

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

**APPEAL No. 6 OF 2022 &
IA No. 1542 of 2021 & IA Nos. 46 & 129 of 2022**

Dated: 23rd March, 2022

**Coram : Hon`ble Mr. Justice R.K. Gauba, Officiating Chairperson
Hon`ble Dr. Ashutosh Karnatak, Technical Member (PNG)**

In the matter of:

Gujarat Gas Limited

Through Mr. Tarang Pandya, Manager
2, Shanti Sadan Society, Near Parimal Garden
Ellisbridge, Ahmedabad – 380006
Email: tarang.pandya@GUJARATGAS.com

... **Appellant(s)**

VERSUS

1. Charotar Gas Sahakari Mandali Limited

“Gas House”, Near CNG Gas Station
Anand Sojitra Road, Near CNG Gas Station
Vitthal Udhyog Nagar, Anand, Gujarat 388121
Email: info@charotargas.com

... **Respondent 1**

**2. Petroleum and Natural Gas Regulatory Board
Through the Secretary, PNGRB**

First Floor, World Trade Centre
Babar Road, New Delhi – 110 001
Email: secretary@pngrb.gov.in

... **Respondent 2**

Counsel on record for the Appellant(s):

**Mr. Parag P. Tripathi, Sr. Adv.
Mr. Piyush Joshi
Ms. Sumiti Yadava
Ms. Meghna Sengupta
Mr. Ankit Bhandari
Ms. Vishakha Nagaraj**

Counsel on record for the Respondent(s):

**Mr. Sudhir Nandrajog, Sr. Adv.
Mr. Anand K. Ganesan
Mr. Ashwin Ramanathan R-1**

Mr. Sumit Kishore
Ms. Pinki Mehra
Ms. Tanuja Dhoulakhandi
Ms. Shipra Malhotra
Mr. Mohit Budhiraja for R-2

JUDGMENT

PER HON'BLE DR. ASHUTOSH KARNATAK, TECHNICAL MEMBER

1. This matter was taken up by video conference mode on account of pandemic conditions, it being not advisable to hold physical hearing.
2. M/s Gujarat Gas Limited (“**Appellant**”) has filed an appeal u/s 33 of Petroleum and Natural Gas Regulatory Board Act, 2006 (“**PNGRB Act**”) against the PNGRB order dated 05.03.2020 (“**Impugned Order**”) in case of *Charotar Gas Sahakari Mandali Ltd vs. Gujarat Gas Limited (Legal 270/2018)* wherein the Appellant has been directed to cease and desist from operating Compressed Natural Gas (CNG) stations including one mother and 7 daughters station situated within the geographical area authorised herein to Respondent No. 1 i.e. Charotar Gas Sahakari Mandali Limited, within 30 days of the order. The reliefs sought in the present appeal before this Tribunal is to:
 - a) declare to be arbitrary, void and illegal the Impugned Order dated 05.03.2020 *passed by PNGRB/ Respondent No.2 in the matter of Legal Case No. 270 of 2018 (Charotar Gas Sahakari Mandali Ltd v. Gujarat Gas Limited); and*
 - b) *grant such other and further reliefs as this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case.*
3. The brief facts relevant for the present case are:-
 - i. The Appellant, Gujarat Gas Limited (herein referred to as Gujarat Gas), a public listed company under the control of the Government of Gujarat, is the amalgamated

entity inheriting all the rights and liabilities of the erstwhile GSPC Gas Company Limited; Gujarat Gas Company Limited, Gujarat Gas Financial Services Limited and Gujarat Gas Trading Company Limited which is said to have been approved by the Hon'ble High Court of Gujarat vide order dated 30th March 2015 (read with Certification of Incorporation Pursuant to Change of name issued by RoC, Ahmedabad on 15th May 2015). It is relevant to mention herein that Gujarat Gas was awarded the authorization for the Geographical Area (GA) of Anand District (excluding the area already authorized), pursuant to a competitive bid process undertaken by PNGRB/R-2 in 6th CGD Bidding round on 04.07.2016,

- ii. Respondent No.1 is Charotar Gas Sahakari Mandali Limited (herein referred to as Charotar Gas), which is a cooperative society registered under the Gujarat Cooperative Act, 1961 and has been granted an authorisation on 12.05.2015 by PNGRB/R-2 for laying, building, operating or expanding CGD network in the geographical area (GA) of "Anand area including Kanjari & Vadtal Villages (in Kheda District)" pursuant to the application made by it.
- iii. Respondent No.2 is the Petroleum and Natural Gas Regulatory Board (PNGRB), a statutory authority created and governed by the provisions of the Petroleum and Natural Gas Regulatory Board Act, 2006, which has issued the Impugned Order.
- iv. GSPC Gas Company Ltd. and Charotar Gas had entered into a Franchisee Agreement on 23.09.2006 for opening, operating and maintaining an online CNG Gas Station located at Janta Chokdi, V.U. Nagar, Dist. Anand, owned by Charotar Gas. On the same day an accompanying Lease Deed was also signed by the parties for providing the equipment for the CNG Station on lease. The relevant clauses of the Agreement for the purpose of issue in hand are:-

The Agreement dated 23/09/2006, inter-alia, provides as under

"Second Party has accepted to undertake sales promotion activities to ensure that the sale of CNG at the outlet will not be less than 3000 kg / Day throughout

the entire period of Agreement (after one year from the date of commissioning of outlet)”

.....

NOW IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS

.....

(2) The service charges payable by the GSPC GAS to the Second Party in consideration of the service to be rendered by the Second Party, under the clause No. 8.6 read with schedule I of the said agreement is fixed at Rs 1.20 per kg is inclusive of the service charges towards the service rendered by the Second Party for sales promotion activity. GSPC GAS will not pay any other charges in this respect to the Second Party.

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The Franchisee Agreement dated 23/09/2006 provides as under:

WHEREAS:

- [2] To increase distribution of compressed natural gas and facilitate easy availability thereof, **GSPC GAS proposes to supply and sell compressed natural gas through additional outlets at various locations in the city of Vapi, Valsad, Bilimora, Navsari, Anand, Nadiad, Khambhat, Kheda, Kalol, Mehsana, Himmatnagar, Prantij, Limdi, Chotila, Surendranagar, Wankanaer, Morbi, Rajkot and Bhavnagar and other places in Gujarat, as GSPC GAS may decide, from time to time;**
- [4] The Second Party has represented to GSPC GAS that it has the required site and manpower and required expertise to enable GSPC GAS to set up a retail outlet for supply and sale of compressed natural gas to motor vehicles;
- [5] In consideration of the Second Party making available the land, other services for an agreed service charges, **GSPC GAS has agreed to open a retail outlet for supply and sale of CNG to motor vehicles of compressed natural gas at the said site of the Second Party, on the terms and conditions hereinafter contained;**

.....

1.1 Definitions:

.....

(k) "Site" means the site of the Second Party described in Annexure I and shall include any additional sites for opening of an outlet as agreed upon by the parties by execution of supplementary Annexures for opening an outlet.

.....

[II] SUPPLY AND SALE OF CNG

- 2.1 GSPC GAS agrees to open an outlet for sale of CNG to Vehicles on the Site, and the Second Party agrees to provide to GSPC GAS the Site and to provide the facilities and services for installing and operating of the outlet & sale of CNG, on the terms and conditions hereinafter contained.
- 2.2 The parties may, from time to time, agree upon additional locations or Sites at which additional outlets may be opened by GSPC GAS and in such case, the sale of CNG from such additional outlets shall be covered by the terms and conditions as would be decided between the Parties.
- 2.3 **The CNG shall be sold by the Second Party on behalf of GSPC GAS at the Retail Price of CNG fixed by GSPC GAS, from time to time. The Second Party shall dispense the CNG to the Vehicles at the outlet and collect, on behalf of GSPC GAS, the Retail Price.** GSPC GAS may, at any time, revise the Retail Price and such revised Retail Price shall be binding on the Second Party from the date of communication thereof by GSPC GAS to the Second Party. The current Retail Price as on the date of this Agreement will be the price specified in Annexure - II, which Retail Price shall remain in force until revised by GSPC GAS.
- 2.4 **GSPC GAS shall have full control over the supply of CNG to the outlet and the sale thereof to the vehicles.** The Second Party shall not deliver gas to those customers identified by GSPC GAS, from time to time, due to safety or any other reasons. GSPC GAS will issue guidelines to the Second Party regarding routine maintenance /delivery of gas / safety precautions / type of vehicles to which CNG can be supplied. The Second Party shall adhere to and comply with these guidelines. The Second Party shall be responsible for the maintenance of the outlet in the manner prescribed by GSPC GAS.....
- 12.1** This Agreement shall come into force with effect from the date of signing and shall remain in force for a period of ten years subject to availability of gas unless earlier terminated in the event hereinafter mentioned.”
- 12.2** GSPC Gas has a right but not obligation to renew this agreement for a further period of not exceeding ten years on same terms and conditions. In the event that GSPC Gas exercise the option to renew the agreement for

a further period, the Second Party shall be obliged to make necessary arrangement for renewal of this agreement. In case of failure of the second party to do so, the second party shall be liable to indemnify GSPC Gas for all direct and indirect losses/damages.

[XIX] ALTERATION

Any alteration or amendment to this agreement shall be effected only by an instrument in writing signed by both the parties.”

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Annexure I

Pursuant to the agreement

DETAILS OF OUTLETS

- | | |
|---|--|
| 1. Location of Retail outlet | 11, GIDC Estate, Vitthal Udyog Nagar-Anand |
| 2. Full address of Retail outlet
Anand | 11, GIDC Estate, Vitthal Udyog Nagar-Anand |
| 3. Description of outlet | On Line Stations |

.....”

- v. The Parliament enacted the Petroleum and Natural Gas Regulatory Board (PNGRB) Act, 2006 on 01.10.2007 and mandated authorisation by the Board for the laying, building, operating or expanding any city or local natural gas distribution network. It is pertinent to mention herein that Section 16 of the PNGRB Act, which is related to grant of authorisation, came into effect on 12.07.2010.
- vi. Charotar Gas was authorised for Anand-Kheda-GA including Kanjari and Vadtal Villages (In Kheda District) in the state of Gujarat by PNGRB on 12.05.2015 vide letter no. S-Infra/II/2008-Vol.II/ under Regulation 18(1) of CGD Authorization Regulations for laying, building, operating or expanding CGD network as per schedule-D format. According to clause 4 of the Schedule - D, Charotar Gas was “...allowed exclusivity period under the PNGRB(Exclusivity for City or Local Natural Gas distribution Networks) Regulations 2008, in respect of following:-

*a) Upto 31.03.2026 for laying , building and expansion of the CGD networks;
and*

*b) No Exclusivity in terms of exemption from the purview of common carrier or
contract carrier for the CGD Network.*

- vii. Charotar Gas has placed on record various letters including letters dated 30.05.2015 & 25.07.2015, which were written to Gujarat Gas immediately after authorization, wherein information regarding grant of authorization by PNGRB for the Anand Area to Charotar Gas was conveyed along with a requisition to take necessary action to handover the existing CNG Station at Anand which were being operated by Charotar Gas at the earliest, on depreciated value. The record shows that various meetings were also held between the parties and on 20.09.2016 Gujarat Gas replied to Charotar Gas that it was working to find out amicable solution in the matter and thereby requested to extend the Franchisee Agreement for a further period of 6 months. Charotar Gas responded Gujarat Gas, vide letter dated 22.09.2016, that their Board of Directors are not agreeable to renew the Franchise Agreement for a further period of 10 years and has passed a resolution to execute a fresh agreement for a further period of 03 months from 23rd September, 2016 with amended terms of rent of Rs. 50,000 per month, three month's rent as advance and the commission on the sale of gas to be flat @ Rs. 3.00 per kg up to 31st December, 2016. It was also mentioned in the said letter that draft for the fresh agreement to be shared by Gujarat Gas for review by the Board of Directors in consultation within a month's time. However no documents is placed before the Tribunal to show that if any steps were taken by Gujarat Gas towards handing over of the CNG station or any response was given by Gujarat Gas for the same.
- viii. On 03.11.2016 Gujarat Gas clarified that in the interim period of reaching a finality to the ongoing discussion of said CNG station for the continuation of the agreement or otherwise, Charotar Gas shall be solely responsible for the operation of the CNG

station situated at Anand-Sojitara Road including safety and all other statutory requirements therein and requested for a long term mutually beneficial relationship for both the parties. However vide letter dated 24.11.2016, Charotar Gas once again requested to Gujarat Gas to hand over the subject CNG stations on or before expiry of the said breathing period.

- ix. Gujarat Gas informed Charotar Gas vide letter dated 22.12.2016 that the proposal for handover/sale of equipment was under consideration and are in the process of appointing a valuation consultant and sought further extension of the Agreement up to 30.06.2017 and based on the assurances given, the said agreement was further extended till 22.02.2017. It is contended by the Charotar Gas that in spite of numerous letters sent thereafter on the contentious issue, no positive response was received from Gujarat Gas and thus was constrained to send a legal notice dated 20.02.2017.
- x. Charotar Gas requested PNGRB vide letter dated 02.03.2017 and 20.03.2017 to look into the matter and to take appropriate action. In furtherance to these letters, PNGRB sought clarification vide letter dated 27.03.2017 from Gujarat Gas on the operation of the CNG Gas Stations in the GA authorized to Charotar Gas. Gujarat Gas replied vide letter dated 07.04.2017 stating that operation of the CNG Stations in the authorized area of Charotar Gas is in relation to the pre-existing CNG stations which were established prior to the constitution of PNGRB under a Franchise Agreement & had a deemed authorization under Section 16 of the PNGRB Act.
- xi. On 23.05.2017, Gujarat Gas informed Charotar Gas that it has unilaterally extended the Franchise Agreement for an additional period of 10 years i.e. 23.09.2026 and claimed various damages along with interest from Charotar Gas. Pursuant to this Gujarat Gas also issued Arbitration notice on 28.06.2017.

- xii. In order to resolve the issue, various meetings were held between the parties and in one of the meeting held by PNGRB on 03.11.2017; directions were given to amicably resolve the issue failing which Gujarat Gas to discontinue operations in the authorized GA of Charotar Gas. Further PNGRB also directed Gujarat Gas to provide a list of unauthorized CNG stations being run by it in areas authorized to other entities. It is worth mentioning herein that on 05.07.2017 meeting was also held between both the parties in presence of Minister of State, Gujarat Government also wherein a timeline was granted to Charotar Gas till 26.07.2017 for final decisions on the three options given to them during the meeting.
- xiii. Later, Charotar Gas filed a complaint u/s 25(2) of the PNGRB Act against the unauthorized operation of CNG stations by Gujarat Gas in his authorized GA which was disposed by PNGRB vide impugned order dated 05.03.2020 against which the Appeal has been filed by Gujarat Gas before this Bench.
- xiv. In order to decide the prayer of the Appellant, the issues that require deliberation are:-
- 1) Whether PNGRB has jurisdiction to adjudicate disputes or complaints, the subject matter of which is already a subject matter of an ongoing arbitration?
 - 2) Whether Gujarat Gas has deemed authorization under Section 16 of the Act?
 - 3) Whether PNGRB is correct in holding that the activities carried out by Gujarat Gas in the authorised area of the Charotar Gas are unauthorised and are in violation of the PNGRB Act and the CGD authorisation Regulations.

It has also been contended by the Charotar Gas before this Tribunal that Gujarat Gas has, as an afterthought, tried to raise several other extraneous issues, which were not even raised before the PNGRB, and were not subject matter of the dispute thereof.

We have heard the learned counsel for the Appellant, Respondent and for the Board at length.

4. **Issue 1: Whether PNGRB has jurisdiction to adjudicate disputes or complaints, the subject matter of which is already a subject matter of an ongoing arbitration?**

- i. The contention of the Gujarat Gas is that the PNGRB does not have any jurisdiction over disputes that are the subject matter of an arbitration agreement between the entities u/s 24 of the PNGRB Act. The subject matter of the Impugned Order, namely the establishment, operation and maintenance of one on-line CNG mother station and seven (7) DBS CNG Stations, had already been referred to arbitration before Hon'ble Sole Arbitrator Mr. Justice K.M. Mehta (Retd.) and the subject matter of the complaint filed by Charotar Gas u/s 25 of the PNGRB Act was already a subject matter of the arbitration and u/s 8 of the Arbitration & Conciliation Act every adjudicatory authority is mandated to refer a matter covered by arbitration to the arbitrator. PNGRB has no jurisdiction to adjudicate disputes or complaints, the subject matter of which is already a subject matter of an ongoing arbitration. Moreover the Land disputes and vacating possession of land is not covered by PNGRB Act, and is not a subject matter of Section 25 of the PNGRB Act. The dispute between the parties here is about the rights arising out of the Franchisee Agreement and depends on interpretation of the Franchisee Agreement. Section 24 of the PNGRB Act is applicable, since the complaint was related to disputes on operation of CNG Stations under the Franchisee Agreement which was already subject matter of ongoing arbitration proceeding, and under section 24 of PNGRB Act read with section 8 of Arbitration & Conciliation Act, 1996 ("**A&C Act, 1996**"), it is the statutory obligation of PNGRB to have referred the matter to arbitration. Moreover reagitating the same issue is not permissible as settled by the Hon'ble Supreme Court in the matter of *K.K. Modi v. K.N. Modi*, (1998) 3 SCC 573. The "CNG Station Situated at Janta Chokdi, V.U. Nagar" referenced in the Prayer is not a functional CNG Station and had not been

operational since the Complainant itself blocked access to the CNG Station thereby completely preventing its access sometime in second quarter of 2017 that necessitated the commencement of arbitration proceedings. The complaint filed is limited to only seeking vacating of the site and does not relate to operation.

- ii. It is also contended by Gujarat Gas that the petition under the PNGRB Act was filed by Charotar Gas only after the judgment dated 26.07.2018 passed by commercial court at City Civil Court, Ahmedabad that had rejected the appeal filed by Charotar Gas against the order dated 11.05.2018 which has directed Charotar Gas to deposit a total outstanding amount of Rs. 1,01,53,685/- for the period 05.03.2018 to 05.04.2018 on account of sale of gas and deposit any further amounts that Charotar Gas may have collected from the customers from 06.04.2018 onwards. The commercial court has also held that Clause 12 of the Franchisee Agreement gives specific right to the Appellant to extend the Franchise Agreement for further period of 10 years and even otherwise, it was not disputed that Charotar Gas was selling gas on behalf of the Appellant and therefore by the conduct of parties, the Franchise Agreement dated 23.09.2006 deemed to have been extended. Though Charotar Gas has filed a writ petition dated 02.10.2018 to set aside Judgement of the Commercial Court at City Civil Court, Ahmedabad (in Com. CMA/41/2018) dated 26.07.2018, however, no stay or relief has been granted on the same till date. It is also contended by the Gujarat Gas that Impugned Order had relied on Hon'ble APTEL order dated 09.03.2012 in the matter of *GAIL India Ltd. v Shyam Industries Ltd. & Ors, Appeal No. 86 & 87 of 2011* however, that order is not applicable here, as this appeal's subject matter is covered by a Franchisee Agreement between two entities, while in Shyam Industries case, there was an order under Section 11(a) of PNGRB Act between consumers and authorised entity.
- iii. Whereas Charotar Gas has contended that the only issue decided by the PNGRB in the impugned order pertains to unauthorised construction and operation of CGD

infrastructure in the GA authorised to Charotar Gas. This issue is within the sole and exclusive jurisdiction of the PNGRB.

- iv. In order to deliberate on the issue of jurisdiction of PNGRB it is relevant to refer to the important section of the PNGRB Act. Section 24 & 25 of the PNGRB Act empowers PNGRB to settle dispute which specifies as follows:-

“Section 24 of the PNGRB Act empowers Board to settle disputes:

“(1) Save as otherwise provided for arbitration in the relevant agreements between entities or between an entity or any other person, as the case may be, if any dispute arises, in respect of matters referred to in sub-section(2) among entities or between an entity and any other person, such dispute shall be decided by a Bench consisting of the Member (Legal) and one or more members nominated by the Chairperson: Provided that if the members of the Bench differ on any point or points, they shall state the point or points on which they differ and refer the same to a member other than a member of the Bench for hearing on such point or points and such point or points shall be decided according to the opinion of that member.

(2) The Bench constituted under sub-section (1) shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable by a civil court on any matter relating to –

(a)refining, processing, storage, transportation and distribution of petroleum, petroleum products and natural gas by the entities;

(b) marketing and sale of petroleum, petroleum products and natural gas including the quality of service and security of supply to the consumers by the entities; and

(c) registration or authorisation issued by the Board under section 15 or section 19.

(3) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), the Board shall have the power to decide matters referred to in sub-section (2) on or after the appointed day.

25. Filing of Complaints:

(1) A complaint may be filed before the Board by any person in respect of matters relating to entities or between entities on any matter arising out of the provisions of this Act: Provided that the complaints of individual consumers maintainable

before a consumer disputes redress forum under the Consumer Protection Act, 1986 (68 of 1986) shall not be taken up by the Board but shall be heard and disposed of by such forum. Explanation.- For the purposes of this sub-section, the expression "consumer disputes redress forum" shall mean the district forum, State Commission or, the National Commission, as the case may be, constituted under the provisions of the Consumer Protection Act, 1986 (68 of 1986). (2) Every complaint made under sub-section (1) shall be filed within sixty days from the date on which any act or conduct constituting a contravention took place and shall be in such form and shall be accompanied by such fee as may be provided by regulations : Provided that the Board may entertain a complaint after the expiry of the said period if it is satisfied that there was sufficient cause for not filing the complaint within that period."

- v. In the present case, M/s Charotar Gas has filed the Complaint before PNGRB u/s 25(2) of the PNGRB Act, 2006 with a prayer of immediate vacation. The primary issue before the PNGRB was the unauthorised activities carried out by the Gujarat Gas in the authorised GA of Charotar Gas which was granted by PNGRB following due procedure laid down under the provision of the PNGRB Act. PNGRB is the sole regulator, set up by the Parliament to regulate the refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas excluding production of crude oil and natural gas so as to protect the interests of consumers and entities engaged in specified activities relating to petroleum, petroleum products and natural gas and to ensure uninterrupted and adequate supply of petroleum, petroleum products and natural gas in all parts of the country and to promote competitive markets and for matters connected therewith or incidental thereto.
- vi. Section 16 of the PNGRB Act categorically states that *"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”.

- vii. Therefore in terms of Section 16 of the PNGRB Act, there is no doubt that Section 16 of the PNGRB Act empowers absolute authority to PNGRB to grant authorisation and no entity can lay, build, operate or expand any city or local natural gas distribution network, without obtaining authorisation in accordance to the provision of the Act. Admittedly, Charotar Gas has obtained an authorisation by PNGRB u/s 18 of the PNGRB Act for Anand district including Kheda GA on 12.05.2015. PNGRB has an exclusive jurisdiction not only on the issue of granting authorisation but also on the issue of violation of authorisation or matters connected therewith or incidental there to and thus has an exclusive jurisdiction on the issue of unauthorised construction of CGD infrastructure by Gujarat Gas in Anand District which has been duly authorised to Charotar Gas. Arbitrator has no jurisdiction to decide on the issues relating to authorisation or of unauthorised construction of CGD infrastructure by Gujarat Gas or going into the terms of authorization granted by PNGRB or matters connected therewith or incidental thereto. The issue of violation of the terms the authorisation granted by PNGRB or unauthorised activities in the GA of the authorised entity cannot fall within the domain of Arbitration and Conciliation Act, 1996.
- viii. Moreover two entities by entering into a franchisee agreement, even prior to the enactment of PNGRB Act, cannot claim authorisation post notification of PNGRB Act unless has been specifically granted or accepted by PNGRB, being the sole authority to do so, in accordance of PNGRB Act.
- ix. It is true that Arbitration proceedings are in nature of civil dispute and any dispute arising out of the Franchisee agreement is very well within the domain of

Arbitrator. Arbitration is an alternate dispute resolution mechanism incorporated to have a speedy and out of court fair and efficient settlement of disputes arising in commercial relations where the parties to the transaction seek an amicable settlement of that dispute by recourse to conciliation. According to Black's Law Dictionary, Arbitration is a method of dispute resolution involving one or more neutral third parties. The preamble of the Arbitration and Conciliation Act itself suggests that Arbitration is a right *in personam* which binds two parties agreeing to opt for such mechanism for dispute resolution. Alternatively, for certain disputes arising between the parties covered and governed by special enactments, there are special courts/tribunals constituted under such enactments where the parties can approach in case of disputes arisen between them like Central Administrative Tribunal and State Administrative Tribunals constituted under the Administrative Tribunals Act, 1985 to deal with the Service matters of the civil servants and employees of public bodies/ authorities, Armed Forces Tribunal constituted under the Armed Forces Tribunal Act, 2007 to decide the disputes of defense personnel etc. These enactments generally have the exclusion jurisdiction set out with a notwithstanding clause mentioned in such acts. Such enactments set out the exclusivity of the disputes governed by such acts to be dealt with the specialized forums constituted to decide on such disputes. PNGRB Act is also one of such enactment notified to protect the interests of consumers and entities engaged in specified activities relating to petroleum, petroleum products and natural gas and to promote competitive markets and for matters connected therewith or incidental thereto.

- x. In the present case the prayer before the PNGRB by Charotar Gas was for vacation of land of Charotar Gas and to desist the operation of CNG station by other entity within the authorised GA of Charotar Gas. Accordingly PNGRB being the sole regulator, as per the PNGRB Act, has the sole authority to direct Gujarat Gas to cease and desist operation of the CNG Station in the area authorised to Charotar. The issue of examining the terms of the authorisation is beyond the scope of the Franchisee Agreement which has been signed by the two entities.

- xi. It is also contended by Gujarat Gas that the impugned order is barred by *res-judicata* as the subject matter of impugned order had been referred to arbitration vide arbitration notice dated 28.06.2017 before Ld. sole arbitrator and having failed in the Arbitration Proceeding and Civil Court, Charotar Gas approached the PNGRB with its complaint under Sec. 25 of PNGRB Act which has same subject issue. This Tribunal is of the view that the issue before the arbitrator and the Civil Judge pertains to the breach of obligation by Charotar Gas which were arising from the Franchisee agreement and to indemnify Gujarat Gas for losses caused for not acting in conformity with the terms and conditions of the Franchisee Agreement. Thereby Gujarat Gas is well within its right to claim damages under the Franchisee Agreement before the Arbitrator for the same, which is very well within the domain of the Arbitration.
- xii. In view of the above, this Tribunal do not agree with the contention of Gujarat Gas that PNGRB has no jurisdiction to adjudicate disputes or complaints, the subject matter of which is already a subject matter of an ongoing arbitration. The proceeding before the Arbitral Tribunal and the civil judge have no correlation to the issue of unauthorised activity in the authorised area of Charotar Gas granted by PNGRB, which can only be decided by PNGRB. PNGRB has an exclusive jurisdiction not only on the issue of granting authorisation but also on the issue of violation of authorisation or matters connected therewith or incidental thereto. Thus PNGRB in its impugned order is right in holding that Board being the only governing body of the Petroleum and Natural Gas Regulatory framework has a power to regulate, cease any activity which might harm the interest of the consumers and entities as well as promoting fair competition among the entities.

5. Issue 2: Whether Gujarat Gas has “deemed authorization” under Section 16 of the PNGRB Act

- i. Gujarat Gas has contended that the Impugned Order is *ultra vires* the proviso to Sec.16 of the PNGRB Act since it is erroneously holding that the online mother

CNG station and seven (7) daughter booster CNG stations were unauthorized, when they are covered by the deemed authorization provided as per proviso to Sec. 16 of the PNGRB Act. The Impugned Order has completely ignored the fact that the infrastructure exclusivity vested with Charotar Gas was only prospective and would not cover CNG Stations developed under a Franchise Agreement with Charotar Gas. The Franchise Agreement was entered into on an exclusive basis and the unilateral application by Charotar Gas to seek an application under Regulation 18(2) CGD Authorisation Regulation was itself a breach of the exclusivity vested with Gujarat Gas under the Franchise Agreement.

- ii. Whereas Charotar Gas has argued that there was no registration done by Gujarat Gas as a deemed authorised entity or any such claim made even at the stage of grant of authorisation by the PNGRB to Charotar Gas and is now seeking deemed authorisation under the Franchise Agreement, as a franchisee of Charotar Gas. Admittedly neither Gujarat Gas nor Charotar Gas were authorised by the Central Government prior to the appointed date, therefore, the applicability of the deeming provision of Section 16 and 17 of the PNGRB Act to either Gujarat Gas or Charotar Gas does not arise. It is for this reason that Charotar Gas has obtained a specific authorisation from the regulator PNGRB for the area in issue whereas Gujarat Gas did not obtain an authorisation for the area in issue. The Franchise Agreement was only for establishing and maintaining one CNG Station at the "Site". The additional daughter booster stations, could only be as per agreement of the parties for which separate supplementary agreements would have to be entered into and the argument of Gujarat Gas that, in terms of the Franchise Agreement, is entitled to construct CNG Stations and operate the same as an agency of Charotar Gas is the complete opposite of the arrangement envisaged under the Franchise Agreement.
- iii. This Tribunal is of the view that pursuant to the enactment of the PNGRB Act on 01.10.2007, admittedly the CGD operations can only be done by entities

authorised in accordance with the provisions of the Section 16 of the Act which 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.*

The only exception to the above provision is given under the proviso of Section 16 i.e. deemed authorisation.

- iv. Further Section 17 (2) of the PNGRB Act provides that “*An entity which is laying, building, operating or expanding, or which proposes to lay, build, operate or expand, a city or local natural gas distribution network shall apply in writing for obtaining an authorisation under this Act : Provided that an entity laying, building, operating or expanding any city or local natural gas distribution network authorised by the Central Government at any time before the appointed day shall furnish the particulars of such activities to the Board within six months from the appointed day.*” Thus Section 17(2) obliges entities to apply to the PNGRB for authorization, and its proviso says that such entities which were authorized by the Central Government at any time before the appointed day, shall furnish the particulars of such activities to the Board within six months from the appointed day. Further Section 17 (4) of the PNGRB Act provides that “**Subject to the provisions of this Act**

and consistent with the norms and policy guidelines laid down by the Central Government, the Board may either reject or accept an application made to it, subject to such amendments or conditions, if any, as it may think fit.” It is also relevant to mention herein that Section 19 of the PNGRB Act provides for the grant of authorizations, and reads as follows:

“19. Grant of authorization.

- (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 suo motu 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 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.”**

v. Further Regulation 18 of the CGD Regulations which is relevant over here, pertains to entities not authorized by the Central Government, and provides as follows:

“18. Entity not authorized by the Central Government for laying, building, operating or expanding CGD network before the appointed day.

- (1) An entity laying, building, operating or expanding CGD network at any time before the appointed day but not duly authorized to do so by the Central Government shall apply immediately for obtaining an authorization in the form as at Schedule I.**
- (2) The Board may take into consideration the following criteria while considering the application for grant of authorization, namely: -**
 - (a) the entity meets the minimum eligibility criteria as specified in clauses (a) to (e) and (i) of sub regulation (6) of regulation 5 before the appointed date and is possessing all necessary statutory clearances, permissions, no**

objection certificates from the Central and State Governments and other statutory authorities;

- (b) an entity which is not registered under the Companies Act, 1956 at the time of submitting the application for grant of authorization shall undertake to become a company registered under the Companies Act, 1956:*

Provided that the Board may exempt an entity to register under the Companies Act, 1956 on such conditions as it may deem appropriate;

- (c) a satisfactory assessment of the actual physical progress made and the financial commitment thereof till immediately before the appointed day in comparison with the entity's DFR appraised by the financial institution funding the project. In case the project has not been funded by any financial institution, the Board may appraise the DFR. The DFR of the entity should clearly indicate the specified geographical area of the project and also specify the coverage proposed for CNG and PNG. In case upon scrutiny of the DFR by the board by taking into account the geographical area, customer segments, infrastructure requirements, etc. proposed by the entity, the DFR is found to be sub-optimal and unacceptable, the Board may not consider the case of the entity for issuing the authorization;*
- (d) in respect of the actual physical progress made and the financial commitment thereof referred to in clause (c), a physical progress of at least twentyfive percent and a financial commitment of at least twenty five percent of the capital expenditure identified for the CGD project as per the DFR immediately before the appointed day may be considered as adequate;*
- (e) the entity should have arranged, by way of acquisition or lease, land for CGS and procured the necessary equipment for erecting the CGS before the appointed day;*
- (f) the Board reserves the right to get the actual physical progress and the financial commitment certified and depending upon the progress achieved, the Board may consider authorizing the entity for the authorized area –*
- i) as per the geographical area in its DFR;*
- ii) as per the geographical area actually covered under implementation till the appointed day; or*
- ii) the geographical area as specified by the Board;*
- (g) in relation to laying, building, operating or expanding the CGD network, it is for the entity to satisfy the Board on the adequacy of its ability to meet the applicable technical standards, specifications and safety standards as*

specified in the relevant regulations for technical standards and specifications, including safety standards and the quality-of-service standards as specified in regulation 15;

- (h) assessment of the financial position of the entity in timely and adequately meeting the financial commitments in developing the CGD network project as appraised by a financial institution and an examination of the audited books of accounts of the entity;*
 - (i) firm arrangement for supply of natural gas to meet the demand in the authorized area to be covered by the CGD network;*
 - (j) any other criteria considered as relevant by the Board based on the examination of the application.*
- (3) The evaluation of the application in terms of the clauses (a) to (j) shall be done in totality considering the composite nature and the inter-linkages of the criteria.*
- (4) The Board, after examining the application in terms of the criteria under sub-regulation (2) and also taking into account the requirements in other regulations, may form a prima-facie view as to whether the case should be considered for authorization.*
- (5) In case of prima-facie consideration, the Board shall issue a public notice in one national and one vernacular daily newspaper (including web-hosting) giving brief details of the project and seek comments and objections, if any, within thirty days from any person on the proposal.*
- (6) The Board, after examining the comments and objections, if any, under sub-regulation (5), may either consider or reject the case for grant of authorization for the CGD network.*
- (7) In case it is decided to grant authorization, the same shall be in the form at Schedule D.*
- (8) In case of rejection of the application, the Board shall pass a speaking order after giving a reasonable opportunity to the concerned party to explain its case and proceed to select an appropriate entity for the project in terms of Regulation 6.*
- (9) In case the entity is selected for grant of authorization for CGD network-*
- (a) the network tariff and the compression charge for CNG shall be determined under the Petroleum and Natural Gas Regulatory Board*

(Determination of Network Tariff for City or Local natural Gas Distribution Networks and compression charge for CNG) Regulations 2008;

(b) the Board may consider grant of exclusivity on such terms and conditions as specified in the Petroleum and Natural Gas Regulatory Board (Exclusivity for City or Local Natural Gas Distribution Networks) Regulations, 2008;

(c) the entity shall abide by the technical standards, specifications including safety standards as specified under relevant regulations for technical standards and specifications, including safety standards;

(d) the provisions under regulations 9, 13, 14, 15 and 16 shall apply to the entity."

.....

- vi. There is no dispute with the fact that Gujarat Gas had been operating under the policy of the State Government prior to the notification of the PNGRB Act. It is relevant to mention here that by the recent Judgement dated 28.09.2021 of the Hon'ble Supreme Court of India in *Adani Gas Limited v. Union of India & Ors., 2021 SCC Online SC 820*, the Hon'ble Court has clarified that such activities based on the authorisations given by the State became exposed to the vice of illegality, since the States did not have legislative competence to grant such authorisations in the first place and has held that

Quote :

".....deemed authorization" clause under proviso to Section 16 is subject to other provisions of Chapter IV, including Section 17 and, further, that only entities granted authorization by the Central Government, fell in that category. As a sequitur, it is held that entities which had received authorization from States, had to seek authorization under the PNGRB Act, in terms of Section 17(2), and in compliance with the conditions spelt out under the CGD Regulations. The role of the State in granting NOC is only supportive or collaborative, in terms of the Central Government's policy, of 2006, and cannot confer any advantage to any entity, which has to seek and be granted specific authorization in terms of the PNGRB Act on the merits of its application....." Unquote

vii. In the present matter before us, the terms of operation & maintenance of CNG station are governed by Franchisee Agreement which was executed prior to the enactment of PNGRB Act and also prior to grant of authorisation to Charotar Gas. The PNGRB Act came into effect on 01.10.2007 and mandated authorizations by the Board, being the sole regulator, for the laying, building, operating or expanding any city or local natural gas distribution network. It is also pertinent to mention herein that the PNGRB issued a press note on 30.10.2007 calling upon all the concerned entities involved in or proposed to the laying, building, operating or expanding of a City or Local Gas Distribution Network prior to the appointed date, i.e 01.10.2007 to furnish information, in accordance with the PNGRB Act, of such activities to the Board within six months from the appointed day. Admittedly neither any information was submitted by Gujarat Gas for seeking deemed authorisation which is a statutory requirement, as per the PNGRB Act, by entities **authorized by the Central Government for laying, building, operating or expanding CGD network before the appointed day** nor had applied for authorisation as required by **Entity not authorized by the Central Government for laying, building, operating or expanding CGD network before the appointed day**. There is no dispute with the fact that neither Gujarat Gas nor Charotar Gas were authorised by the Central Government prior to the appointed date i.e 01.10.2007 which is also admitted by the Gujarat Gas.

viii. Thus, the applicability of the deeming provision of Section 16 and 17 of PNGRB Act to either Gujarat Gas or Charotar Gas does not arise. And thus Gujarat Gas is not covered under the definition of deemed authorisation as per the PNGRB Act/ Regulation. PNGRB did accepted and granted authorisation to Charotar Gas, as per Schedule-D under Section 18 (1) of the CGD Regulation which is applicable for the entities not authorised by Central Govt before the appointed day for the area in issue. Even after the notification of PNGRB Act, Gujarat Gas neither submitted any information nor applied for the authorisation for Anand Area the activities of which is

presently in dispute, required as per the PNGRB Act/Regulation. In fact no document is placed on record to demonstrate that Gujarat Gas had submitted any comments or filed objections even at the time of processing of the Charotar Gas application under Section 18 of the PNGRB Act.

Therefore, this Tribunal is of the view that contention of Gujarat Gas having “deemed authorisation” for the Anand Area is not correct as it has neither been authorized by the central government nor by PNGRB.

Thereby PNGRB is correct in upholding that Gujarat Gas does not qualify as a “deemed” authorised entity under the provision of the PNGRB Act.

6. **Issue 3: Whether Gujarat Gas can continue to operate Compressed Natural Gas (CNG) stations including one mother and 7 daughters station situated within the geographical area authorised to Charotar Gas .**

- i. Contention of Gujarat Gas, that the Franchisee Agreement dated 23.09.2006 predated PNGRB Act, 2006, which was notified on 01.10.2007 (except Sec.16, which was notified on 15.07.2010). Therefore, there was no prohibition till 15.07.2010 on operation of the CNG stations by Gujarat Gas.
- ii. The Franchisee Agreement did not become illegal even after Sec.16 of the PNGRB Act came into force on 15.07.2010, as time period was provided for parties to obtain authorisation under CGD Authorisation Regulations (including Regulation 18). Charotar applied for authorisation under Reg.18 of CGD Authorisation Regulations and obtained authorisation on 12.05.2015 with only infrastructure exclusivity and no marketing exclusivity for 843 sq.km. area in Anand District.
- iii. Further Regulation 8(2) of the CGD Exclusivity Regulations permits entities to develop CNG stations through agreements with other entities, so development of CNG stations under the Franchisee Agreement continued. There was no

automatic termination of the Franchisee Agreement as the CGD Exclusivity Regulations permit development of CNG stations through agreements with third parties.

- iv. It is also contended by Gujarat Gas that Charotar Gas by its own conduct never declared the Franchisee Agreement to have become void once it got the authorisation under Regulation 18. Instead, Charotar Gas continued the Franchisee Agreement arrangement and dispute arose in relation to the right vested with Appellant to extend the term of the Franchisee Agreement for another ten (years).
- v. Whereas Charotar Gas has argued that there is no dispute that Charotar Gas does not have marketing exclusivity however, it has marketing authorisation. The only implication would be that if any other person has marketing authorisation, he is entitled to supply gas using the network of the authorised entity. It is only the authorised entity that can maintain the CGD network. However, for Gujarat Gas to even claim any right to supply gas within the area in issue, it has to show that it has an authorisation. Admittedly, the authorisation granted to Gujarat Gas does not cover the area in issue which has been authorised to Charotar Gas. It is not possible for Gujarat Gas to supply gas using its own network and infrastructure, within the area authorised to Charotar Gas. This is because Charotar Gas has been granted network exclusivity.
- vi. It is relevant to mention herein that under Regulation 18 of the CGD authorisation Regulation an entity laying, building, operating or expanding a CGD network at any time before the appointed day but not duly authorized to do so by the Central Government shall apply immediately for obtaining an authorization in the form as at Schedule I. In case it is decided by PNGRB to grant authorization, the same shall be in the format Schedule-D. In the present case Charotar Gas was granted authorisation under regulation 18 and on perusal of the authorisation letter dated 12.05.2015, which is issued to Charotar Gas, it is mentioned therein that no

marketing exclusivity is granted to Charotar Gas for the development of the CGD Network in the Anand Area including Kanjari & Vadtal GA. However Clause 4 of the Schedule- D attached with the authorisation letter granted an exclusivity period under PNGRB (Exclusivity for City or Local Natural Gas Distribution Networks) Regulations, 2008, in respect of the following:

.”

.....

- (a) *Up to 31.03.2026 from the date of this communication for laying , building and expansion of the CGD Network; and*
- (b) *No Exclusivity in terms of an exemption from the purview of common carrier for the CGD network.*

.....”

Further Clause 6 of Schedule –D states that “the entity shall publish the approved network tariff for transportation of natural gas as well as the compression charge in the CGD network in the authorized area.” Clause 8 of the above mentioned Schedule specifies that “the entity shall publish & display the retail selling price of CNG for the purpose of invoicing to CNG customers in Rs./KG at all NG dispensing stations.”

- vii. Thus schedule D of the authorisation letter issued to Charotar Gas shows that PNGRB has imposed various obligations which are required to be complied by Charotar Gas as an authorised entity for its GA & has to abide by various Regulations as specified therein or else will result in penal action.
- viii. It is correct to hold that Gujarat Gas does not have any deemed authorisation and has never applied for authorisation or has ever approached or filed any objection to PNGRB at the time of process of authorisation to Charotar Gas w.r.t. the disputed GA.

- ix. However Charotar Gas applied & succeeded in getting authorisation from PNGRB under Regulation 18 of the Authorisation Regulation but did not get exclusivity from the purview of common carrier or contract carrier for the CGD Regulation.
- x. In fact various communication on record shows that Gujarat Gas changed its stand which was earlier confirmed by Gujarat Gas that proposal for handover/sale of equipment was under consideration and are in the process of appointing a valuation consultant and sought further extension of the Agreement upto 30.06.2017.
- xi. After receiving various extensions, for the first time on 07.04.2017 Gujarat Gas changed its stand, w.r.t handing over of the disputed CNG station and contended that operation of the CNG Stations in the authorized area of Charotar Gas is in relation to the pre-existing CNG stations which were established prior to the constitution of PNGRB under a Franchise Agreement & had a deemed authorization under Section 16 of the PNGRB Act.
- xii. Prior to 07.04.2017 Gujarat Gas was in agreement & was in process of handing over of operation & maintenance of CNG station to Charotar Gas. Furtherance to its change of stand also unilaterally extended the Franchisee Agreement for 10 years.
- xiii. This Tribunal is also of the view that mere absence of having marketing exclusivity to Charotar Gas **does not grant any right to Gujarat Gas to operate & maintain CNG station in the authorised area of Charotar Gas.** The term "Marketing exclusivity is nowhere defined in the PNGRB Act therefore it is not clear what was the intention of PNGRB w.r.t "no exclusivity" from the purview of Marketing Exclusivity in its authorisation letter dated 12th May 2015.
- xiv. However PNGRB in Schedule–D attached with authorisation letter did specified that "*No exclusivity in terms of exemption from the purview of common carrier or contract carrier.*"The term "Common Carrier" is defined in Section 2 (j) of the

PNGRB Act as “*such pipelines for transportation of petroleum, petroleum products and natural gas by more than one entity as the Board may declare or authorise from time to time on a nondiscriminatory open access basis under sub-section (3) of section 20, but does not include pipelines laid to supply- (i) petroleum products or natural gas to a specific consumer; or (ii) crude oil; Explanation.- For the purposes of this clause, a contract carrier shall be treated as a common carrier, if – (a) such contract carrier has surplus capacity over and above the firm contracts entered into; or (b) the firm contract period has expired.*”

- xv. Further Section 2 (m) of the PNGRB Act defines "contract carrier" as "*such pipelines for transportation of petroleum, petroleum products and natural gas by more than one entity pursuant to firm contracts for at least one year as may be declared or authorised by the Board from time to time under sub-section (3) of section 20.*”
- xvi. Perusal of the definition of Common Carrier & Contract Carrier shows that it has reference with respect to transportation of natural gas from pipelines by more than one entity on contract or common carrier basis. It is nowhere related with operation & maintenance of CNG Station.
- xvii. Therefore, relevance of absence of exclusivity from the purview of Common Carrier or contract carrier has no relevance with operation & maintenance of CNG Station under Franchisee Agreement. Moreover power to declare the pipeline as contract carrier or common carrier lies with PNGRB which is required to be notified as per Section 20 of the PNGRB Act and no documents has been produced by Appellant to show that the pipeline in disputed area has been declared as common carrier or contract carrier by PNGRB.
- xviii. Further this Tribunal also does not agree with the contention of Gujarat Gas that Reg.8(2) of the CGD Exclusivity Regulations permits entities to develop CNG stations through agreements with other entities, so development of CNG stations

under the Franchisee Agreement continued and Charotar Gas has by its own conduct never declared the Franchisee Agreement to have become void once it got the authorisation under Regulation 18. Instead, Charotar continued the Franchisee Agreement arrangement and dispute arose in relation to the right vested with Appellant to extend the term of the Franchisee Agreement for another ten (years).

- xix. The perusal of Regulation 8(2) the CGD Exclusivity Regulations shows that it is related with service obligation of the authorised entity as detailed therein that “*During the period of exclusivity allowed under regulation 6, the authorized entity may supply compressed natural gas for dispensing either through CNG dispensing facilities owned by itself or by any other entity and in the latter case, the other entity shall be required to pay the compression charge for CNG to the authorized entity and enter into a mutually agreeable commercial contract with the authorized entity for- (a) either having the online compression facilities installed in its own dispensing facilities wherein the online compression facilities shall be owned, installed and operated by the authorized entity, or (b) take delivery of CNG ex-online compressor station of the authorized entity for subsequent dispensing in the authorized area.*”
- xx. It is clear from the reading of Regulation 8(2) referred above that there is no obligation on the authorised entity to supply CNG through any other entity. It can be done either on its own or by any other entity and in case it is by any other entity than can only be by mutually agreeable commercial contract between the authorised entity and other entity.
- xxi. In the present case there is no iota of doubt that Charotar Gas has ever agreed for continuation of Franchisee Agreement after getting authorisation from PNGRB and continuously requested Gujarat Gas to hand over the CNG Station to which Gujarat Gas agreed earlier but later on changed its stand. It is also relevant to mention herein that though as per clause 12.2 of Franchise Agreement, Gujarat

Gas had a right but not obligation to renew the agreement for a further period of 10 years but in case Charotar Gas did not agree for the same, in that scenario maximum liability of the Charotar Gas will be to indemnify Gujarat Gas, for which Arbitration is already pending between the parties. The Indian Contract Act 1872, section 2(e), defines an agreement as "every promise and every set of promises, forming the consideration for each other is an agreement." A promise is essentially an offer or a proposal, made by a person or an entity, towards another. It is an understanding between parties.

- xxii.* Therefore, this Tribunal is of the view that PNGRB has correctly held that mere expiration/cessation of a reasonable term or time period of Marketing Exclusivity of the entity will not by itself create any right in favour or against any entity to carry out unauthorised activities in the authorised GA unless the CGD network has been declared as common or contract carrier under Section 20 of the PNGRB Act.
- xxiii.* One of the contention of Gujarat Gas before this Tribunal is that Charotar gas has till date failed to incorporate itself as a company as required under regulation 18(2)(b) of the CGD Authorisation Regulations and has not obtained any exemption from compliance with this requirement.
- xxiv.* Whereas Charotar has submitted that this issue was admittedly not raised by Gujarat Gas in the proceedings before the PNGRB. It is not a question of law, but relates to the conditions to be fulfilled, exemption granted by the PNGRB and the subsequent notifications and correspondence of PNGRB, none of which is on record. The issue was raised in a review petition filed after the impugned order, which has been withdrawn by Gujarat Gas. Gujarat Gas has filed a substantive petition under Section 24 of the PNGRB Act on 08.12.2021 before the PNGRB, raising the very same issue and seeking adjudication of the PNGRB. Gujarat Gas has also filed a writ petition, bearing CWP No. 14494/2021 before the Hon'ble High Court of Delhi raising the very same issue. Gujarat Gas should not be

permitted for forum shopping and raising the same issues in multiple proceedings, before different forums.

- xxv. Charotar Gas in its written submission has also submitted that the initial proposal of the PNGRB on 14.05.2009 was with the condition that Charotar Gas would be required to convert itself to a limited company for the grant of authorisation. Thereafter, by letter dated 13.08.2009 sent by the Principal Secretary, Government of Gujarat, Energy & Petrochemicals Department, to the PNGRB, the position of Charotar Gas being a co-operative society was sufficiently explained, and PNGRB was requested to exempt Charotar Gas from the requirement of being registered under the Companies Act, 1956. Thereafter, in the communication of terms and conditions for grant of authorisation dated 22.06.2012, the condition for conversion to a limited Company was deleted by the PNGRB. Thereafter, the authorization was granted on 12.05.2015, again without any such condition or direction to Charotar Gas to be registered under the Companies Act, 1956. The authorisation is granted with Charotar Gas being a co-operative society. PNGRB has also on numerous occasions recognised the status of Charotar Gas as an authorised entity and being a Cooperative Society.
- xxvi. This Tribunal is of the view that issue of conversion to a limited company by Charotar Gas, as required under Regulation 18, is already pending before different forums and has no relation with the issue before this tribunal w.r.t the unauthorised activities of Gujarat Gas in the authorised GA of Charotar Gas. However, without prejudice, it is in the jurisdiction of PNGRB to examine the conditions of authorization and to take requisite action in accordance with the Act & regulation including power to exempt the requirement of converting to a limited company.
- xxvii. One of the contention of Gujarat Gas is that the Impugned Order is pre-judging the issue of CNG Stations being an integral part of the CGD network, though the issue is currently *sub-judice in the matter of Jatinder Moudgil & Others Vs State*

of Punjab and Others (CWP No. 13490 of 2008)". Where as Charotar Gas has contended that, before the PNGRB, it was the contention of Gujarat Gas that only daughter CNG Stations are not part of the CGD Network, however in the present appeal it is the contention of Gujarat Gas that all CNG stations are not part of the CGD network. Being a sub-judice matter, this tribunal will not comment on this issue.

Tribunal is of the view that the issue before this Tribunal is whether Gujarat Gas has deemed authorisation and can continue to operate Compressed Natural Gas (CNG) stations including one mother and 7 daughters station situated within the geographical area authorised to Charotar Gas under the garb of Franchisee Agreement signed prior to enactment of PNGRB Act and not whether CNG station is part of CGD network or not.

xxviii. Further Franchisee Agreement did contemplate opening of more than one CNG Station which is evident from the Clause 2.2 of the Franchisee Agreement and it clearly provides that "*parties may, from time to time, agree upon additional locations or Sites at which additional outlets may be opened by GSPC GAS and in such cases, the sale of CNG from such additional outlets shall be covered by the terms and conditions as would be decided between the parties.*". Thus the clause 2.2 clarifies that the Franchisee Agreement was only for establishing and maintaining one CNG Station at the "Site". It deals with the opening of additional location apart from the agreed site as detailed in Annexure I.

xxix. The definition of "Site" in Franchisee agreement has specifically clarified that it include additional site for opening of an outlet as agreed upon by the parties by execution of supplementary annexure for opening an outlet. The additional daughter booster stations, could only be as per agreement of the parties for which separate supplementary agreements would have to be entered into. In the present case, no document has been placed on the record to show opening of additional station.

xxx. The issue before the Tribunal is related to the unauthorised activities of Gujarat Gas in the area authorised to Charotar Gas by PNGRB. However the issue of interpretation of Franchisee Agreement and whether such an agreement existed or not, is an issue required to be adjudicated in arbitration.

xxxi. In view of above, following is concluded that :-

- a) PNGRB has an exclusive jurisdiction not only on the issue of granting authorisation but also on the issue of violation of authorisation or matters connected therewith or incidental thereto and thus has an exclusive jurisdiction on the issue of unauthorised construction of CGD infrastructure by Gujarat Gas in Anand District which has been duly authorised to Charotar Gas
- b) The proceeding before the Arbitral Tribunal and the civil judge have no correlation to the issue of unauthorised activity in the authorised area of Charotar Gas granted by PNGRB, which can only be decided PNGRB.
- c) Gujarat Gas is neither authorized by Central Govt prior to enactment of PNGRB Act nor has been authorized by PNGRB and does not fulfill the condition of the “deemed authorization” as stipulated in the Section 16 of the PNGRB Act, and hence cannot be considered as “deemed authorized” entity.
- d) Charotar Gas is the duly authorised entity for the Anand- Kheda GA under Section 18 of the PNGRB Act.
- e) Gujarat Gas is well within its right to claim damages under the Franchisee Agreement before the Arbitrator for the issue related with the breach of obligation by Charotar Gas, which is very well within the domain of the Arbitration.

- f) The relevance of absence of exclusivity from the purview of Common Carrier or contract carrier has no relevance with the operation & maintenance of CNG Station under Franchisee Agreement.
- g) Power to declare the pipeline as contract carrier or common carrier lies with PNGRB which is required to be notified as per Section 20 of the PNGRB Act.
- h) PNGRB is correct in holding that mere expiration/cessation of a reasonable term or time period of Exclusivity as detailed in schedule D of the entity will not by itself create any right in favour or against any entity to carry out unauthorised activities in the authorised GA unless the CGD network has been declared as common or contract carrier.

ORDER

The present Appeal i.e., Appeal No. 6 of 2022 is devoid of merit and stands dismissed. In view of the above the Impugned order dated 05.03.2020 passed by PNGRB is upheld. Needless to mention that pending IA's if any shall stand disposed of. No order as to costs.

The Registrar shall certify a copy of this judgment to both the parties.

**PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO CONFERENCING
ON THIS 23rd DAY OF MARCH, 2022.**

**(Dr. Ashutosh Karnatak)
Technical Member (P&NG)**

**(Justice R.K. Gauba)
Officiating Chairperson**