNGRB has been taking complete district as GA since 3rd round of CGD bidding. This was being done to ensure development of the rural as well as urban areas in the district. However, to ensure that GA is economically viable, some of the districts may need to be merged.

2. In view of the above, you are requested to review the enclosed list and suggest any change in GA boundaries, if any, latest by 22.12.2017.”

9. The case of the Appellant is that the Board by itself has stated in the above letter that the Board had been taking the entire district in a particular GA since the 3rd round of bidding for CGD network development and hence, since the Appellant's GAs

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

pertain to the 3rd round of bidding, the entire districts of Jalandhar and Ludhiana were already considered by the Board under the GAs of Jalandhar and Ludhiana. The Appellant, therefore, has been rightly considering the entire districts of Jalandhar and Ludhiana including the contiguous districts as the operational areas under the GAs of Jalandhar and Ludhiana.

10. The Appellant, immediately after receiving the letter of the Board dated 15.12.2017, responded to the Board vide letter dated 18.12.2017 stating that as per Regulation 2(1)(c)(ii), the definition of GA entitles the entire district of Jalandhar and the contiguous districts of Kapurthala and SBS Nagar to fall within the GA of Jalandhar which has already been authorized by the Board to the Appellant. Similarly, the authorization granted to the Appellant by the Board, the GA of Ludhiana also includes the entire district of Ludhiana including the contiguous districts of Barnala and Moga. The Appellant states that it did not receive any response from the Board on its letter of 18.12.2017.

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

11. The Appellant contends that it was shocked and surprised to note that the Board invited bids for 86 GAs including Jalandhar (except area already authorized) including Kapurthala and SBS Nagar districts and Ludhiana (except area already authorized) including Barnala and Moga districts which became apparent in the summary sheets published by the Board in its website for 9th round of bidding vide GA Id Nos. 54 and 53 respectively.
12. The Appellant immediately made representations to the Board vide letters dated 02.05.2018, 28.05.2018 and 31.05.2018 along with personal visits by its representatives seeking recall of the invitation of bids for the said areas of Jalandhar and Ludhiana on the ground that these areas were already granted to the Appellant. The Appellant finally received a letter dated 12.06.2018 from the Board saying that the Board was going ahead with its decision to invite bids for the GAs of Jalandhar and Ludhiana except the areas already authorized but including the contiguous districts in the 9th round of bidding. Challenging the same, the Appellant has preferred these instant Appeals before APTEL.

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

13. It is pertinent to state that the Appellant has not taken part in the 9th round bidding process. The winning bidder for the GAs of Jalandhar and Ludhiana is the Respondent No. 2, the Think Gas Investments Pte Limited which is the lead member of the Consortium of Think Gas Investments Pte Limited and Think Gas Distribution Pvt Ltd. The Lols for both the GAs were issued to Respondent No. 2 by the Board on 10.08.2018. Having got the Lols, the Respondent No. 2 during the pendency of the appeals filed IA No. 1253 of 2018 on 07.09.2018 seeking impleadment as party Respondent and this Tribunal impleaded the party as the Respondent No. 2 of the appeals vide orders dated 12.10.2018. While the proceedings of the appeals were going on, the Respondent No. 2 was granted authorization by the Board for both the GAs, i.e., Jalandhar and Ludhiana excluding the areas already authorized but including the contiguous districts on 26.10.2018.
14. In view of incomplete arguments in the Court by the Appellant, we have perused the written submissions made by the Appellant and the gist thereof is as under:

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

- The Respondent Board has failed to appreciate and consider that the GA of Jalandhar covers the entire districts of Jalandhar, Kapurthala and SBS Nagar. Similarly, the Board also has failed to appreciate and consider that GA of Ludhiana covers the entire districts of Ludhiana, Barnala and Moga. The Board in terms of bids invited in 3rd round of bidding, had already granted authorisation to the Appellant for all these areas under GAs of Jalandhar and Ludhiana.
- The decision of the Board is wrong, erroneous, malafide, contrary to law and has been arrived at without following the principles of natural justice and thus deserves to be set aside. The Appellant while making representations and sending reminders sought a hearing, but no hearing was given to the Appellant by the Board.
- As per Regulation 2(1)(c)(ii) of the Authorisation Regulations, the entire areas of authorization along with the areas contiguous thereto covered under the GAs of

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

Jalandhar and Ludhiana already authorized to the Appellant.

- The letter of the Board dated 12.06.2018 wrongly and erroneously records that entire districts of Jalandhar, Kapurthala and SBS Nagar fall outside the GA of Jalandhar because the NIO for the 9th round of bidding itself has mentioned the district of Jalandhar (except areas already authorized) and districts of Kapurthala and SBS Nagar under the same GA of Jalandhar. Similar is the case for the GA of Ludhiana.
- The letter of the Board dated 12.06.2018 was signed by an Additional Advisor and it does not state as to who has taken the decision communicated in the letter. The authorisations to the Appellant were granted by the Board and the Advisor could not have taken the decision as communicated to the Appellant. That the decision was taken by the Board was nowhere mentioned in the letter.
- The Appellant has already made huge investments in the GAs granted to it. The Appellant would be in the best

position to provide facilities in the areas of the entire districts of Jalandhar, Kapurthala and SBS Nagar under GA of Jalandhar and the areas of entire districts of Ludhiana, Barnala and Moga under GA of Ludhiana.

- As per Regulation 2(1)(c) of the Authorisation Regulations, the geographical contiguity is already defined for the purpose of any area to be considered as contiguous to the GAs. Without the contiguous areas, such an area shall not have any economic viability to have an independent CGD network on its own which is also evident from the summary sheet vide GA Id Nos. 54 and 53 of the 9th round of bidding.
- The cause of action for filing the present appeal first arose on 01.03.2018 when the Board in its website malafidely included the remaining areas of the Jalandhar district and the districts of Kapurthala and SBS Nagar under Jalandhar GA in the summary sheets vide GA Id No. 54 for the 9th round of bidding process. Similarly, same thing happened in the case of Ludhiana GA also. The Board did not

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

respond to Appellant's letters and personal visits till it received a letter from the Board on 15.06.2018 written on 12.06.2018.

- The letter of the Board dated 15.12.2017 itself states that since 3rd round of bidding, the entire district has been taken as GA to ensure development of rural as well as urban areas in the district. The Appellant's GAs are the areas covered under the 3rd round of bidding. The content of this letter contradicts the Board's own decision taken for 9th round of bidding.

15. The Respondent No. 1, the Board has advanced arguments on two accounts, i.e., maintainability of the appeals and the merits of the appeals. We have heard Mr. Prashant Bezbourah, learned counsel appearing for the Board and perused the submissions made by the Board. The gist of submissions is as under:

- The first concealment/suppression made by the Appellant was during the 3rd round of bidding itself. As for example, the bid for Jalandhar GA under 3rd round of bidding was submitted by a

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

consortium of JMEPL and Jay Madhok Holding (JMH), a partnership firm on 18.02.2011. The bids of the consortium got qualified based on networth of JMH, but JMH was dissolved on 09.05.2018. Another entity with resembling name, i.e., Jay Madhok Holding Private Limited (JMHPL) was incorporated as a private limited company on the same date, i.e., 09.05.2011. This happened before the opening of the financial bids of Jalandhar GA which amounts to concealment of facts by the bidder.

- The Appellant has also suppressed/concealed the information about the company's status before the Hon'ble Tribunal. In the instant appeal, the Hon'ble Tribunal passed an interim order on 'status quo' on 17.08.2018 and the same was vacated on 23.11.2018 based on the Appellant's concealment that on the date of interim order, the Appellant company was not in existence. The company's name was struck off by the Registrar of Companies during that time.
- Based on the settled position of law, the appeal must be dismissed on the ground of suppression/concealment itself

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

without considering the merits of the appeal. In this context, the following judgments are relied upon:

- (i) Supreme Court of India's Judgment in K. D. Sharma Vs. Steel Authority of India Ltd – (2008)12 SCC 481 and Dalip Singh Vs State of UP – (2010)2 SCC 114.
 - (ii) NCLT's Order dated 12.09.2018 in Appeal No. 834/252/ND/2018 titled as Mr. Mandeep Singh Suri Vs ROC & Another.
- The Appellant has inter alia challenged the Public Notice dated 01.03.2018 and prayed for quashing of the same. The Notice dated 01.03.2018 is not a Notice Inviting Offer as has wrongly been stated by the Appellant in the appeal. The 01.03.2018 Notice only encloses a list of GAs for reference subsequent to the Public Notice dated 24.02.2018. The 01.03.2018 Notice is by no stretch of imagination a decision or order of the Board which can be challenged under Section 33 of the PNGRB Act, 2006. In any case, if the Appellant wanted to challenge the 01.03.2018 Notice, it should have filed its appeal on or before 01.04.2018 in terms of Section 33(2) of the PNGRB Act, 2006.

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

- The “Authorised Area” is defined under Regulation 2(1)(c) of the Authorisation Regulations which deals with the areas to be considered under a particular GA considering criteria of economic viability and geographical contiguity etc. The Appellant’s authorized areas under 3rd round of bidding were identified as per this regulation only.
- In regards to determination of authorized area for a GA, there has been no change in policy by the Board between the 1st CGD bidding round and the 10th round of bidding. The Regulation 5(4) of the Authorisation Regulations has remained the same which reads as under:

“(4) The Board may, based on the views received and taking into consideration the criteria specified in Schedule A, decide or fix the authorized area for the proposed CGD network including the decision whether it should be different from that indicated in the expression of interest.”

- The authorized areas for the GAs of Jalandhar and Ludhiana were as per the Application-cum-Bid Document(ACBD) which enclosed the maps depicting the GAs and charge areas. This is the map on which the bidders’ bids for the CGD network were based. These maps are sacrosanct and cannot be modified by

the Board once the bidding process is underway and/or complete and a successful bidder has been identified. There is no provision in the Act or the Regulations that the Board can unilaterally increase the area authorized to a particular entity merely through a letter.

- The letter dated 15.12.2017 issued by the Board was simply a general letter relating to the future rounds of CGD bidding and there was no intention of the Board that it should be considered/interpreted in relation to earlier rounds of bidding. There is no order or decision of the Board in this letter deciding that the Appellant is already authorized for the area of Jalandhar, Kapurthala, SBS Nagar etc.
- The entire process of deciding the GAs for future rounds of bidding involved the States, MOP&NG, GAIL, ONGC and various existing CGD entities etc. In this regard, a meeting was chaired by the Minister of MOP&NG & SDE on 05.12.2017. After this session, a letter dated 08.12.2017 was sent by the Board to various State Governments including the State of Punjab for their feedback. It was also decided to send a

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

similar letter to the existing CGD entities. There was also a meeting held on 11.12.2017 amongst the heads of divisions within PNGRB to share the list of future GAs. Subsequently, the letter dated 15.12.2017 was issued to all CGD entities. It was sent in the normal course of business of the PNGRB.

- As regards the letter dated 12.06.2018 issued by the Board, this was only a mere reply/communication and a factual reiteration of the provisions of Section 19 of the Act and the competitive bidding process that is followed before granting authorization to any entity for CGD network. This communication was made after considering the representations from the Appellant dated 02.05.2018 and 31.05.2018. The letter dated 12.06.2018 was also not a Board's decision which was simply approved by Chairperson and another Member of the Board.
- A letter dated 02.08.2018 was also issued to the Appellant by the Board in response to the Appellant's letter dated 20.07.2018. This letter also made it clear to the Appellant that the letter dated 15.12.2017 was a general letter and there was

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

no decision in this letter that the complete district of Jalandhar would be treated as the GA authorized to the Appellant. It was also clarified in this letter that the Jalandhar and Ludhiana GAs were city boundary and frozen in the 3rd CGD bidding round.

16. The Respondent No. 2, Think Gas Investments PTE Ltd., has also advanced arguments in the same line as of the Board. It has prayed for disposal of the appeal on the ground of maintainability and also argued on merits. We have heard Mr. Piyush Joshi, counsel appearing for Respondent No. 2 on merits and also perused the submissions made by it. The gist of submission is as under:

- Appellant, i.e., Jay Madhok Energy Pvt Ltd has no locus standi to file the present appeal since it is not an “aggrieved person” under S. 33 of the PNGRB Act, and is not the entity to whom the PNGRB had granted the authorization to lay, build, operate or expand city gas distribution network in : (i) geographical area of Jalandhar on 06.09.2013 or (ii) geographical area of Ludhiana on 25.06.2015. The authorization has been granted to a consortium comprising of Jay Madhok Energy Private

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

Limited and what was then a partnership firm of Jay Madhok Holdings.

- The order of the Hon'ble High Court of Punjab and Haryana dated 10.05.2019 shows that the Appellant has no locus standi, since it directs PNGRB to issue No Objection Certificates to Ishar Gas Jalandhar Pvt Ltd., and Ishar Gas Ludhiana Pvt Ltd to undertake dispensing CNG from their outlets and effectively establishes these entities to be the purported "authorized entities" for the respective geographical areas of Jalandhar (338 sq kms) and for Ludhiana (211 Sq Kms).
- The appeal is liable to be dismissed since there is no vested right that exists with an authorized entity to obtain any extension under the PNGRB Act or the CGD Authorisation Regulations, and there is no violation of any legal right of the Appellant; therefore no cause of action arises.
- The appeal had lapsed on 8th August, 2018 itself when the Appellant company, and also the other consortium member, ie, Jay Madhok Holdings Pvt Ltd, both stood dissolved vide notice of the Registrar of Companies (ROC) dated 08.08.2018, since

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

the dissolution of the said companies is an incurable default under the PNGRB Act and regulations.

- The order of the National Company Law Tribunal, New Delhi, dated 29.10.2018 in the matter of Mr. Mandeep Singh Suri v ROC & Anr., CA No. 115/2018, Appeal No. 836/252/ND/2018 records that consortium agreement had not been executed between the Appellant and Jay Madhok Holdings Pvt Ltd even as on 29.10.2018. Thus, since there was no valid consortium agreement between the purported members of the Jay Madhok consortium, this is an incurable event of default that cannot be cured even if a consortium agreement is signed now.
- As on the date of filing of the present appeals before this Hon'ble Tribunal, i.e., 02.07.2018, there was no valid constituted Board of Directors of the Appellant company which fact has been admitted by the Appellant itself in its letter dated 13.07.2018 to the Registrar of Companies. Therefore, the present appeals have been filed without due authorization as required, and ought to be dismissed.

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

- The Appellant did not approach this Hon'ble Tribunal with clean hands and willfully misled this Hon'ble Tribunal by failing to disclose facts regarding dissolution of the Appellant company, and obtaining an interim order on 17.08.2018 in its favour from this Hon'ble Tribunal even though on that day, the Appellant company did not even exist since it had been struck off the rolls of the Registrar of Companies on 08.08.2018.
- The Appellant has been delaying the present proceedings, and has also not been diligently pursuing its own appeal once this Hon'ble Tribunal, vide its Order dated 23.10.2018, vacated the interim order of stay that had been granted on 17.08.2018. Since 23.10.2018, the present matter has come up for hearing a number of times out of which the Appellant has sought time for arguments or sought adjournment of the hearings on several occasions.
- The conduct of the Appellant company, the suppression of facts and fraud played by the Appellant, and the aforesaid facts placed on record before this Hon'ble Tribunal clearly

demonstrate that the present appeal is an abuse of the process of the judicial system and ought to be dismissed.

- The Appellant does not have any vested rights to claim the entire districts of Jalandhar and Ludhiana for CGD network development. The Appellant was granted authorization only for 338 sq km of Jalandhar City GA and 211 sq km of Ludhiana City GA under the 3rd round of bidding. The maps attached to the bid documents were very clear depicting the areas to be authorized.
- Section 16 of the PNGRB Act statutorily mandates that no person can lay a CGD network or natural gas pipeline without obtaining authorization under the Act for the same and hence, there is no scope for the Appellant to claim or profess to have any “legitimate expectation” or a “residuary right” beyond the specific authorization granted under the Act.
- In the 3rd round of bidding, along with the part-Jalandhar district and part-Ludhiana district, 3 more part-districts were offered for bidding. There is nothing in the practice of the

Board to indicate that it always awards complete districts as authorized area/GA.

- The letter dated 15.12.2017 issued by the Board to the Appellant was merely a communication seeking the comments of existing authorised entities to the proposed Geographical Areas for future CGD bid Rounds and enclosed a list of proposed geographical areas. Furthermore, it had required the Appellant to review the list of proposed geographical areas and “suggest any change in GA boundaries, if any by 22.12.2017.” Thus clearly no rights were created with the Appellant by the letter dated 15.12.2017. Furthermore, Appellant did not submit any comments to PNGRB by 22.12.2017. Instead the Appellant issued a letter only on 2nd May, 2018, almost six months after the deadline and after the 9th Bid Round had been initiated.
- The Appellant has agitated that it is aggrieved by the Board’s Notice inviting offer for 9th bidding round and the Board’s letter dated 12.06.2018 in response to Appellant’s request letters dated 02.05.2018 and 31.05.2018 for extension of areas. Both

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

these communications cannot be characterized as an “order or decision” of the Board under Section 33 of the Act.

- The 9th CGD bid round was launched by the Board in April, 2018 after conclusion of the public consultation process, wherein the GAs of Jalandhar and Ludhiana were offered excluding the areas already authorized to the Appellant along with additional districts and pursuant to the competitive bid process, these GAs were awarded to Respondent No. 2.
- Under the Authorisation Regulations, as applicable to the 3rd CGD Bid Round, “authorized area” is defined as under:
 - *“...the specified geographical area for a city or local natural gas distribution network (hereinafter referred to as CGD network) authorized under these regulations for laying, building, operating or expanding the CGD network which may comprise of the following categories, either individually or in any combination thereof, depending upon the criteria of economic viability and contiguity as stated in Schedule A...”*
 - *It further states that the authorized area shall comprise the following :*
 - *“..(i) geographical area, in its entirety or in part thereof, within a municipal corporation or municipality, any other urban area notified by the Central or the State Government, village, block, tehsil, sub-division or district or any combination thereof; and*

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

(ii) any other area contiguous to the geographical area mentioned in sub-clause (i)."

- That the Board is the final authority to decide on a geographical area is clear from the "Note" to Schedule A of the CGD Authorisation Regulations, as applicable to the 3rd CGD Bid Round, which states as under:

"The Board reserves the right to intervene during the expression of interest stage itself, if in its opinion the specified geographical area is too large to sustain customer service; or allow safe and convenient operations; or has a potential to restrict competition. In the alternative, the Board may also intervene in case the geographical area considered is too small; or covers only a certain class of customers; or tantamount to cherry-picking. In all such cases, the Board may prescribe a geographical area of a size different than that indicated in the expression of interest."

From the applicable provisions of the CGD Authorisation Regulations it is clear that the Appellant does not have any vested rights in claiming the entire districts of Jalandhar and Ludhiana. It is only the Board that determines the extent of the geographical areas depending on economic viability and geographical contiguity of the same, and invites bids for such geographical areas.

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

17. Before deliberating on the matter, it is pertinent to mention that inspite of giving ample opportunities to the Appellant, the Appellant did not complete its arguments asking for repeated adjournments on some pretext or the other. Having asked for time and adjournment many a times by the Appellant, the matter was finally reserved for judgment on 8th November, 2019. The said order is reproduced below :

“Heard learned Sr. Counsel Mr. M.G. Ramachandran appearing for Respondent No. 2. Learned counsel Mr. Yash Prakash, representing learned counsel for the Appellant, Mr. Vineet Malhotra, advocate on record, seeks time.

With lot of constraints, we must put on record that in this matter in spite of several directions to complete the arguments, the Appellant, on some pretext or the other, seeks time.

On 30.08.2019, after hearing the main appeal for some time, the matter got adjourned to 13.09.2019.

On 13.09.2019 following order was made:

“Heard the learned counsel for the Appellant. Since, certain information ought to be provided by the Appellant, Learned Sr. Counsel, Mr. Anip Sachthey took adjourned of the matter. Since the matter was coming up for the last several dates for arguments and being heard at the instance of the Appellant, we allow the Respondents Nos. 1 & 2 to complete their arguments since they were ready with their

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

arguments. Finally, the matter is listed for further arguments of the Appellant on 04.10.2019."

On 04.10.2019 following order was made:

"Written submissions filed by learned counsel for the first Respondent are taken on record. List the matter for further hearing on 08.11.2019, as agreed by learned counsel for both the parties."

The matter was listed on 18.10.2019. On that day also, at the instance of Appellant, the following order was made:

"On the last date of hearing subsequent to reserving the matter for judgment since appellant did not appear and his counsel was also absent, later, Mr. Sanchiti, senior learned counsel came and submitted that he was stuck in the traffic and could not reach Tribunal on me. In view of the hearing of the matter, the appeal is listed for final argument on merits as last chance. On the next date of hearing if appellants' arguments are not addressed, the arguments would be taken as heard and appeal would be reserved for judgment.

We direct parties to place on record written submissions well in advance i.e. on or before 01.11.2019 with advance copy to other side.

List the matter for further hearing on 08.11.2019."

Hence Appellant arguments closed.

Written submissions of Respondents, if any, are to be placed on record.

Reserved for judgment."

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

18. While passing the above order, we duly took note of the Supreme Court's Order (2017) 15 Supreme Court Cases 702 in Kanachur Islamic Education Trust (R) Vs. Union of India and Another – Writ Petition (c) No. 468 of 2017 with IA No. 73463 of 2017 – decided on August 30, 2017. Relevant portion of para 11 of the order is reproduced below :

"11. The overwhelming premise in which the above direction was issued can be culled out from the following excerpts of the aforementioned order dated 01.08.2017 (Glocal Medical College case, SCC pp 699-700, paras 21-24):

*"21.
..... ..
..... ..*

***"10-A.(4)** The Central Government may, after considering the scheme and 12 the recommendations of the Council under sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or college concerned, and having regard to the factors referred to in sub-section (7), either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme and any such approval shall be a permission under sub-section (1);*

**Provided that no scheme shall be disapproved by the Central Government except after giving the person or*

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

college concerned a reasonable opportunity of being heard:"*

We have given ample opportunities to the Appellant to address arguments.

19. While also refer to another judgment of Supreme Court in SCC (2018) 13 Supreme Court Cases 715 in Kanailal and Others Vs. Ram Chandra Singh and Others – Civil Appeal No. 4165 of 2008. The relevant para 11 reads as under :

"11. That apart, Order 41 Rule 31 of the Code which deals with the contents, date and the signature of judgment is also apposite to take note of. It reads as under:

"31. Contents, date and signature of judgment.
– The judgment of the appellate Court shall be in writing and shall state –

- (a) The points for determination;*
- (b) The decision thereon;*
- (c) The reasons for the decision; and*
- (d) Where the decree appealed from is reversed or varied, the relief to which the Appellant is entitled,*

And shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein."

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

We have clearly spelt out the reasons as per Rule 31(C) above while taking the decision to reserve the judgment on 08.11.2019.

20. As can be seen from the pleadings and the arguments made by the learned counsel appearing for Respondent No. 1 and Respondent No. 2, both these parties prayed for dismissal of the appeal on the ground of suppression/concealment of document and relevant information before this Tribunal. We heard both these parties and also heard the Appellant partly. As agreed by all the parties, however, it was decided in the Court to hear the appeal on merits. Following discussions of ours will, therefore, be concerning mostly with merits of the case.

21. The instant matter is concerning the Geographical Areas (GAs) of Jalandhar and Ludhiana in Punjab for development of CGD network. As per the PNGRB Act, 2006, the authority which authorizes the entities to develop CGD network is Respondent No. 1, i.e., the Petroleum and Natural Gas Regulatory Board

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

("the Board"). The entities who got authorizations for this CGD network development are the Appellant and Respondent No. 2. The issue involves two rounds of bidding by the Board for the purpose of CGD network development, viz., 3rd Round of bidding and 9th Round of bidding.

22. Let us understand first the process of granting authorization by the Board to an entity to develop a CGD network. Grant of authorization to develop a city or local natural gas distribution network is carried out following a competitive bidding process which is in line with Section 19 of the PNGRB Act, 2006. Section 19 reads as under :

"19. Grant of authorisation :-

(1) When, either on the basis of an application for authorisation for laying, building, operating or expanding a common carrier or contract carrier or for laying, building, operating or expanding a city or local natural gas distribution network is received or on sue motto basis, the Board forms an opinion that it is necessary or expedient to lay, build, operate or expand a common carrier or contract carrier between two specified points, or to lay, build, operate or expand a city or local natural gas distribution network in a specified geographic area, the Board

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

may give wide publicity of its intention to do so and may invite applications from interested parties to lay, build, operate or expand such pipelines or city or local natural gas distribution network.

(2) The Board may select an entity in an objective and transparent manner as specified by regulations for such activities."

To understand the process for granting authorization, it is also relevant to see Regulation 5(4) of the Authorisation Regulations which reads as under :

"5. Criteria for selection of entity for expression of interest route.

(1)

(2)

(3)

(4) The Board may, based on the views received and taking into consideration the criteria specified in Schedule A, decide or fix the authorization area for the proposed CGD network, including the decision whether it should be different from that indicated in the expression of interest."

23. Section 16 of the PNGRB Act makes it clear that no person or entity can develop a CGD network without an authorization from the Board. Section 16 reads as under:

" 16. Authorisation :-

No entity shall-

(a) lay, build, operate or expand any pipeline as a common carrier or contract carrier,

(b) lay, build, operate or expand any city or local natural gas distribution network, without obtaining authorisation under this Act : Provided that an entity:-

*(i) laying, building, operating or expanding any pipeline as common carrier or contract carrier;
or*

(ii) laying, building, operating or expanding any city or local natural gas distribution network, immediately before the appointed day shall be deemed to have such authorisation subject to the provisions of this Chapter, but any change in the purpose or usage shall require separate authorisation granted by the Board."

24. Conjoint reading of both the Sections as mentioned above, clearly demonstrates that the Board alone can authorize an entity to develop CGD network following a particular process and cannot authorize any entity for the same on nomination basis.

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

25. We note that not only Jalandhar and Ludhiana, but some more GAs were also offered with part-districts as authorized areas in the 3rd round of CGD bidding. The offers were made enclosing the corresponding maps depicting the total geographical areas offered so also so number of charge areas. We have perused the maps. In case of Jalandhar GA, the total geographical area was mentioned as 338 sq kms with 14 charge areas. In case of Ludhiana GA, the area was 211 sq kms with 14 charge areas. The authorizations granted by the Board for these GAs were duly accepted by the Appellant. We have verified both the authorizations granted by the Board to the Appellant for Jalandhar and Ludhiana GAs. In both the authorizations, the authorized areas were clearly mentioned as 338 sq kms for Jalandhar and 211sq kms for Ludhiana GA enclosing the maps also depicting the areas of authorization. The authorizations also enclose the milestones to be achieved in terms of number of domestic CGD customers and inch-km of steel pipelines as per the Appellant's bids along with time schedule for completion.

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

26. At this juncture itself, let us examine whether part-district is allowed for offer for CGD bidding and whether entire district or the entire district with neighbouring districts only should be offered as per relevant regulations. Under Regulation 2 of the Authorisation Regulations, the sub-regulation 2(1)(c) reads as under:

“(c) “authorized area” means the specified geographical area for a city or local natural gas distribution network (hereinafter referred to as CGD network) authorized under these regulations for laying, building, operating or expanding the CGD network which may comprise of the

following categories, either individually or in any combination thereof, depending upon the criteria of economic viability and contiguity as stated in Schedule A, namely: -

(i) geographic area, in its entirety or in part thereof, within a municipal corporation or municipality, any other urban area notified by the Central or the State Government, village, block, tehsil, sub-division or district or any combination thereof; and

(ii) any other area contiguous to the geographical area mentioned in sub-clause (i); “

27. From the above, it is very clear that the entire geographical area can be offered as authorized area or a part of a district

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

also can be offered as authorized area as per (i) above. It is not necessary that the category (ii) areas as above need to be merged with category (i) area. Category (i) area can be offered individually or in combination with category (ii) areas. In the cases of Jalandhar and Ludhiana, the authorized areas were carved out as per category (i). Economic viability is another important factor for deciding the authorized area. In this context, we have also gone through the relevant portion of Schedule 'A' of the Authorisation Regulations which reads as under :

"2. Geographical contiguity.

For the purpose of any area to be considered as contiguous to the geographical area as per regulation 2 (1)(c) of the Petroleum and Natural Gas Regulatory Board (Authorising Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, such an area shall not have an economic viability to have an independent CGD network on its own.

Note : *The Board reserves the right to intervene during the expression of interest stage itself, if in its opinion the specified geographical area is too large to sustain customer service; or allow safe and convenient operations; or has a potential to restrict competition. In the alternative, the Board may also intervene in case the geographical area considered is*

too small; or covers only a certain class of customers; or tantamount to cherry-picking. In all such cases, the Board may prescribe a geographical area of a size different than that indicated in the expression of interest."

Since the Appellant submitted the DFRs along with the bids quoting the CGD tariffs also along with the milestones and accepted the authorizations, there cannot be any doubt that the authorized areas were not economically viable.

28. In this context, we also observe that the Board has offered the areas pertaining to Jalandhar and Ludhiana GAs under the 9th round of bidding considering the combination of criteria (i) and criteria (ii) of the Regulation 2(1)(c) of the Authorisation Regulations. We have noted from the maps submitted to us by Respondent No. 2 that areas that have already been authorized have been carved out distinctly to offer the remaining part of the districts of Jalandhar and Ludhiana. We have been made to understand by the Board that only the city areas of Jalandhar and Ludhiana were offered in the 3rd round of bidding.

29. The Appellant has prayed for extension of its authorized area under Jalandhar GA to cover the remaining area of Jalandhar district and the contiguous districts of Kapurthala and SBS Nagar. Similarly, under Ludhiana GA, the Appellant has prayed for inclusion of the remaining part of the Ludhiana district and the contiguous districts of Barnala and Moga. The authorizations granted to the Appellant do not have any provision to include any additional area after grant of authorization nor do these have any clause giving the Appellant any vested right to claim in future. We have gone through the Application-cum-Bid Documents also for the 3rd round of bidding. We have not noticed any such provision/clause to give the Appellant vested right to claim any contiguous area/additional area in future under the same GAs. There is also nothing on record whereby the Appellant approached the Board for increasing its authorized areas under the GAs of Jalandhar and Ludhiana prior to the notification of the 9th round of bidding.

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

30. In the Appeal, the Appellant has quoted the letter dated 15.12.2017 written by the Board while claiming that it is the understanding of the Board that the entire district was being offered since 3rd round of bidding for CGD network development. Secondly, the Appellant has challenged the letter dated 12.06.2018 written by the Board to the Appellant. Thirdly, the Appellant has also challenged the Notice of the Board dated 01.03.2018 as published in the Board's website. We are discussing below all the above three communications in brief.

31. The content of the letter dated 15.12.2017 is reproduced below:

"PNGRB is in process of finalisation of list of GA for inviting bids for development of CGD Networks in future rounds. Accordingly, a tentative list based on the input received from pipeline operators has been prepared and enclosed as Annex-1. As you are aware that though the definition of GA provides flexibility in terms of areas, however, PNGRB has been taking complete district as GAS since 3rd round of CGD bidding. This was being done to ensure development of the rural as well as urban areas in the district. However, to ensure that GA is economically viable, some of the districts may need to be merged.

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

2. *In view of the above you are requested to review the enclosed list and suggest any change in GA boundaries, if any latest by 22.12.2017."*

32. The Board contends that the above letter was not written to the Appellant in particular; it was a general letter sent to all the existing CGD entities in the normal course of business of the Board. The letter does not say that the Appellant was authorized for the entire districts of Jalandhar and Ludhiana along with the contiguous districts. Moreover, the content of the letter was not a Board's decision or order which can be challenged by the Appellant. We have checked the documents submitted by the Board and we are inclined to accept the statement of the Board. We also observe from the original documents submitted by the Board that the Board not only consulted the existing CGD entities but also consulted the State Governments before finalization of the GAs. We have also observed the fact that in the 3rd round of bidding, except 2 GAs, all other GAs were offered as part-districts. We have also observed that in the 9th round of bidding also, GAs were offered as part-districts, full district with/without contiguous

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

districts and district (except areas already authorized) and contiguous districts like Jalandhar and Ludhiana GAs. It indicates that there was no change in the policy of the Board between 3rd round and 9th round of bidding so far as coverage of GAs is concerned. We also observe regarding the letter dated 15.12.2017 that though the Appellant has stated in the appeal that it had responded to the letter of 15.12.2017 on 18.12.2017, no such communication was brought to our notice in this regard. It is also seen that the appellant has not substantiated that the letter dated 15.12.2017 was responded on 18.12.2017. Only communications that the Appellant has repeatedly mentioned are the letters dated 02.05.2018, 28.05.2018 and 31.05.2018.

33. As regards the letter dated 12.06.2018 of the Board, the content of the letter is reproduced below :

"This has reference to your communication dated 2.5.2018 and subsequent reminder on 31.5.2018 regarding extension of your CGD network to remaining part of Jalandhar and Ludhiana district, which is outside your authorized geographical area and currently under 9th round CGD bidding process.

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

2. In this regard, it is informed that authorization to any city or local natural gas distribution network is granted by PNGRB by following a competitive bidding process as per provisions under Section 19 of PNGRB Act, 2006. Accordingly, bids are invited inter-alia for geographical area (GA) of Ludhiana (Except areas already authorized), Barnala & Moga Districts and Jalandhar (Except areas already authorized), Kapurthala & SBS Nagar districts under 9th round CGD bidding. The bid due date is 10.7.2018."

34. The Board contends that the letter under reference was issued to the Appellant as a response to the Appellant's letters dated 02.05.2018 and 31.05.2018. It is not an order or decision of the Board that can be challenged under Section 33 of the PNGRB Act, 2006. The letter was approved by the Chairperson and another member of the Board. The same was not signed by minimum 3 members of the Board as quorum in a Board Meeting or by circulation of the letter as Board Agenda.
35. So far as the Notice dated 01.03.2018 is concerned, the Board contends that it was not a 'Notice Inviting Offer'. The Notice dated 01.03.2018 encloses only a list of Geographical Areas for reference subsequent to the Public Notice dated 24.02.2018

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

issued by the Board. The relevant portion of this Public Notice dated 24.02.2018 is reproduced below :

“PNGRB grants authorization to entities for development of CGD networks based upon competitive bidding process under the provision of PNGRB (Authorising Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008. In furtherance to earlier Public notice dated 10.3.2016, a list of Geographical Areas has been identified by PNGRB for 9th round of CGDF Bidding and enclosed as Annexure-A. List includes total 86 Geographical Areas consisting of 156 complete districts and 18 part districts. Bids shall be invited on these GAs by March, 2018.

2. This is for information to all stakeholders involved.”

36. The Appellant contends that the above Public Notice was not challenged by the Appellant but the Notice dated 01.03.2018 enclosing the list of GAs to be offered under 9th round of bidding only has been challenged. As contended by the Board, the Notice dated 01.03.2018 cannot be challenged by the Appellant under Section 33 of the Act; since Appellant could have challenged only the Public Notice dated 24.02.2018 which apparently is not done. Even if it were to challenge the Notice of 01.03.2018, it should have filed its appeal on or before 01.04.2018 in terms of Section 33(2) of the PNGRB Act, 2006

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

or at least should have filed an application for condonation of delay while filing the appeal on 02.07.2018.

37. During the course of proceedings of the appeal in the Court, when we asked the Board as to who finalized the list of GAs to be offered under the 9th round of bidding, the Board responded that the list was approved by the Board after public consultation. In response to our directions, the Board also submitted the relevant original documents in this regard for our perusal. After examining the documents, it has been found that the list of the GAs to be offered was approved by the Board Members as per the Board Agenda by circulation on 23.02.2018.

38. As emerges from the discussions/observations above, inter alia, the following Sections of the PNGRB Act, 2006 and regulations of the Authorisation Regulations have been found to have direct bearing on the matter:

- (i) Regulation 2 (1)(c) of Authorisation Regulations which defines the authorized area and gives the principles for determination of a geographical area.
- (ii) Regulation 2(1)(c) above needs to be read with Schedule A attached to the Authorisation Regulations. Paragraph 1 talks of economic viability and paragraph 2 talks of geographical contiguity.
- (iii) Section 19 of the PNGRB Act, 2006 which spells out the procedure to be followed by the Board for grant of authorization for CGD network development to an entity.
- (iv) Section 16 of the PNGRB Act, 2006 empowers the Board to authorize any entity for CGD network development.
- (v) Regulation 5(4) of the Authorisation Regulations, when read in conjunction with Regulation 2(1)(c) and Schedule A, gives the flexibility to the Board to decide or fix the authorized area.

Appeal No. 297 of 2018 & IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018 & IA Nos. 89, 1317 & 1884 of 2019 and Appeal No. 300 of 2018 & IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019

39. In our discussions above, we have considered all the above Sections of the Act and the relevant regulations of the Authorisation Regulations along with the submissions made by the parties. In our considered opinion, we do not find any merit in the appeals warranting our interference. On overall considerations, the appeals are liable to be dismissed.

ORDER

40. In the light of our discussion and reasoning, both the appeals, i.e., Appeal No. 297 of 2018 and Appeal No. 300 of 2018 are dismissed as being devoid of merits.

41. In view of disposal of the above appeals, the IA Nos. 1245, 1246, 1250, 1327, 1507, 1558 & 1890 of 2018, and IA Nos. 89, 1317 & 1884 of 2019 in A. No. 297 of 2018 and IA Nos. 1247, 1248, 1251, 1326, 1320, 1508, 1559 and 1891 of 2018 & IA Nos. 90, 1318 & 1885 of 2019 in A. No. 300 of 2018 also do not survive and are disposed of, as such.

42. There is no order as to cost.

Pronounced in the Open Court on **20th December, 2019.**

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

Justice Manjula Chellur
Chairperson

√ **REPORTABLE/~~NON-REPORTABLE~~**