APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
(APPELLATE JURISDICTION)

APPEAL No. 156 OF 2023 &
IA NOS. 1685 & 2163 OF 2022 & IA NO. 474 OF 2023

Dated: **04.10.2023**

Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Dr. Ashutosh Karnatak, Technical Member (P&NG)

In the matter of:

GAS TRANSMISSION INDIA PRIVATE LIMITED
Through Mr. JVVS Murthy, Managing Director
having its registered office at 81-32-4,
Walkers Road, Venkateswara Nagar,
VL Puram, Rajahmundry East Godavari,
Guntur,
Andhra Pradesh – 533 101 …Appellant

VERSUS

PETROLEUM & NATURAL GAS REGULATORY BOARD
Through the Secretary, PNGRB
Having its office at 1st Floor,
World Trade Centre,
Babar Road,
New Delhi- 110 001 … Respondent

Counsel for the Appellant(s) : Mr. Gopal Jain, Sr. Adv.
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Ms. Tanuja Dhoulakhandi
Mr. Prince Singh
Mr. Raghav Malani for R-1

JUDGEMENT

PER HON'BLE MR. JUSTICE RAMESH RANGANATHAN, CHAIRPERSON

1. This Appeal has been filed under Sections 33(1) and (6) of the Petroleum and Natural Gas Regulatory Board Act, 2006 **('Act')** challenging the orders dated 31.05.2022 passed by the PNGRB refusing to grant transfer of authorization in favor of M/s IMC Limited ("**IMC**"), and further granting one month time to complete financial closure ("**FC**") and Gas Transportation Agreement ("**GTA**"); and the order dated 13.09.2022, passed in Review Petition No 14 of 2022 whereby the Board dismissed the review petition filed by the appellant.

2. In this appeal, the Appellant prays that this Tribunal may be pleased to: (a) allow the present Appeal and set aside the orders dated 31.05.2022 bearing Reference Legal/07/2022 passed by the PNGRB, as well as the order dated 13.09.2022 in Review Petition No. 14/2022; and (b) consequently direct the PNGRB to examine the matter as per the status prevailing as on 30.10.2019 (when it had passed the earlier termination order that had come to be set aside by this Tribunal by its judgment dated 15.12.2021), including to take a decision on the proposal for renunciation of the Appellant's Authorization in favor of IMC. and to grant them reasonable remedial time in case it finds violation of the terms and conditions of authorization.

I. CASE OF THE APPELLANT:

3. The Appellant, a company incorporated under the Companies Act, 2013, is carrying on the business of transportation, distribution, marketing and sale of petroleum and natural gas, and for all matters connected therewith. Vide Public Notice no. EOI/NGPL/BID/6/2013-2 dated 20.06.2013, the PNGRB invited bids for authorization of Natural Gas Pipeline network from Ennore (Thiruvallur District, Tamil Nadu) to Nellore (Sri Potti Sri Ramulu Pradesh) spanning about 250 kms with a system capacity of 36 MMSCMD. Following the process of competitive bidding, the consortium led by KEI-RSOS Petroleum and Energy Private Limited (KREPL) was authorized, vide letter dated 02.12.2014, for laying, building, operating or expanding the Ennore-Nellore Natural Gas Pipeline (ENPL) under the provisions of Regulation 5 of the PNGRB (Authorizing Entities to Lay, Build, Operate or Expand Natural Gas Pipelines) Regulations, 2008 ("2008 Regulations" for short). Subsequent to the authorization, and in line with Regulation 5(6)(f) of the 2008 Regulations, the Consortium incorporated a Special Purpose Vehicle ("**SPV**") company named the Gas Transmission India Pvt. Ltd. ("**Appellant**") for execution of ENPL. On the request of the appellant, on 06.03.2015, the authorization issued in the name of KREPL consortium was amended, and re-issued in favour of the Appellant, on 15.05.2015. On the ground that it was a newly formed SPV, and required some time for FC and capacity booking/gas sales agreement ("**GSA**"), the appellant sought time extension from the Board. However, the request of the Appellant was rejected, vide order dated 15.06.2015, and the Board informed that no provision existed for extension of the time schedule. Subsequently, the appellant submitted (a) The FC in line with Regulation 10(5) of the NGPL Authorization Regulations as internally financed project vide letter dated 30.11.2015, and a copy of the Board Resolution as per the requisite Regulation; (b) MoU with LNG Bharat Private Limited for

transportation of 11.5 MMSCMD of gas which is 50% of the volume to be transported in the first 5 years, and (c) clarifications, by its letters dated 26.12.2015 and 31.12.2015, to the queries raised by the Board in its letter dated 18.12.2015.

4. Quoting Regulation 16 of the 2008 Regulations, the Board directed encashment of Rs. 1.825 crores (25% of the Performance Bank Guarantee amount) on 17.02.2016 on the ground that a breach of the authorization had occurred with respect to the appellant's failure to achieve financial closure and natural gas tie-ups. This action, according to the appellant, was not in accordance with Regulation 16 as the said Regulations do not empower the Board to direct Bank guarantee invocation without first giving the entity an opportunity of taking remedial measures; and they had submitted the requisite documents in support of it being an internally financed project.

5. Aggrieved by the Order of the Board dated 17.02.2016, the Appellant approached the High Court at Hyderabad and an interim order was passed in Writ Petition No. 6387 of 2016; however, by that time, the Board had already encashed the Bank Guarantee to the extent of 25% amounting to Rs.1,82,50,000. The appellant sent letter dated 10.03.2016 to the Board objecting to encashment of the performance bank guarantee for ENPL. As recorded in the Minutes of the meeting held on 11.01.2018, the appellant was required to withdraw the case pending before the High Court, and to submit the balance 25% of the PBG amounting to INR 1,82,50,000, as the Board was ready to examine afresh the schedule for execution of the project. The appellant informed the Board, vide letter dated 29.01.2018, that it had withdrawn the Writ Petition; in the hearing held on 31.01.2018 (Minutes dated 07.02.2018) the factum of withdrawal of the Writ Petition and replenishment of the Bank Guarantee was informed to the Board, and it was also informed that the detailed route survey had finally established the final

length of the main trunk line; again on 19.03.2018, a proposed schedule for execution of the project was submitted; for ENPL, the primary source was the Ennore LNG terminal which was not yet commissioned by then and, accordingly, coupled with other constraints as mentioned in the communication dated 17.03.2018, the Board granted time extension of ENPL up to April 2020 by its letter dated 12.07.2018; the Board again started proceedings against the appellant, under Regulation 16, vide notice dated 08.03.2019 and conducted a progress review meeting on 26.03.2019 wherein the appellant informed them that it was in talks with various companies for strategic partnership in the ENPL project; after the hearing, the Board directed the appellant to provide the latest status and correspondence towards the finalization of the strategic partners for ENPL; and, according to the appellant, the Minutes of the aforesaid meeting would show that there was no discussion on financial closure.

6. The Appellant submits that they had taken the following steps for the Ennore-Nellore Natural Gas Pipeline project ("**Project**"): (a) Route Survey had been completed for the Phase 1 – Spread I of the Project i.e., from TP 0 at Madras Fertilizer Limited, Ennore, Tiruvallur Dist, TN to TP 106 at southeast side of Sricity near village Mallavaripalem, Chitoor Dist, AP for a length of 50.977 kms; (b) Route Survey had been completed for the Phase 1 – Spread II of the Project (From TP 106 at southeast side of Sricity near village Mallavaripalem, Chitoor Dist to TP 228 near village Pellakuru, Nellore Dist., AP) for a length of 44.991 kms. (c) Route Survey had been completed for the Phase 1 – Spread II (Branch Line) of the Project from (From TP 228 (TP 0) near village Pellakuru, Chitoor Dist, AP to TP 35 near northeast corner of Lanco, Yerpedu, Chittoor Dist, AP) for a length of 26.850 kms.(d) Route Survey had been completed for the Phase 1 – Spread III of the Project (From TP 228 near village Pellakuru, Nellore dist, AP to TP 302 in LNG area in Krishnapatnam port, Nellore Dist, AP) for a length of 61.694 kms. (e) Route

Survey had been completed for the Phase 2 – Spread IV of the Project (From TP 302 in LNG area in Krishnapatnam port, Nellore dist, AP to TP 409 near village Sunnabatti, Nellore District, AP (1.34 km North of IFFCO KISAN SEZ) for a length of 61.266 kms. (f) Geotechnical survey had been completed; and (g) Topographical survey had been completed; however, the PNGRB proceeded to issue a Show Cause Notice on 04.07.2019; in response thereto, the Appellant provided the required information on 20.07.2019 including regarding the tap-off and other matters; the Appellant informed that a strategic investor would be acquiring a major shareholding in the SPV, which would help adhere to the timelines prescribed by the Board for the project; this was followed by letters dated 04.09.2019, 23.09.2019 and 30.09.2019 where the appellant sought an opportunity to make a presentation with its strategic investor, IMC, in view of the agreement between them and IMC to take over their entire shareholding; the Appellant sought approval of the Board for transfer of 100% (One hundred percent) of its equity shareholding to IMC; in the hearing conducted by the Board on 09.10.2019, it was confirmed that the Appellant and IMC would complete the legal and due diligence formalities, and submit an application for transfer of Authorization in favour of IMC; during the said meeting, it was assured by IMC that the requirement of arrangement of funds etc. shall be achieved within 120 days after approval of transfer of authorization by the Board; the senior management of IMC personally attended the hearing on 09.10.2019 and discussed in detail, with the members of the Board, on the proposed way forward on their plans for ENPL; IMC assured that, upon renunciation of the authorization in its favour, it would achieve Financial Closure in accordance with the Regulations and complete the project; the Board was also open to favourably consider any such transfer of authorization and consequent grant of time.

7. It is submitted, on behalf of the appellant, that the minutes of meetings are prepared and subsequently issued by the Board; however, the minutes were not received; in accordance with the discussions at the hearing held on 09.10.2019, the appellant and IMC finalized the terms and conditions of transfer of the ENPL authorization to IMC, and executed a binding Memorandum of Agreement; a copy of the said agreement along with the formal request for renunciation of the pipeline authorization in favour of IMC was submitted to the Board on 30.10.2019; however, on 30.10.2019, without waiting for the transfer related documents and first sending the MoM of the meeting dated 09.10.2019, the Board wrote to bank invoking 100% of the PBG amount; the appellant received information from the Bank that they had received the request for encashment of 100% PBG amount of Rs. 7.3 crores; no termination letter of the ENPL was received by email / post; on 31.10.2019, a termination order dated 30.10.2019 was uploaded on the PNGRB's web site, though no communication was received from the Board after 09.10.2019, and they straightaway resorted to terminating the authorization without providing an opportunity to the appellant; the order showed that the Board had resorted to termination because the appellant had not submitted the transfer related documents within 2 days of the meeting dated 09.10.2019, whereas the Board had neither issued a written communication nor issued the minutes of meeting of 09.10.2019; the appellant filed Review Petition No. PNGRB/Legal 1-BC/15/ 2019, and since hearing of the review did not happen for some time, they filed Appeal No. 17 of 2021 on 18.12.2019 before this Tribunal challenging the termination order; during the pendency of the Appeal, the Board dismissed the Review Petition *vide* order dated 18.05.2020; by its Order dated 15.12.2021, this Tribunal set-aside the Termination Order and remanded the matter back to the Board to pass a fresh order after giving the appellant an effective opportunity of hearing; the PNGRB issued a notice of hearing on 31.03.2022, fixing the

date of hearing as 06.04.2022; the Appellant filed its written submissions along with a compilation of relevant documents on 02.05.2022, pointing out that they were unable to commence any activity prior to 15.05.2015 on account of SPV approval; soon thereafter, within a few months, the Bank Guarantee of the appellant was encashed in February 2016 and the matter remained sub-judice in Court till January 2018 when Appellant withdrew the Writ Petition so that the matter could be resolved; even though the Board had granted extension only in July 2018, but again Show Cause Notice proceedings were initiated in March and July 2019; the delay had occasioned due to frequent actions against Appellant; the action of invocation of the Bank Guarantee had also been stayed by the High Court; further action of termination vide order dated 30.10.2019 has also been set-aside by this Tribunal, meaning thereby that the authorization ought not to have been terminated; moreover, the approval of renunciation has been not considered or granted till date; the time lost from 30.10.2019 till date cannot be attributed to the appellant on account of the termination order and its setting aside by this Tribunal; a meeting had been held along with IMC and the PNGRB on 09.10.2019, but before the required documents could be considered, the PNGRB had passed the termination order on 30.10.2019; and, since the termination order had now been set-aside by this Tribunal *vide* order dated 15.12.2021, the pending renunciation be approved, and the appellant be granted sufficient and clear time by the PNGRB so that it can take steps for completing the project. The Appellant informed the PNGRB that the process of achieving Financial Closure and execution of an agreement for transport of natural gas would take about 6 – 7 months, and that the laying and commissioning of the pipeline would be completed within a period of 3 years, which would include the placement of order for procurement of long lead items. The appellant sought the following reliefs from the Board:(a) Allow a period of 6 – 7 months to achieve Financial

Closure as well as to execute an agreement for transport of natural gas; (b) Allow a period of 3 years to complete the laying and commissioning of pipeline for Ennore-Nellore Natural gas project; and (c) Approve the renunciation in favour of IMC Limited."

8. The Appellant submits that, in the Impugned Order dated 31.05.2022 ('**Impugned Order**"), the PNGRB did not deal with their request for transfer of authorization in favour of IMC, and only granted them one month time to complete FC and GTA; and, with the preconceived notion that the appellant had delayed the project, rejected the appellant's requirement of time, overlooking that the delay was entirely due to their wrongful actions of first imposing a penalty and thereafter terminating the authorisation in complete disregard to the procedure under Regulation 16 of the Authorization Regulations, while not approving the renunciation of authorisation after the appellant and IMC had already entered into such agreements.

9. The appellant states that, by the impugned order, the PNGRB held that it would proceed under Regulation 16 of the Authorization Regulations and gave mere 1-month remedial time (which is nothing but a mere formality) without approving the renunciation of authorisation by the appellant in favour of IMC; renunciation of authorisation in favour of IMC had not been considered at all, even though the said renunciation was to the knowledge of the PNGRB and obviously they would not have spent their money and resources when the agreements for renunciation had already been entered into with IMC; all steps in connection with the authorisation were to be taken by the transferee; and all the documents were lying with the Board since 30.09.2019.

10. It is submitted that the appellant filed a petition seeking review of the said order praying that they be allowed to transfer the authorization in favor of IMC permitting it to take over the entire shareholding of the appellant, and

the time of 1 month granted by the Board by the Impugned Order dated 31.05.2022 be increased to at-least 4 months. In the review petition, the appellant stated that, since the appellant and IMC had already entered into a binding MoU for transfer, the PNGRB ought to have approved the renunciation and granted sufficient time because IMC would be pursuing the formalities w.r.t the authorization in view of the agreed transfer between the parties; hence, the order granting only 1 month and without approving the transfer was not a remedial measure at all, particularly when the matter relating to approval of renunciation of IMC was the subject matter of the hearing on 09.10.2019; and, moreover, the time of 1 month was hardly sufficient or reasonable, given that the regulations themselves provide for 120 / 180 days for achieving the steps of Financial Closing and transport of natural gas.

11. It is submitted that the PNGRB, *vide* order dated 13.09.2022 dismissed the Review Petition holding that the power of review was distinct from the power of Appeal; at this stage, the Board is not sitting in appeal over its order dated 31.05.2022; when hearing the Review Petition filed against its own order, the Board does not re-hear the case at hand; the prayer in the review petition is limited to remedy an error apparent on the face of the record, or resultant grave injustice that has been a consequence of a decision; the Board is restricted in the exercise of power to review the cases where there is an error apparent on the face of the record or in accordance with power as per Order XLVII Rule 1 of CPC; the scope of power of Review was explained by the Supreme Court in the case of **Northern India Caterers (India) Limited vs Lt. Governor of Delhi [AIR 1980 SC 674]**; the Power to review its own decision is not an inherent power but a protective measure against the fallibility of the adjudicating body so as to ensure the delivery of justice, and it must be therefore executed in a limited manner; it was the case of the Review Petitioner that the authorization granted for

ENPL to the Review Petitioner by the Board may be transferred to the M/s IMC Limited; the PNGRB Act confers diversified functions to be performed by the Board i.e. Judicial functions, Legislative functions, Regulatory functions, and Administrative/Ministerial functions; the Board, while adjudicating the present review petition, is exercising its Adjudicatory function; however, the Board, while deliberating on the transfer of authorization of any pipeline/CGD Network, would exercise its regulatory function; the contention of the Review Petitioner to transfer the authorization of ENPL in favor of M/s IMC Limited could not be accepted as the power of the Court, while adjudicating the Review Petition, is limited and cannot go beyond it; since the Board, while adjudicating the present Review Petition, is exercising the Judicial function; therefore, the issue regarding transferring the authorization of ENPL in favor of M/s IMC Limited cannot be dealt in the instant Review Petition; the Board was not inclined to intervene by way of the Review Petition since more than 7 years had passed from the grant of authorization and the Review Petitioner had failed to achieve Financial Closure; as per Regulation 9 of the NGPL Authorization an entity can make an application for transfer / surrender /renunciation of authorization only after three years from the date of grant of authorization, and the Board, after examining various factors and satisfying itself, may decide the same; thus, transfer of authorization is not a matter of right; Regulation 10 of the Authorization Regulations provides a period of 120 days to achieve Financial Closure; and the spirit of the Authorization Regulations was that financial Closure predates the transfer/surrender/renunciation of the authorization in favor of an entity which it may propose to seek. The Board found no sufficient reason to review its order dated 31.05.2022.

12. The appellant submits that the Board had acted in a highly arbitrary and illegal manner by passing the order dated 31.05.2022 and by dismissing the review petition on 13.09.2022; the appellant had sought permission from

the PNGRB for renunciation of the authorization which was presently in the name of Appellant and transfer it in favor of IMC; however the PNGRB had still not passed any direction with respect to the same; since the authorization is to be transferred in terms of the Regulations, any further steps in the matter would be taken by the transferee if the transfer is allowed; pending determination of the same by the PNGRB, it is arbitrary and unreasonable to expect the applicant, seeking the said transfer, to continue to take steps in respect of the project without having any clarity on whether the transfer would be approved or otherwise; similarly, the beneficiary of the transfer also has no clarity whether it would be given the transfer, and therefore cannot take any steps in respect of the project anyway; by its actions, the PNGRB has, in effect, created a logjam by not determining the issue of transfer/renunciation since the same has been admittedly pending from 30.10.2019.

13. According to the appellant, the PNGRB failed to consider that a meeting had been held along with IMC and the PNGRB on 09.10.2019; as per the directions of the PNGRB, the appellant had already submitted all the documents way back in October 2019 and requested the PNGRB to accept and approve renunciation by way of transfer of 100% equity share holding of the appellant to IMC under Regulation 9(4) of the Authorization Regulations; the binding MOU between the appellant and IMC was also submitted vide email dated 30.10.2019; the PNGRB did not even consider or determine the transfer/renunciation sought for in October 2019; having not done so, the PNGRB has effectively quelled the appellant's ability to do anything on the project as there is an abject lack of clarity on the transfer/renunciation issue without which no entity can be expected to proceed with the project; it is only after transfer of authorization is permitted by the PNGRB, in favor of IMC, can any steps towards achieving financial closure be taken by IMC; while a determination on the same is pending, it

is wholly unreasonable and arbitrary for the PNGRB to expect that the appellant would proceed with the project; however, the PNGRB proceeded to direct the appellant to proceed with achieving financial closure, while not returning a determination on the issue of transfer of authorization; without passing any order on the transfer of authorization, the grant of time to complete Financial Closure will not be of any relevance at this stage; and, hence, such grant of time would be unreasonable, arbitrary and entirely inconsequential

14. It is submitted, on behalf of the appellant, that IMC was keen to take over and complete the subject pipeline project, and has shown its interest and seriousness even during the meeting held before the PNGRB on 09.10.2019, wherein the PNGRB gave the unmistaken impression that it would consider the transfer of authorization, and sought for definitive agreements which were subsequently submitted within the same month; however, by way of an order that was subsequently set aside by this Tribunal dated 15.12.2021, the PNGRB had terminated the authorization of the appellant; as indicated by the Appellant, during the hearing held on 04.05.2022, the process of achieving financial closure and to execute an agreement for transportation of natural gas will take about 6-7 months, but an endeavor can be made to achieve FC within 4 months, if the authorization is transferred in the name of IMC; it cannot be overlooked that, in the post pandemic situation, Banks / financial institutions are taking longer time in processing such matters, and additional checks have to be undertaken by them for infrastructure projects; in the event of the above extensions being granted by the PNGRB, IMC would take over the entire equity shareholding of the appellant; further, the formal request to this effect made, by the appellant, by its letter of 30.10.2019, admittedly continues to remain pending, and no determination has been returned by the PNGRB on this aspect, despite the fact that it has been 3 years since the formal application

was made with the requisite documents; the appellant had made this submission before the PNGRB in the review hearing and the same was recorded by the PNGRB in its Second Impugned Order dated 13.09.2022, along with its views on the same; the PNGRB refused to determine the issue of renunciation of authorisation in favour of IMC citing the narrow scope available in the review petition, though it had not determined the application for renunciation of authorisation in favour of IMC in its order dated 31.05.2022; the PNGRB has merely granted a period of 1 month as a formality to somehow ensure that the requirement of the Authorization Regulations is met superficially; one month is not a meaningful time; the PNGRB is basically taking advantage of its own failing and penalizing the appellant for the same; the PNGRB has also made prejudicial statements on the appellant, which are well beyond the scope of the review; if the scope of review is narrow, then the PNGRB should not have, in the review order, observed that the conduct of the Review Petitioner did not inspire confidence of the Board, and there was lack of seriousness as, despite the grant of ample opportunity, the review Petitioner had failed to achieve Financial Closure and capacity booking/natural gas tie up and there was no physical progress on the ground; the PNGRB has also ignored that the procedure to achieve Financial Close itself takes substantial time, since it involves various factors which are considered by the appellant's or IMC's Board of Directors before committing funds to finance the project; further, there are certain pre-requisites which are mandatory to obtain comfort to investing funds even after achieving FC, which include: Market Study, Feasibility Report for the Project, Environmental Clearance, Consent from concerned State Pollution Control Board, Clearances from Petroleum and Explosive Safety Organization; appointment of Competent Authority for finalizing Right of Way; right of way for the pipeline from NHAI and other Authorities; the above mentioned steps cannot be undertaken in one month;

the PNGRB ought to have considered that the- time, prior to the order granting time, was marred by several actions by the PNGRB, which were not in accordance with the Regulations; the appellant was unable to commence any activity prior to 15.05.2015 on account of SPV approval; soon thereafter, within a few months, the Bank Guarantee of the Appellant was encashed in February 2016, and the matter remained sub-judice in Court till January 2018, when the Appellant withdrew the Writ Petition so that the matter could be resolved; even though PNGRB granted extension only in July 2018, but again Show Cause Notice proceedings were initiated within one year by way of the Show Cause Notice dated 04.07.2019; thereafter, since 09.10.2019 and 30.10.2019, the approval for the transfer of authorization has remained pending; separately, the PNGRB took the draconian step of termination of authorization (which was ultimately set aside by this Tribunal); the delay is solely on account of the PNGRB taking frequent arbitrary and misconceived actions against GTIL, which is evident from the fact that, even though the PNGRB granted extension only in July 2018, but again Show Cause Notice proceedings were initiated in March and July 2019; the action of termination, vide order dated 30.10.2019, has also been set-aside by this Tribunal; hence, the time lost from 30.10.2019 till date cannot be attributed to the appellant on account of the termination order and its setting aside by this Tribunal; and the request for extension of time by the appellant was in accordance with the PNGRB Authorization Regulations that provide for the entity to be granted sufficient time for undertaking the remedial steps.

15. It is submitted, on behalf of the appellant, that the PNGRB held a meeting with the appellant along with IMC on 09.10.2019, but before the required documents could be submitted, the PNGRB had passed the termination order on 30.10.2019; in its Order dated 31.05.2022, the PNGRB did not deal with the request of the appellant for transfer of authorization in favour of IMC; the PNGRB did not pass any order / direction w.r.t approval

of the renunciation in favour of IMC; given that the appellant and IMC had already entered into a binding MoU for transfer with its knowledge, the PNGRB ought to have approved the renunciation, and granted sufficient time because IMC would be pursuing the formalities w.r.t the authorization in view of the agreed transfer between the parties; the order dated 31.05.2022 granting only one month, and without approving the transfer, was not a remedial measure at all, particularly when the matter, relating to approval of renunciation of IMC, was the subject matter of the hearing on 09.10.2019; moreover, the time of one month was hardly sufficient or reasonable, given that the regulations themselves provide for 120 / 180 days for achieving Financial Closure and transportation of natural gas; the PNGRB ought to have allowed transfer of authorization in favour of IMC by permitting it to take over the entire shareholding of the appellant, and sufficient time ought to have been granted in terms of the Regulations, as the application is pending since 30.10.2019; the appellant was unable to commence any activity prior to 15.05.2015 on account of SPV approval; soon thereafter, within a few months the Bank Guarantee of the appellant was encashed in February 2016 and the matter remained sub-judice in Court till January 2018 when the appellant withdrew the Writ Petition so that the matter could be resolved; though the Board granted extension in July 2018, Show Cause Notice proceedings were again initiated in March and July 2019 leading to a termination Order on 30.10.2019, whereas the Board had only granted time till April 2020; as a result, the delay in carrying out the pipeline project had been the result of improper and prejudicial actions taken by the Board; any such action or even a notice creates prejudice and jeopardizes the project hampering the development of the Project; and, from 2015 till July 2018, the project could not progress due to the wrongful encashment of the Bank guarantee on the basis that there was a default on the part of the appellant.

16. It is submitted, on behalf of the appellant, that, with the setting aside of the termination order by this Tribunal, without prejudice and without getting into the correctness or otherwise of the allegations made against the appellant, it was stated that approval to the renunciation be granted, and sufficient and clear time be given by the Board for completing the project; such request was in accordance with the NGPL Authorization Regulations that provide for the entity to be granted sufficient time for undertaking remedial steps; the delay had occasioned due to frequent actions by the PNGRB against the appellant that were not in accordance with the NGPL Authorization Regulations; the action of invocation of the Bank Guarantee had also been stayed by the High Court; the further action of termination, vide order dated 30.10.2019 (uploaded on 31.10.2019) has also been set-aside by APTEL, meaning thereby that the authorization ought not to have been terminated; and the time lost from 30.10.2019 till date cannot be attributed to the appellant on account of the termination Order and its setting aside by APTEL.

17. It is submitted, on behalf of the appellant, that, in the hearing held on 04.05.2022, without going into the merits of the issue, the appellant requested that the issues be resolved by granting their request that: (i) The process of achieving FC and to execute an agreement for transport of natural gas will take about 6-7 months. (ii) The laying and commissioning of the pipeline would be completed within a period of 3 years, which would include the placement of order for procurement of long lead items. In this connection, a periodic review of the work progress can be undertaken. (iii) In the event of the above extensions being granted by the Board, IMC would take over the entire equity shareholding of the appellant, the request along with a memorandum of agreement as required by PNGRB, made vide its letter dated 30.10.2019, was pending; by the order dated 31.05.2022, the PNGRB with its preconceived notion that the appellant had delayed the project,

rejected the appellant's request for time; the PNGRB overlooked that the delay was entirely due to the wrongful actions of first imposing a penalty and thereafter terminating the authorisation in complete disregard to the procedure under Regulation 16 of the NGPL Authorization Regulations, while not approving the renunciation of authorisation after the appellant and IMC had already entered into such agreements; in the impugned order, the Board held that it would proceed under Regulation 16 of the NGPL Authorization Regulations and gave a mere one month remedial time (which is nothing but a mere formality) without approving the renunciation of authorisation by the appellant in favour of IMC, and even though the said renunciation was to the knowledge of the PNGRB; the appellant could not have been expected to spend its money and resources when the agreements for renunciation had already been entered into with IMC; all steps in connection with the authorisation were to be taken by the transferee; besides, all the documents were lying with the PNGRB since 30.10.2019.

18. It is submitted, on behalf of the appellant, that the review petition preferred by them seeking that they be allowed to transfer the authorization in favor of IMC by permitting it to take over the entire shareholding of the appellant, and the time of one month granted by the Board, by the Impugned Order dated 31.05.2022. be increased to at-least 4 months; by way of the order dated 13.09.2022, the Review Petition was also rejected primarily on the ground that the issue of transfer is a regulatory matter; however, while doing so, the PNGRB has recorded, entirely prejudicially, that it "*is not inclined to intervene by way of the Review Petition since more than 7 years have passed from the grant of authorization and the Review Petitioner has failed to achieve the Financial Closure*"; the PNGRB has completely ignored that the 7 years that it is quoting were almost entirely spent in litigation either before or with the PNGRB given the incessant actions against the appellant, which had been taken arbitrarily, and without any justification, legal or

otherwise; the matter of approval to the renunciation of authorisation had arisen in the hearing on the Regulation 16 notices, so there was no reason to treat and sidestep it as a regulatory matter; it was in the course of Regulation 16 proceeding that the matter regarding approval of renunciation had earlier arisen, and the PNGRB had not taken any such objection; after the hearing on 26.03.2019 under Regulation 16, the PNGRB had itself directed the appellant to provide the latest status and correspondences towards the finalization of the strategic partners for ENPL; in the subsequent Regulation 16 proceeding, which had culminated in the earlier impugned order of 30.10.2019, IMC's representatives had also participated in the hearing on 09.10.2019; and made presentation to the PNGRB to their satisfaction; even in the order dated 30.10.2019, which has been set aside, the PNGRB had resorted to termination because the appellant had not submitted the transfer related documents within two days of the meeting of 09.10.2019; if the aspect of 2 days' time is kept on the side, then certainly this is acknowledgment of the fact that the PNGRB was willing to consider the aspect of transfer of authorisation; with the setting aside of the Termination Order dated 30.09.2019 by APTEL, the PNGRB was bound to consider the aspect of renunciation / transfer of authorisation from the appellant to IMC; despite remand, the PNGRB did not even advert to / consider the aspect of renunciation/ transfer of authorisation either in the Impugned Order dated 31.05.2022 or in the Review Order dated 13.09.2022; since the matter of approval of renunciation of authorisation has been pending since 30.09.2019, the PNGRB should have first considered this and only then proceeded with any other matter; there was no reason as to why this aspect had been not considered till date, and instead the PNGRB was prepared to take coercive steps against the appellant; by not considering this matter of approval of renunciation, the appellant has been put to serious prejudice; since the appellant has already entered into an agreement with

IMC Limited, further steps have to be taken by IMC in the project which it is unable to take due to the approval being awaited from the PNGRB; and, on the other hand, the PNGRB is proceeding against the appellant for alleged violation of the terms and condition of authorisation.

II. CASE OF THE PNGRB:

19. In the reply to the appeal, it is stated on behalf of the Board that, presently, the Board has covered approximately 98% of the population of the country, by way of authorizing City or Local Natural Gas Distribution Network, Natural Gas Pipeline, which includes large number of infrastructure projects and requires huge amount of capital investment; however, the aim and objective of the PNGRB Act, 2006, i.e. to lay infrastructure all across the country, is not fulfilled, due to the negligent attitude of various entities; in order to achieve the aim and objective, as stated in the preamble of the Act, the Board has been focusing on building a robust pipeline network and overall gas market; and, despite the best efforts of the Central Government and the Board, citizens of the country are not being able to be served with natural gas, due to the casual approach of entities, who seeks extension of time, on one pretext or another, for completion of the projects.

20. It is submitted, on behalf of the PNGRB, that more than 8 years have passed from the grant of authorization, and the Appellant has failed to achieve Financial Closure, which is the foremost obligation of the entity, immediately after grant of authorization; ample opportunities were given to the Appellant to achieve financial closure; in compliance with the judgement of this Tribunal dated 15.12.2021, the PNGRB, vide its order dated 31.05.2022, gave another opportunity to the Appellant of one month to achieve its financial closure; however the Appellant, instead of complying with the order dated 31.05.2022, preferred a review petition before the Board, wherein it prayed that additional four months' time be granted to

achieve financial closure; the Appellant further improved its case by also praying that the request made for transfer of authorization, in favour of IMC Limited, may be considered; the Board, while exercising the power conferred under Section 13(1)(h) of the PNGRB Act, 2006, did not find any merits in the said review petition; the Appellant's submission, that the Board has not considered their request to amend the authorization in favour of IMC Limited, is contrary to the undertaking given by the Consortium of KEI-RSOS Petroleum and Energy Private Limited, vide letter dated 26.05.2015, that KRPEPL and RRAT put together will hold more than 50% equity shares in the appellant till the ENPL project is completed, and relevant documents from the Registrar of Companies in this regard will be furnished by the appellant on quarterly basis in QPRs; therefore, this request of the Appellant violates the undertaking given by the Consortium of KEI-RSOS Petroleum and Energy Private Limited, which forms part of the terms and conditions of the authorization; instead of making efforts for completing the project allotted to them, the Appellant has indulged in selling the license to secure financial benefits; and they have preferred the present appeal with an intention of delaying the process of completion of the project, which will also lead to non-availability of natural gas to its customers.

21. It is submitted, on behalf of the PNGRB, that they had, vide letter dated 02.12.2014, granted authorization in favour of KEI-RSOS Petroleum and Energy Private Limited (hereinafter referred to as "**KRPEPL**"), as lead partner of the consortium which had participated in the bidding process for the subject pipeline, for laying, building, operating or expanding the Ennore-Nellore Natural Gas Pipeline (ENPL) under Regulation 5 of the 2008 Regulations, with completion date as 01.12.2017; subsequently the consortium registered a Company, under the Companies Act with the name of "Gas Transmission India Private Limited (GTIL)", as it is one of the regulatory requirements specified in Regulation 5(6)(f) of the 2008

Regulations; thereafter, upon request of the authorized entity, an amendment in the Authorization Letter was issued by the Respondent-Board in favor of the Appellant, vide letter dated 15.05.2015, with the condition that the Petroleum and Energy Private Limited (KRPEPL) will furnish an undertaking that KRPEPL and Riverbay Resorts and Agri Tech. (RRAT) put together would hold more than 50% of the equity shares in GTIL till the ENPL project is completed; accordingly, KRPEPL submitted an undertaking, vide letter dated 26.05.2015, that they and RRAT put together will hold more than 50% equity shares in GTIL till the ENPL project is completed, and relevant documents from Registrar of Companies in this regard will be furnished by the appellant on a quarterly basis in the QPRs.

22. It is submitted, on behalf of the Respondent Board, that they had, vide letter dated 02.12.2014, granted authorization of ENNPL in favour of KEI-RSOS Petroleum and Energy Pvt, Ltd; and vide letter dated 15.05.2015 to KEI RSOS Petroleum and Energy Pvt, Ltd, had amended the authorization of ENNPL in favour of the Appellant; the Appellant had submitted letter dated 30.11.2015 along with the board resolution dated 24.11.2015 where it had stated that it had decided to take up the project as “internally financed”; the Appellant was required to achieve Capacity Booking and Financial Closure within 180 days from the date of authorization, as per Regulation 10(1) and Regulation 10(4) of the 2008 Regulations respectively; however, the Appellant failed to do so by 01.06.2015, and had sought time extension for the same; in response thereto, the Respondent Board, vide its letter dated 15.06.2015, informed the Appellant that no such provision for extension or modification of the time schedule was available under the 2008 Regulations; the Board directed the Appellant to submit its Gas Sales Agreement and Financial Closure within 15 days of the communication; in view of the continuous delay by the Appellant, a hearing under Regulation 16 of the 2008 Regulations was held on 26.10.2015; during the said hearing, the

Respondent Board advised the Appellant to achieve clear GTA and Financial Closure on or before 30.11.2015, failing which 25%e of the Performance Bank Guarantee (PBG) would be encashed by the PNGRB in accordance with the provisions of Regulation 16(1)(c)(i) of the 2008 Regulations; the appellant, vide letter dated 30.11.2015, informed PNGRB that they had taken a decision to internally finance the project, and had submitted a copy of its Board Resolution, and a copy of a MOU with its group company, M/s LNG Bharat Private Limited. (LNGBPL) for transportation of 11.5 MMSCMD of gas which accounted for 50% of the first 5 years volumes to be transported by the pipeline; however, since the project cost at that time of bidding was Rs. 729.41 Crores and the net worth of the promoters was Rs. 136.52 Crore (Book Value) and Rs. 411.01 Crore (Market Value), the Respondent Board, vide its letter dated 18.12.2015, sought clarification from the Appellant as to how it was going to finance the project when the net worth was much less than the cost of the project; thereafter, the Appellant, vide letter dated 26.12.2015, informed the PNGRB regarding the upwardly revised net worth of its promoters to Rs. 756 Crore *vis-a-vis* downward revised project cost of Rs. 625 Crores; and it again upwardly revised the net worth vide its letter dated 31.12.2015 to Rs. 1071 Crores.

23. It is submitted, on behalf of the PNGRB, that, despite letter dated 15.06.2015 and the hearing held on 26.10.2015, the Appellant kept on seeking time extension on one pretext or the other without any progress on the project; though ample opportunities of being heard and reasonable time to fulfil its obligations was given to the Appellant, no substantive action was taken by them within the specified period; in view of Appellant's failure to achieve capacity booking/ natural gas tie-up and FC, the Respondent, vide its order dated 17.02.2016, came to the conclusion that a breach of authorization had occurred and accordingly encashed 25% of the PBG amounting to Rs. 1,82,50,000 (Rupees One Crore Eighty Two Lacs and Fifty

Thousand Only) in accordance with the provisions of Regulation 16(1)(c)(i) of the 2008 Regulations; aggrieved by the order passed by the Respondent Board dated 17.02.2016, the Appellant approached the High Court of judicature at Hyderabad, and an interim order of stay was passed in Writ Petition No. 6387 of 2016; a progress review meeting was held on 18.07.2017 and the minutes were issued on 27.07.2017; information, as sought by the Respondent, was provided by the Appellant on 12.10.2017; thereafter, the Respondent Board, under Regulation 16 of the 2008 Regulations. called the Appellant for a hearing on 11.01.2018, to explain non-achievement of the project milestones; due to gaps/anomalies in the presentation in respect of factual date for the pipeline project, the Respondent deferred the hearing to 31.01.2018; the Respondent further called the Appellant for a hearing on 11.01.2018, under Regulation 16 of the 2008 Regulations, to explain the reasons for non-achievement of the project milestones as specified in the terms and conditions of the authorization; however, during the hearing, the Respondent Board observed that there were many gaps/anomalies in the presentation made by the Appellant with respect to the factual data for ENPL; accordingly, the Respondent Board decided to defer the hearing to 31-1-2018, and directed the Appellant to present the current status of ENPL, the revised implementation schedule with milestones as on 31-1-2018, and its quarterly progress report of ENPL as on 31-12-2017 and replace the expired PBG; in the minutes, of the hearing held on 11.01.2018, the Appellant offered to withdraw the case pending before the High Court, and to submit the balance 25% of PBG amounting to INR 1,82,50,000 in order to enable the Respondent to examine afresh the schedule for execution of the project; accordingly, the Appellant, vide its letter dated 12.01.2018, submitted PBG for Rs. 5.475 Crores; however, the same was submitted on behalf of KREPL rather than the Appellant; on 25.01.2018, the appellant withdrew Writ Petition No. 6387 of

2016, and informed the same to the Respondent vide its letter dated 29.01.2018; the Appellant, vide letter dated 29.01.2018, submitted an undertaking from KRPEPL that the PBG, for Rs. 7.30 Crores (Rupees 7 Crore and Thirty Lacs only) had been submitted on behalf of the Appellant, KRPEPL was fully aware of the contractual obligations of the Appellant for ENPL, and would honour any decision of the Board to encash the PBG in case of non-performance by the Respondent; subsequently, in the hearing of 31.01.2018, the Board issued various directions: (a) Appellant to submit relevant documents in respect of length of the Pipeline, (b) to submit commitment from promoters for infusion of Rs. 100 Crores each by 31.05.2018 and 31.05.2019 along with affirmation from the promoters that the project would not face any financial constraints even if the finance was not provided by the banks by 15.02.2018; (c) to submit the comfort letter/ sanction letter from Banks by 31.07.2018, (d) to submit a letter for Gas tie-up regarding available tie-up customers and expected upcoming projects by 15.02.2018; (e) to submit details of the project, and the constraints faced by the Appellant in executing the project along with a request for extension of the pipeline with an aggressive implementation schedule; the Appellant, vide its separate letters dated 17.03.2018, submitted the following in respect of the directions issued by the Respondent Board: (a) Appellant submitted the extract of the Board Resolution from the promoters regarding infusion of Rs. 100 Crore each by 31.05.2018 and 31.05.2019, (b) Appellant shall submit comfort/ sanction letter from banks within 5 or 6 months, once the extension is granted by the Respondent or by 31.07.2018, whichever is later, (c) Appellant submitted the list of customers for gas tie-up and expected customers and the upcoming customers, and (d) Appellant submitted details of project and constraints being faced by them in executing projects; the completion date, as per the Authorization Letter was 01.12.2017; however, the Respondent, in response to the letter dated 17.03.2018 seeking time

extension to submit Comfort Letter/Sanction Letter, vide its letter dated 12.07.2018 granted extension to the Appellant until April, 2020; and, accordingly, the Respondent revised the Letter of Authorization; even after extension being granted by the Respondent, the Appellant failed to achieve FC, and make any progress in execution of the project; the Respondent, vide its Letter No. PNGRB/Monitoring/NGPL/Review dated 08.03.2019, issued Notice for Hearing under Regulation 16 of the 2008 Regulations, and requested the Appellant to be present on 26.03.2019 to present the latest status of the project, and the modus-operandi for completion of the pipeline project within the stipulated time; as of March, 2019, the Appellant had only completed the route survey of the pipeline; further, another progress review meeting was called on 23.03.2019, wherein the PNGRB observed that no visible progress had been made in the said project; the Appellant had not yet started pipeline laying, they had not even acquired the RoU for the pipeline, and till date had only completed the route survey of the pipeline; and, therefore, the PNGRB directed the Appellant to submit the following information/ documents within 10 days from the date of issuance of the minutes: (a) submit firm Financial Closure by 31.07.2019, (b) submit a detailed activity chart section/phase wise for the pipeline, and (c) provide the latest status and correspondence towards finalization of the strategic partners for the pipeline; the Appellant vide its Letter dated 27.03.2019, assured the Respondent-Board that the following activities would be achieved by 31.07.2019: (a) completion of Financial closure, (b) infusion of equity funds as required by the banks for the sanction of the project loan, and (c) finalization and issue of Letter of Award to EPC contractor towards execution of the ENPL project; the Appellant further stated that, if it was unable to honour the above commitments, it would accept and abide by the decision of the Board; the Appellant, vide its email dated 01.05.2019, stated that it had submitted an execution schedule for EPC of the project; as per

the schedule, the Appellant would implement the project in four spreads with completion of spread 1 by 30.04.2020, and spread 4 by 31.12.2020; the appellant further stated that they were in discussions with various entities for finalization of the strategic partners, and assured the Respondent Board that all the process with respect to the same would be completed by 31.07.2019; the Respondent, vide its Letter No. PNGRB/Monitoring/2/NGPL-ENPL/(1)/2015 dated 04.07.2019, issued Show Cause Notice to the Appellant under Regulation 16 of the 2008 Regulations; even though the said Notice was issued under Regulation 16, the Appellant was called upon to show cause as to why action should not be taken under Regulation 16 and/or Regulation 10; the Appellant, vide its Letter dated 31.07.2019 stated that they have finalized on IMC Limited as their strategic partner for the project, however, the binding documents were being negotiated, and would then be entered into; in view of the Appellant's non-achievement of milestones, and repetitive failure to honour commitment, a hearing was held on 04.09.2019 to explain the reasons why action be not initiated in terms of Regulation 10 and 16 of the Authorization Regulations; and the Appellant, vide its letter dated 04.09.2019 informed that (i) finalization of M/s BGRL or M/s ADANI as a strategic partner or signing of the binding documents with M/S IMC was expected to be completed within the month; (ii) upon finalization of the binding documents, they along with their strategic investor would be in a better position to present before the board with firm plans with respect to the project to the satisfaction of the board. (iii) the board may conduct the hearing by end Sept 2019 during which, they along with their strategic investor would present their firm execution plan along with dates, to the board; *(iv*) if they were not able to satisfy the board with the strategic investor/ financial closure/ firm execution plan during the next hearing, they would relinquish the authorization of the ENPL and would abide by any decision taken by the board.

24. It is submitted, on behalf of the PNGRB, that the Appellant, vide its Letter No. GTIL/PNGRB/ENPL/23092019 dated 23.09.2019 informed the Board that they had finalized M/s IMC Ltd as the strategic investor into their pipeline company, and the necessary documents were being executed this week; it requested the Respondent to allow the Appellant to be accompanied by the strategic partner to make a presentation about firm plans for the timely execution; no specific request was made for renunciation or transfer of authorization; as per the request of the Appellant, the Respondent Board gave an opportunity of hearing on 09.10.2019, which was conducted under the provisions of Regulation 10 and 16 of the 2008 Regulations, read with Section 23 of the PNGRB Act; during the hearing, the Appellant informed that a binding agreement would be signed by 11.10.2019, a formal application for transfer of authorization in favour of IMC shall also be submitted by 11.10.2019, and this may be treated as the last opportunity; the Appellant was further directed to submit DFR for the project within 10 days; however, the appellant again failed to honour its commitment, and no response from the Appellant was received by the Respondent Board; the Respondent, vide its Order PNGRB/Monitoring/2/NGPL-ENPL/(1)/2015 dated 30.10.2019, issued Termination Order, and ordered to encash 100% of the PBG.

25. It is submitted, on behalf of the Respondents, that, subsequently, it came to the knowledge of the Respondent that the Appellant had filed letter dated 30.10.2019 seeking renunciation in favour of M/s IMC Limited, and it had also attached a binding memorandum of agreement dated 30.10.2019 (stamp paper bought at 04.07 pm); the letter dated 30.10.2019 was received by the Respondent after authorization of the Appellant was terminated, and consequential proceedings were completed; therefore, no decision was taken on the letter dated 30.10.2019; thereafter, the Appellant filed a Review Petition bearing no. PNGRB/Legal1-BC/15/2019 before the Respondent

Board; since the hearing of the review did not happen for some time, the Appellant filed Appeal No. 17 of 2021 before this Tribunal challenging the Termination Order dated 30.10.2019; while the appeal referred to the Appellant's letter dated 30.10.2019, it did not seek the relief of renunciation of the authorization in favour of IMC Limited; during the pendency of Appeal No. 17 of 2021, the Respondent Board dismissed the Review Petition filed by the Appellant vide order dated 18.05.2020; and the Board observed in para 10 that, after the order was webhosted and encashment letter was sent on 30.10.2019, an agreement dated 30.10.2019 was emailed on 30.10.2019 which was an afterthought, and considering the said agreement would be delving into the merits of this petition.

26. It is submitted, on behalf of the PNGRB, that, on 15.12.2021, this Tribunal passed an order setting aside the Termination Order dated 30.10.2019, and remanded the matter to the Respondent Board for fresh consideration; the said order neither mentioned the letter of the Appellant dated 30.10.2019 nor required the Respondent to deal with the same; this Tribunal had set aside the order dated 30.10.2019, and had only remitted the matter, arising out of the show cause notice, to the respondent Board for further proceedings and fresh decision in accordance with law; it also specifically stated that the Board would not feel bound by the view taken in the order which had been set aside, and that an appropriate decision should be taken after according effective opportunity of hearing to the Appellant, and a fresh order should be passed in accordance with law; accordingly, a notice of hearing was sent to the Appellant on 31.03.2022 informing them that a hearing had been scheduled on 06.04.2022; the Appellant thereafter filed its written submissions and compilation of documents; the Respondent had refunded INR 7.30 Crores vide its letter dated 13.04.2022; in the Written Submissions, the Appellant sought the Board to consider the following requests: *(a)* Allow a period of 6-7 months to achieve Financial Closure as

well as to execute an agreement for transport of natural gas, (b) Allow a period of 3 years to complete the laying and commissioning of pipeline for Ennore-Nellore Natural gas project, and (c) Approve the renunciation in favour of IMC Limited.”; the Respondent in its Order, in case no. Legal/07/2022 dated 31.05.2022, observed that, the Appellant had again requested the time period of almost 7 months for achieving financial closure, which was not acceptable to the Respondent Board as there was no regulation which provided for the same; the Respondent stated that as per Regulation 16 of Authorization Regulations, the Board had to issue a notice to the defaulting entity allowing it reasonable time to fulfil its obligations and, in case the entity failed to do so, the Respondent Board may encash the performance bond and terminate the authorization; in view of the same, the Respondent Board, in exercise of its power and in terms of Regulation 16(1)(c)(ii) of the Authorization Regulations, 2008 granted one-month time to the Appellant to meet its obligations as prescribed under Regulations 10(1) to 10(5) of the Authorization Regulations; and, thereafter, the Appellant preferred Review Petition bearing No. 14 of 2022 before the Respondent Board which was dismissed on 13.09.2022.

27. It is submitted, on behalf of the PNGRB, that it was the case of the Appellant that the Respondent had not considered its request to amend the authorization, and transfer it in favour of IMC Limited; transfer of authorization of ENPL was not the subject matter of Appeal No. 17 of 2019; this Tribunal, while setting aside the order dated 01.11.2019 and remanding the matter for its fresh adjudication, did not direct the Respondent to consider the Appellant’s request to amend the authorization and transfer it in favour of IMC Limited; pursuant to the order dated 31.05.2022, the Respondent issued notice to the Appellant under Section 23 and 28 of the Act, 2006 on 07.10.2022 bearing case reference number PNGRB/Monitoring/2/NGPL-ENPL/(I)/ 2015, fixing a hearing on 13.10.2022; the Appellant preferred the

present appeal, and *ex-parte* stay was granted vide order dated 19.10.2022 passed by this Tribunal; the Respondent Board, being unaware of the *ex-parte* stay being granted by this Tribunal a day before, passed the order dated 20.10.2022, pursuant to the hearing held on 13.10.2022, under the provisions of Section 23 and 28 of the PNGRB Act, 2006 read with Regulation 10 and 16 of the 2008 Regulations, terminating the authorization; the order dated 20.10.2022 was uploaded at around 11.46 a.m. on the same day; thereafter, the Board issued letter for invocation of Performance Bank Guarantee (PBG) to the Bank, and receipt of the same was provided by the Bank at 12.08. p.m. on 20.10.2022; and the Respondent Board was only informed about the order dated 19.10.2022 through email dated 20.10.2022 received at around 4 pm.

28. It is submitted, on behalf of the PNGRB, that, pursuant to the order of this Tribunal dated 15.12.2021, the Respondent gave an opportunity to the Appellant to make its submissions afresh; the Appellant submitted its written submissions essentially asking for another 6-7 months to achieve financial closure as well as to execute an agreement for transport of natural gas, to allow a period of 3 years to complete laying and commissioning of the pipeline, and to approve renunciation in favour of IMC Ltd; despite committing, in the DFR, that the project would be internally financed, the Appellant had been seeking renunciation of the authorization in favour of a third party stating that it would be funded by the said third party; this went against the fundamentals of the bid which was submitted by the Appellant itself and, if allowed, would be completely unfair to the other participants in the bid; the authorization cannot be treated as a marketable commodity which can be transferred (may be for profit) without any cogent reasons; in case the authorized entity is not able to meet its obligations, necessary regulatory consequences must follow as otherwise it will become open to abuse; that is the reason the Respondent observed, in the review order, that

transfer of authorization was not a matter of right and financial closure should pre-date the transfer/surrender/renunciation of the authorization in favour of an entity which it may propose to seek; and this Tribunal may be pleased to dismiss the writ petition as devoid of merits.

III. REJOINDER FILED, ON BEHALF OF THE APPELLANT, TO THE REPLY FILED BY THE PNGRB:

29. In the Rejoinder, the Appellant submits that the Respondent has not been forthright about the facts and circumstances that led to the filing of the appeal in the first place; there are a multitude of factors, such as obtaining permissions for building infrastructure, funding issues, delays arising because of the Covid-19 pandemic, and availability of gas, and gas-pricing etc, which may have an impact, but have been ignored by the Respondent Board in trying to paint an incorrect and self-serving picture that the sole reason for the infrastructure not developing was the negligence by entities; the delay in the present case has been caused by the Respondent Board's incessant actions against the entity, which have time and again been subject to judicial review in litigations; the contention of the Respondent that the Appellant failed to achieve Financial Closure even after 8 years of grant of authorisation is entirely misconceived and misplaced; the Respondent has failed to acknowledge that the delay in achieving FC and natural gas tie-ups is not attributable to the Appellant as there have been roadblocks since the date of its authorisation; the Appellant could not commence any activity prior to 15th May 2015 because, admittedly, the authorisation that was initially granted in favour of the consortium of KEI-RSOS Petroleum and Energy Pvt Ltd was to be transferred to the Special Purpose Vehicle ("**SPV**") to be incorporated under the extant Regulations (being Regulation 5(6)(f) of the 2008 Regulations); after the said SPV, being the Appellant herein, was duly incorporated, the authorisation was supposed to be transferred by the

Respondent Board in the name of the said SPV/Appellant, which was admittedly only done on 15th May 2015; according to the extant Regulations, the FC was supposed to have been achieved within 180 days of the grant of Authorisation; as the Appellant was authorised only on 15th May 2015, the said 180 days should have been calculated from the said date only, which would expire on 11th November 2015; in the letter dated 27th May 2015, the Appellant requested the Respondent Board to accept the time schedule, and targets like capacity booking, natural gas tie up, and FC to be considered from 15th May 2015; however, the Respondent Board, right from the outset, was taking an unreasonable and negative outlook towards the Appellant; after one month of the authorisation granted in favour of the Appellant – i.e., on 15th June 2015, the Respondent Board wrote to the Appellant, in response to the Appellant's letter dated 27th May 2015, wrongly stating that there was no provision for "extension or modification" of the schedule or targets capacity booking, natural gas tie up, and FC was available under the extant Regulations; this was totally contrary to the Regulations which provide for 180 days from authorisation, and it is an admitted fact that the authorisation in favour of the Appellant was granted only on 15th May 2015; the Respondent Board stated that the Appellant should complete the FC within 15 days from the communication, which is by 30th June 2015, whereas, under the Regulations, the Appellant had until November 2015 to submit the same; thereafter, correspondence ensued between the Appellant and the Respondent, culminating in a notice for hearing being issued by the Respondent on 5th October 2015 to be held on 26th October 2015; this notice was illegal and unwarranted as the 180 days for completion of FC had not yet expired, and the Respondent Board was proceeding on an ex-facie illegal premise that the time period was already over, and that the Appellant was in default; at the hearing dated 26th October 2015, the Respondent Board granted the Appellant time up to 30th November 2015; in compliance

with the Respondent's timeline, the Appellant submitted its FC (through internally financed route) along with the Detailed Feasibility Report (DFR) on 30th November 2015; this submission was also substantially in line with the original timeline of 180 days which would have expired in mid-November 2015; while there was no actual delay in submission of the FC, the Respondent Board proceeded to create the ghost to exorcize it by counting the Appellant was in default; thereafter, certain details were sought by the Respondent Board, and the same were provided by the Appellant, despite which, and even without any notice, the Respondent passed an order on 17th February 2016 encashing 25% of the bank guarantee; and the developments between November 2015 and February 2016, culminating in the ex facie illegal order of the Respondent Board dated 17th February 2016, meant that the Appellant actually never got an opportunity to operationalise the project for which it was authorised.

30. The Appellant submits that, thereafter, they challenged the said order dated 17th February 2016 by way of a Writ Petition before the High Court of Judicature at Hyderabad, and the matter remained sub-judice in Court until January 2018; in fact, the High Court had also granted stay on the said order of the Respondent Board by its order dated 29th February 2016, noting that it appeared from the documents that the Appellant had complied with the requirements prescribed by the Respondent Board; during the pendency of the said petition before the High Court from February 2016 to January 2018, the Appellant had been wrongly adjudged by the Respondent Board as being a defaulter, the bank guarantee was wrongly encashed and, therefore, there was no scope for the Appellant to operationalise the project in accordance with the authorisation granted to it on 15th May 2015; the entire issue had arisen because the Respondent Board was too eager to come to the conclusion that the Appellant was in default, and invoking the bank guarantee on that basis, which resulted in almost 3 years going by when the

Appellant was in an indeterminate state as to the future of the project for which it was authorised; thereafter, and also during the pendency of the litigation before the High Court, and while the stay order dated 29th February 2016 was operational, the Respondent yet again issued a notice to the Appellant on 5th January 2018 seeking an explanation as to why action, in terms of Regulation 16 of the 2008 Regulations, should not be taken against the Appellant for failure to lay the subject pipeline project within the stipulated time, and their failure to submit a renewed bank guarantee; yet again, the Respondent Board started on the premise that the Appellant was in default, which was an ex-facie illegal premise, especially in view of the stay order passed by the High Court; the Appellant appeared for a hearing on 11th January 2018, during which it was decided, pursuant to mutual discussions between the Appellant and the Respondent and in the interest of ensuring completion of the project, that the Appellant would withdraw the writ petition pending before the High Court, and the same was withdrawn on 25th January 2018; withdrawal of the writ petition was informed to the Respondent Board; thereafter, a hearing again took place before the Respondent Board on 31st January 2018, wherein the Respondent Board asked for submission of documents, such as details of the project and commitment letter from the promotors, etc by 15th February 2018, and to submit a comfort/sanction letter from banks by 31st July 2018; these documents were submitted to the Respondent Board by the Appellant by three letters, all dated 17th March 2018; in addition to the 2 letters dated 17th March 2018, annexed by the Respondent with its Reply, by the Appellant's 3rd letter dated 17th March 2018 to the Respondent, the commitment letter from the promotors of the Appellant and the gas tie up with customers was submitted, stating that the comfort/sanction letter from the banks would be submitted within 5-6 months, once extension of time was granted by the Respondent or by 31st July 2018, whichever was later; this was again in line

with the original requirement of the Respondent dated 31st January 2018, wherein time was granted to the Appellant to submit the comfort/sanction letter of the banks on or before 31st July 2018; and thereafter, on 12th July 2018, the Respondent granted extension of time to the Appellant upto April 2020 for the subject project.

31. The appellant submits that, despite being granted extension of time until April 2020, the Respondent prematurely initiated proceedings against the Appellant by way of its notice dated 8th March 2019, i.e., less than 9 months after extension of time was granted, fixing a hearing for 26th March 2019 before the Respondent Board; during the hearing held on 26th March 2019, the Appellant informed the Respondent that it had already completed the detailed route survey and, thus far, had incurred INR 25 Crores for the project, and they were in discussions with various entities such as IMC Limited, Bharat Gas Resource Limited and others for strategic partnership in the project; the Appellant also assured the Respondent that it would commence the project execution by May 2019, and ensure mechanical completion by April 2020; after hearing the Appellant, the Respondent Board directed the Appellant to submit the FC by 31st July 2019 as well as a detailed section-wise activity chart, and the latest status and correspondence towards finalisation of the strategic partners; and, at that stage, there was no protest by the Respondent Board about the involvement of strategic partners by the Appellant.

32. It is submitted that thereafter, pursuant to the hearing, the Appellant addressed letter dated 27th March 2019 to the Respondent assuring that the activities such as (i) submission of FC, (ii) infusion of equity funds as required by the banks for sanction of project loan and (iii) finalisation and issue of Letter of Award (LOA) to the EPC contractors, towards execution of the project, would all be achieved by 31st July 2019; despite grant of time,

to the Appellant to achieve/submit the requisite documents by 31st July 2019, the Respondent-Board once again, prematurely, initiated proceedings against the Appellant by way of its show cause notice dated 4th July 2019, requiring the Appellant to show cause why action under Regulation 16 of the 2008 Regulations should not be taken against them for their failure to achieve FC and to lay the pipeline; thereafter, by letter dated 31st July 2019, the Appellant responded to the show cause notice dated 4th July 2019, and submitted details required by the Respondent in the hearing on 26th March 2019; the Appellant adhered to the timeline imposed by the Respondent of 31st July 2019 for submission of documents, and the undertaking given by the Appellant in its letter dated 27th March 2019; in its letter dated 31st July 2019, the Appellant informed that it had finalised IMC Limited as the strategic partner for the project, and the binding documents were being negotiated; a letter of intent dated 6th April 2019 of IMC Limited was also submitted by the Appellant for acquiring equity shareholding in the Appellant company; with regards achievement of FC, the Appellant informed that the current net worth of IMC Limited, combined with the net worth of the initial group promoters of the Appellant, was enough to execute the project; IMC Limited's group company, IMC Infrastructure Limited was expected to be the EPC contractor for the 1st stretch from the Ennore LNG Terminal, and the letter of award would be issued by September 2019. The Appellant assured that it would adhere to the timelines, and requested that an appointment be given with the senior management of IMC Limited to demonstrate their plans for the execution of the project; the Respondent issued a notice of hearing dated 26th August 2019 stating that, despite 4 years after the authorisation, the progress of the Appellant was not up to the mark and, therefore, the Appellant was required to show cause why action should not be taken under Regulations 10 and 16 of the 2008 Regulations; the Respondent's statement completely ignored that, out of the 4 years, most of the time had

been spent in litigation before the Respondent Board, as well as before the High Court at Hyderabad, after which time had been extended by the Respondent, the requisite documents as sought by them had been submitted on multiple occasions by the Appellant, and all clarifications sought by the Respondent were also addressed by the Appellant; a hearing took place before the Respondent Board on 4th September 2019, the minutes of which were shared by the Respondent on 30th September 2019; before the said hearing, the Appellant had confirmed to the Respondent that its Board of Directors had selected IMC as the strategic partner; the minutes of the hearing dated 30th September 2019 recorded that enough opportunities had been granted, but no FC had been achieved; however, the Respondent completely ignored the fact that introduction of a strategic partner, IMC Limited, was already informed by the Appellant, and involvement of the strategic partner was central to achieving FC; by way of the same letter, the Respondent issued another notice for hearing on 9th October 2019 stating that the Appellant's strategic partner, i.e., IMC Limited, may also attend the said hearing on 9th October 2019; the minutes of the hearing held on 9th October 2019 were never shared by the Respondent with the Appellant; the Respondent's own account of what transpired at the hearing dated 9th October 2019 can be seen from the subsequent termination order dated 30th October 2019; the representatives of the strategic partner, IMC Limited, also attended the said hearing, and it was informed to the Respondent that definitive documents of transfer of shareholding in the Appellant to IMC Limited, and the application for approval of such transfer by the Respondent, would be submitted by the Appellant to the Respondent; an unreasonably short timeline of 2 days was set by the Respondent for the submission of these documents; ultimately, these documents (as well as an application for approval of transfer) were submitted by the Appellant to the Respondent, but with a delay of a few days, albeit in

the month of October 2019 itself (on 31st October 2019); admittedly, no decision has yet been made by the Respondent on the said documents or application for transfer; the Respondent, without any basis, issued Order dated 31st October 2019 terminating the authorisation of the Appellant, and invoked 100% of the bank guarantee amount, which was uploaded on 31st October 2019, without providing any reasons as to why it believed that the Appellant would be unable to complete its obligations by the extended time period i.e., April 2020; the Respondent failed to adhere to Section 13(3) of the PNGRB Act, since the actions of the Respondent were clearly not guided by principles of natural justice; and the Respondent failed to provide sufficient and reasonable remedial time to the Appellant to achieve its obligations which was why the Appellant had to prefer a Review Petition.

33. While denying that they were trying to improve their case, the appellant reiterated that the request for transfer of authorisation was made by the Appellant way back in 2019, including making a formal application on 30th October 2019, which was not considered or decided by the Respondent until today; the request for transfer of authorisation was once again made by the Appellant in the written submissions filed by the Appellant on 2nd May 2022 (which was prior to the hearing on 4th May 2022, and thereafter the order was passed on 31st May 2022), and thereafter, again made in the Review Petition; the issue of transfer of authorisation has been pending even before filing of the Review Petition, and has not been considered by the Respondent; the Respondent's reliance on letter dated 26th May 2015 is misplaced; the said letter was issued as the Respondent had insisted on such a letter being issued as a pre-condition to the authorisation being transferred in the name of the SPV, i.e., the Appellant company; the Respondent's letter dated 15th May 2015, accepting the Appellant and re-issuing the authorisation in the Appellant's name, could not have enforced such a condition which is contrary to the extant Regulations, which

specifically permit an application being made for transfer of authorisation after a specified period of time; the contention of the Respondent is contrary to its own subsequent correspondence where the Respondent had no objection to IMC Limited being a strategic partner, and to the transfer of authorisation; the Appellant had informed the Respondent, by its letter dated 26th March 2019 and 1st May 2019, that it was in discussions with IMC Limited and other companies for including a strategic partnership in the project pipeline; by letter dated 31st July 2019, the Appellant confirmed to the Respondent that IMC Limited would join the Appellant as a major shareholder, and become the strategic investor in the project; however, not once did the Respondent raise any objections to the transfer of authorisation and/or shareholding in the name of IMC Limited; moreover, the Regulations permit transfer of authorisation post three years of the authorisation, and the same cannot be taken away on the basis of a pre-authorisation undertaking; the Respondent's contention also ignores the subsequent developments and is nothing but an afterthought; therefore, the effect of any such letter cannot exceed the period of three years.

34. While denying that they were "selling" the license, the appellant states that the arrangement for which the Respondent's approval was sought is the transfer of shares in the Appellant company by the company's promotors to IMC Limited; the authorisation would still be in the name of the originally authorised entity, i.e., the Appellant; this misnomer was being used by the Respondent to create a negative impression unnecessarily, especially when the Respondent did not have any issue with IMC Limited's entry on a 100% equity buyout basis in 2019 itself, after which IMC Limited's representatives also attended the hearing dated 9th October 2019; the Appellant had only requested for transfer of shareholding, and did not gain any financial benefits out of the transaction; the request for approval for transfer of shareholding was made by the Appellant under compelling circumstances; these

contentions have never been raised by the Respondent before, and have only been raised for the first time in its Reply; the Respondent did not pay heed to the Appellant's request for transfer, made from time to time; the Appellant had already achieved FC way back in 2015, when it decided to internally finance the project, and had also submitted a Detailed Feasibility Report to the Respondent; thereafter, the Respondent required clarifications from the Appellant, from time to time, regarding internal financing of the project, which time and again was provided by the Appellant along with supporting documents; despite this, the Respondent went ahead and wrongfully held the Appellant to be in default, and passed the Order encashing 25% of the bank guarantee; under such compelling circumstances, the Appellant brought in IMC Limited as its strategic partner; however, the Respondent failed to approve the Appellant's request to transfer the shareholding to IMC Limited for timely execution of the project; the purported delay, as contended by the Respondent, is not attributable to the Appellant; since the letter of authorisation was issued in the name of the Appellant only on 15th May 2015, the Appellant requested the Respondent to consider the time schedule and targets for activities from 15th May 2015; even after being aware of the fact that the process of financial closure generally takes 5-6 months, the Respondent, vide its letter dated 15th June 2015, directed the Appellant to achieve financial closure within 15 days of the communication; and this clearly establishes that the Respondent failed to give a fair chance to the Appellant.

35. It is stated that the Appellant, thereafter, updated the Respondent on 24th June 2015on the project status and initiation of FC; they further requested the Respondent to allow the Appellant time till September 2015 since target activities like capacity booking, natural gas tie-up and financial closure could have only been initiated after the letter of authorisation was issued in the name of the SPV company, i.e., the Appellant herein on 15th

May 2015 and the Gas Sales Agreements could have been only concluded thereafter; on 9th September 2015, the Appellant again informed the Respondent that a letter from the bank to the effect that finalisation of the financial closure will take further 2-3 months' time had been received, and thereby they had sought extension till 30th November 2015; the Respondent failed to respond to any of the Appellant's request, and issued a hearing notice on 5th October 2015; the Appellant made every effort to achieve the targets on time, as could be seen from their letters; the Respondent cannot attribute the delay between the transfer of authorisation and the said hearing to the Appellant; quite contrary to there being a so-called "continuous delay" on the part of the Appellant, it is apparent from the record that the Respondent proceeded with a pre-conceived notion that the Appellant was in default, even before the Appellant could have actually been in default; the Respondent's contention that no such provision, for extension or modification of the time schedules and targets, was available under the PNGRB regulations is misplaced; the Respondent Board had, on various occasions, granted extension to other entities who had also delayed completion of their respective pipeline projects (which may have been delayed for a multitude of reasons); however, no adverse action such as termination of authorisation, as had been taken against the Appellant in the present case, had been taken by the Respondent Board against any of those other entities (a chart showing the list of entities that had been granted extension by the Respondent Board from time to time is attached hereto).

36. It is submitted, on behalf of the appellant, that the process of financial closure was already submitted by the Appellant in addition to the other targets; the Appellant withdrew the case pending before the High Court since no progress could be made in the project as the matter was *sub-judice,* and the Respondent was finally ready to examine a fresh schedule for execution of the project; since the Appellant was determined to complete the project,

and had already undertaken activities towards completion of the project, it decided to withdraw the matter; the Appellant had submitted all the requisite documents and information to the Respondent as requested by it in the hearing dated 11th January 2018; in addition to the letters dated 17th March 2018 as annexed by the Respondent in its Reply, the Appellant also sent another letter dated 17th March 2018 to the Respondent, submitting other requisite information in respect of the Respondent's directions; the decision of the Respondent to issue the notice of hearing dated 8th March 2019 was itself premature; it had only been less than 9 months since the Respondent granted the Appellant extension of time period for completion of the project till April 2020; however, it proceeded to issue a hearing notice months before expiry of the extended time period; the Appellant also informed the Respondent, in the hearing held on 26th March 2019, that the detailed route survey had been completed, and the Appellant had already incurred an amount of INR 25 Crores in the project; the request to hold hearing was made by the Appellant itself in its letters dated 31st July 2019 and 28th August 2019 to make a presentation with its new strategic partner, in view of the agreement between the Appellant and IMC Limited to take over the entire shareholding of the Appellant; the Appellant also submitted a letter of intent dated 6th April 2019 by IMC Limited to the Respondent; the Appellant had informed the Respondent that IMC Limited has been finalised as the strategic investor for the project, however, the necessary and binding documents were under process and to be executed shortly thereafter; since the formal and binding documents were still under the process of being executed, the Appellant did not make a specific request for renunciation or transfer of authorisation in its letter dated 23rd September 2019, and only informed the Respondent about finalisation of the strategic investor with the sole purpose of keeping the Respondent in the loop of the progress made by the Appellant; thereafter, as soon as the binding agreement was entered

into between the Appellant and IMC Limited, the Appellant, vide its letter dated 30th October 2019, immediately informed the Respondent and made a formal request for transfer of authorisation; no termination letter was received by the Appellant, and the said Order was straight away uploaded on the Respondent's website only on 31st October 2019; the Appellant only got to know about the termination of authorisation, when it was informed by the Bank that it had received the request for encashment of 100% of the bank guarantee amount; the Respondent's contention that the requisite documents were submitted by the Appellant on 30th October 2019 only after the Appellant became aware of the termination order is incorrect and baseless; it is evident from the various correspondence on record that the Appellant has, from time to time, updated the Respondent on the status of the project and progress made by the Appellant, on the basis of which the Respondent had granted extension to the Appellant to complete execution of the project; further the Appellant, through its letter dated 31st July 2019, had clearly explained to the Respondent the status of appointing the EPC contractors, inter-connectivity with IOCL pipeline etc; despite several representations made by the Appellant, the Respondent terminated a valid authorisation prior to expiry of the deadline set by the Respondent itself; it also failed to provide cogent reasons as to why the full opportunity of the time granted to the Appellant by the Respondent itself was not given to the Appellant; the Review Petition was filed by the Appellant to get relief against the termination order; the issue of transfer of authorisation was pending before the Respondent, and was not as such, the immediate concern of the Appellant; it is denied that the letter and agreement dated 30th October 2019 was an afterthought; this Tribunal's order dated 15th December 2021 would reveal the true scope of the direction of remand of the matter to the Respondent Board; however, the Respondent Board failed to adhere to, and/or comply with, this Tribunal's directions to consider the matter afresh

by failing to comply with paragraph 5 of the order dated 15th December 2022; in the Impugned Order dated 31st May 2022, the Respondent completely overlooked that the delay in the project was first caused due to the wrongful conduct of the Respondent in encashing the bank guarantee, and thereafter prematurely and wrongfully terminating the authorisation of the Appellant; besides, the Respondent did not approve transfer of authorisation, even after the Appellant and IMC Limited entered into a binding agreement; the fact that one month's time was granted by the Respondent to the Appellant does not classify as 'reasonable time', and was a mere formality on the part of the Respondent; while examining these aspects, and the reasonable time to be granted, the Respondent should have considered what 'obligations' were left to be fulfilled; in this case, these obligations are dependent on the transfer of authorisation in favour of IMC Limited by the Respondent; and, in such a case, the Respondent should have been mindful of the 'reasonable' time granted by it, where what is 'reasonable time' has not been defined.

37. The Appellant submits that the contention of the Respondent that, since transfer of authorisation was not the subject matter of the previous Appeal No. 17 of 2019, the issue of transfer of authorisation cannot be dealt with in the present appeal is baseless; the scope of the earlier appeal was completely different from the present Appeal, as the earlier appeal was specifically filed seeking quashing/setting aside of the termination order dated 30th October 2019 passed by the Respondent, and pertained to issues prevalent at that time, while the present Appeal has been filed under different circumstances and to challenge the illegal exercise of the regulatory powers by the Respondent in issuing the Impugned Orders; it is denied that the issue of transfer of authorisation was not the subject matter of the previous hearings; by way of its order dated 15th December 2021, the appeal challenging the termination order dated 30th October 2019 was remanded back to the Respondent by this Tribunal and, thereafter, the order dated 31st

May 2022 was passed by the Respondent after considering the matter afresh; the Respondent, in its order dated 30th October 2019, has clearly acknowledged, noted and dealt with the issue of transfer of authorisation to IMC Limited and, since the Impugned Order dated 31st May 2022 (which was passed after reviewing the termination order dated 30th October 2019) is under challenge in the present Appeal, the subject matter pertaining to the transfer of authorisation is common and linked with all the previous litigations in this regard; the Respondent has wrongfully and without any basis dismissed the Review Petition filed by the Appellant; the Respondent, by way of the impugned order, only allowed one-month remedial time to the Appellant; this was a mere formality by the Respondent as it failed to acknowledge and consider the difficulties and issues that the Appellant has been facing since long; the Respondent failed to grant "reasonable" remedial time to the Appellant as per the extant regulations; therefore, the Appellant had the right to raise the issue of transfer of authorisation in the review, and the Respondent is bound to consider and examine the Appellant's case afresh and pass a fresh order accordingly; it is no defence on the part of the Respondent that it was unaware of the *ex-parte* stay granted by this Tribunal vide its order dated 19 October 2022, as a stay order passed by a superior court takes effect from the moment it is passed, irrespective of whether it is communicated or not to the court concerned (Refer: *Ram Samujh v State and another*: AIR 1962 All 80); the Respondent became aware of the order dated 19th October 2022 when it was uploaded on the website around 14:30 hours; upon seeing the termination order, the Counsel for the Appellant sent an email to the Respondent attaching a copy of this Tribunal's order dated 19th October 2022 at around 15:57 hours; it was expected that the Respondent would not proceed with encashment of the bank guarantee after receipt of the Appellant's e-mail; however the Appellant, at about 17:45 hours, received an email from the bank intimating that an amount of INR 7.3

crores had been debited from the bank account of the Appellant; it is clear that, even after informing the Respondent of this Tribunal's order where explicit directions were passed for stay against further proceedings in the matter before the Respondent, the Respondent did not refrain from proceeding with encashment of the bank guarantee; it is denied that the termination order was uploaded on the website on 20th October 2022 at around 11:46 am; it is clear from the screenshot indicating time of the issuance/uploading of the order dated 20th October 2022 (*annexed as Annexure R-2 to the reply filed by the Respondent to IA No. 1794/2022*) that the time indicated therein is the time of creation of the file, and not the time of uploading the order on the Respondent's website; the Regulations nowhere mention that, once the entity has decided to internally finance the project, it cannot later resort to external sources for funds; the Appellant is at liberty to source funds from a third party at any stage of the project if it is required, and is necessary for completion of the project; besides, the Respondent was aware that the Appellant has brought IMC Limited as its strategic investor, and not once had the Respondent raised this issue before; at this stage, both the Appellant and the strategic investor are keen to continue with the project, and the strategic investor is on board to acquire 100% shareholding of the Appellant to continue with the project; transfer of authorisation to IMC Limited would have aided timely completion of the project since all the necessary documentation was already undertaken by the Appellant; the Respondent failed to realise that a transfer of authorisation to the strategic investor, that is waiting to acquire shares of the Appellant, is a far more beneficial proposition, and in the interest of public at large; and if, at this stage, the Respondent decided to take any steps against the Appellant, and re-initiate the bidding, considerable time and resources will be lost which will critically impact development of the pipelines in the country.

IV. ORDER OF PNGRB DATED 31.05.2022:

38. In its Order, in Case No.: Legal/07/2022 dated 31.05.2022 (consequent on the matter being heard after its remand from APTEL vide judgment in Appeal No. 7 of 2021 dated 15.12.2021), the PNGRB held that the appellant had preferred an Appeal before APTEL against the Impugned order dated 30.10.2019 which was set aside and remitted to the Board to hear the matter afresh; in terms of APTEL's Judgment dated 15.12.2021, the Board had refunded ₹7.30 Crores vide letter dated 13.04.2022; accordingly, the authorisation of the subject pipeline stood revived as on date; the Board, in compliance with the directions issued by APTEL, had conducted the hearing on 06.04.2022 and 04.05.2022; during the course of hearing, the following submissions were made (i) the Board on 02.12.2014 had authorized ENPL in favour of the appellant, and the same was authorized in the name of the Special Purpose Vehicle only on 15.05.2015; the appellant, vide letter dated 30.11.2015, informed the Board that the project pipeline would be internally financed by the appellant, and had also submitted a detailed feasibility report; (ii) the appellant submitted clarifications on 26.11.2015 and 30.11.2015, with respect to the information received regarding internal financing of the project as desired by the Board; however, on the ground of breach of authorisation in relation to the achievement of GTA and Financial Closure (FC), the Board had imposed penalty on the appellant, and had encashed 25% of the PBG; (iii) the appellant had filed Writ Petition No. 6387 of 2016, before the High Court at Hyderabad, and the High Court on 01.03.2016, had granted stay; however, the Board had already encashed 25% of the PBG amounting to Rs. 1,82,50,000/- prior to that; (iv) on 25.01.2018, the appellant had withdrawn the above referred Writ Petition, as no progress could be made since the matter remained sub-judice and, thereafter, the appellant had replenished PBG to its original amount; the appellant had informed the Board about the same on 31.01.2018 (minutes dated 07.02.2018), and had submitted that the detailed route survey had

finally established the final length of the main trunk line; (v) on 19.03.2018, the appellant had submitted a proposed schedule for execution of the project before the Board; the Board, vide letter dated 12.07.2018, extended the completion schedule of the project pipeline till April, 2020; (vi) the Board, on 04.07.2019, issued show cause notice even before the end of the tenure i.e., April, 2020; the appellant submitted their response to the same on 31.07.2019, and the hearing in this regard was held on 09.10.2019; thereafter, the Board issued the termination order on 30.10.2019; (vii) the delay in carrying out the project pipeline had been caused due to the early and frequent action taken against the appellant; and they, therefore, requested for a period of 6-7 months to achieve the financial closure as well as to execute an agreement for transport of natural gas; in addition, a period of three years was sought to complete laying and commissioning of the project pipeline, and approve the renunciation in favor of IMC limited; (viii) the measures taken by the appellant towards progress of the project were as follows: (a) route survey had been completed for the Phase-I-Spread I of the Project i.e., TP 0 at Madras Fertilizers Limited, Ennore, Tiruvallur, Dist., TN to TP 106 at south east side of Sricity near village, Mallavaripalem, Chitoor Dist., AP for a length of 50.977 Kms; (b) route survey had been completed for the Phase-I-Spread II of the project (From TP 106 at south east side of Sricity near village, Mallavaripalem, Chittoor Dist., to TP 288 near village Pellakuru, Nellore Dist, AP) for a length of 44.991 Kms; (c) route survey had been completed for the Phase-I-Spread II (Branch Line) of the project (From TP 228 (TP 0) near village Pellakuru, Chittoor Dist., AP to TP 35 near north east corner of Lanco, Yerpedu, Chittoor Dist, AP) for a length of 26.850 Kms; (d) route survey had been completed for the Phase-I-Spread III of the project (From TP 228 (TP 0) near village Pellakuru, Chittoor Dist., AP to TP 302 in LNG area in Krishnapatnam port, Nellore Dist, AP) for a length of 61.694 Kms; (e) route survey had been completed for the Phase-2 -Spread II IV of

the projects (From TP 302 in LNG area, in Krishnapatnam port, Nellore District, AP (1.34 Km North of IFFCO KISAN SEZ) for a length of 61.266Kms; (f) Geotechnical survey had been completed; and (g) Topographical survey has been completed; and once the authorisation is renunciated in favor of IMC Limited, the Financial Closure may be achieved and the project may be completed on time.

39. The Board observed that it was, however, not satisfied with the submissions made, for the reasons that the conduct, intention as well as seriousness was lacking on the part of the entity to perform its obligations; the conduct of the appellant was such that, even after providing ample opportunities, it had failed to achieve Financial Closure and capacity booking/natural gas tie up; it did not inspire confidence of the Board in terms of the physical progress on the ground; Regulation 10(4) of the NGPL Authorisation Regulations provided that the authorized entity shall obtain Financial Closure of the project within 180 days of the authorization; further, Regulation 10(5) of the NGPL Authorisation Regulations provided that, in case of internally financed project, the entity shall submit approval of its Board of Directors for detailed feasibility report ("DFR") of the project along with its financial plan within 120 days of the authorization; Regulation 10(6) of the NGPL Authorisation Regulations provided that, in case the entity failed to meet the requirement of sub-regulations 1 to 5, the authorisation of the entity for laying, building, operating or expanding natural gas pipeline shall be cancelled, and the performance bond shall be encashed; despite the fact, that the appellant had failed to achieve Financial Closure and capacity booking/ natural gas tie-up within the prescribed period as mentioned under NGPL Authorisation Regulations, it had again requested a time period of almost 7 months i.e., equivalent to 210 days for achieving the same which was not acceptable to the Board as there was no Regulation which provided for the same; and on scrutiny of the entity's case record and conduct of the

appellant, the Board was left with no other option but to proceed under the provisions of Regulation 16 of NGPL Authorisation Regulations.

40. The Board further observed that, as per Regulation 16 of the NGPL Authorisation Regulations, the authorized entity shall abide by all the terms and conditions; and, in case of failure to do so, the Board shall issue a notice to the defaulting entity allowing it a reasonable time to fulfill its obligations; thus, this regulation mandated the Board to grant time to the entity to take remedial action and, in case the entity failed to do so, the Board may encash the performance bond submitted by the entity, as well as terminate the Authorisation in the manner stipulated in the said regulation;

41. The Board then held that, in the foregoing circumstances, it had taken the view that, as the pipelines were of national importance, the Board was required, in terms of Regulation 16(1)(c), to grant time to the entity to take remedial action in order to fulfill its obligations. For these reasons, the Board, in the exercise of its powers and in terms of Regulation 16(1)(c)(ii) of the NGPL Authorisation Regulations, 2008 granted one-month time to the entity to meet its obligations as prescribed under Regulations 10(1) to Regulation 10(5) of the NGPL Authorisation Regulations, and the terms and conditions of the Authorisation Letter.

V. ORDER, PASSED IN THE REVIEW PETITION, DATED 13.09.2022:

42. On a review petition being filed by the appellant herein, in Review Petition No. 14/2022 under Section 13(1)(h) of the PNGRB Act, 2006, the PNGRB, in its order dated 13.09.2022, observed that the petition was filed seeking review of the order dated 31.05.2022 passed in Case No.: Legal/07/2022 on the matter being remitted back from APTEL vide judgment dated 15.12.2021 passed in Appeal No. 17/2021; the present case has had a chequered history, and the detailed facts of the case were not being

repeated for the sake of brevity as the same had been enumerated in the order dated 30.10.2019 and 01.11.2019 passed in PNGRB/Monitoring/2-NGPL-ENPL/(1)/2015, and order dated 31.05.2022 passed in Legal/07/2022; before looking into the issues that emerged in the Review Petition, it was essential to mention that the Counsel for the Review Petitioner, during the hearing held on 16.08.2022, had submitted that no appeal had been preferred against the impugned Order dated 31.05.2022 before APTEL; and the Review Petitioner, by way of the present review petition, had prayed to: (a) Review the order dated 31.05.2022; (b) Grant permission to transfer the authorization in favor of M/s IMC Limited; (c) Grant a period of at least 4 months for achieving Financial Closure as well as to execute an agreement for the transport of natural gas.

43. The PNGRB then observed that the substance of the grounds urged by the appellant-review petitioner was that: (1) they had sought transfer of authorization of the Ennore-Nellore Natural Gas Pipeline in favour of M/s IMC Limited; (ii) the Board had overlooked that the Review Petitioner had already submitted the documents in 2019, and had requested the Board to accept and approve the renunciation by way of transfer of 100% equity share-holding of the Review Petitioner to M/s IMC Limited under Regulation 9(4) of the 2008 Regulations; (iii) it was only after the transfer of authorization was permitted by the Board in favor of IMC Limited that any step towards achieving Financial Closure could be taken by IMC Limited; (iv) the Review Petitioner had submitted that grant of the period to complete Financial Closure, without granting permission for transfer of authorization, would not be of any relevance, and without allowing the same, M/s IMC Limited would not be able to take steps towards achieving Financial Closure; (v) it was impractical to complete the obligations to achieve Financial Closure within a month, as the procedure to achieve Financial Closure would take 6 months; (vi) the Review Petition had submitted that they were not going into the

merits of the case, and the present Review Petition was for the limited purpose of seeking directions from the Board to permit transfer of authorization in favor of M/s. IMC Limited, and to extend the time granted by the Board.

44. The PNGRB observed that, on a perusal of the facts and submissions, the issue that arose for consideration was whether the impugned Order dated 31.05.2022, passed in Case No. Legal/07/2022, deserved to be reviewed, on the grounds invoked by the Review Petitioner; Section 13 of the Act specified the '*Procedure of the Board',* and Section 13(1)(h) of the Act empowered the Board to review its own decision; as per Section 13(2) of the Act, every proceeding before the Board was deemed as a judicial proceeding and, as per Section 13(3) of the Act, the Board should be guided by the principles of Natural Justice; in the absence of any specific guidelines under the Act, to review its own decisions, the Board relied upon the provisions of Section 114 r/w Order XLVII Rule 1 of the Code of Civil Procedure, 1908, which laid down the guiding principles governing Review, Orders, and Judgments; it was evident from the aforesaid provisions that review of any order was maintainable only on grounds of discovery of new and important matter or evidence, mistake or error apparent on the face of the record, and any other sufficient reason; in ***Manohar S/O Shankar Nale and Others Vs. Jaipalsing S/O Shivlalsing and Others,*** the Supreme Court observed that the court's jurisdiction to review its own judgment was '***limited'***; the power of review must be exercised and 'limited' within the framework of Section 114 read with the Order XLVII Rule 1 of the CPC; the power of review was distinct from the power of appeal; at this stage, the Board was not sitting in appeal on its order dated 31.05.2022; when hearing the Review Petition filed against its own order, the Board does not re-hear the case at hand, as it would be an appeal; the prayer of the review petition was limited to remedy an error apparent on the face of the record, or

resultant grave injustice that had been a consequence of a decision; the Board was restricted in the exercise of power to review the cases where there is an error apparent on the face of the record or in accordance with power as per Order XLVII Rule 1 of CPC; the scope of power of Review was explained by the Supreme Court of India in the case of ***Northern India Caterers (India) Limited vs Lt. Governor of Delhi [1980 AIR 674];*** the Power to review its own decision is not an inherent power, but a protective measure against the fallibility of adjudicating body so as to ensure delivery of justice; and it must be therefore executed in a limited manner.

45. After deliberating the contents of the Review Petition, Written Submissions and oral arguments made by the Counsel for the Review Petitioner, the Board observed (i) the Review Petitioner had sought an additional period of 4 months for achieving Financial Closure and transfer authorization of ENPL to M/s IMC Limited; (ii) it was an admitted fact that the Board, vide public notice No. EOI/NGPL/BID/6/2013-2 dated 20.06.2013, had invited bids for authorization of NGPL Network Ennore to Nellore about 250 kms; subsequently, after following the due procedure of bidding, it had granted the authorization of ENPL on 02.12.2014 to KEI-RSOS Petroleum and Energy Private Limited led Consortium**;** thereafter, KREPL had incorporated a Special Purpose Vehicle for execution of ENPL i.e. Gas Transmission India Private Limited (Review Petitioner) and, upon the request of KREPL made vide letter dated 06.03.2013, the Board, vide letter dated 15.05.2015, had amended the authorization in favor of the Review Petitioner; the Board is empowered under Regulation 16(1)© of the NGPL Authorization Regulations to grant remedial time to the authorized entity to fulfil its service obligations; in the present case, for achieving Financial Closure, the Board had granted one-month time as a remedial action, despite their failing to achieve in the prescribed time period; it was evident that, even after a lapse of more than 7 years from the grant of authorization, the Review Petitioner,

as of date, had failed in its obligations to achieve Financial Closure, in terms of Regulation 10 of the NGPL Authorization Regulations, despite having been given several opportunities for execution of the project; the Impugned Order was passed on 31.05.2022, and as on date almost 3 months had lapsed, and no development and progress had been undertaken by the Review Petitioner; the Counsel for the Review Petitioner could not show sufficient reason for reviewing the impugned order; development of the Ennore-Nellore Natural Gas Pipeline was crucial in the national interest, and likely to play a vital role in the national gas grid and supply of natural gas across the country; while going through the case file, it was observed that the conduct of the Review Petitioner did not inspire the confidence of the Board, and there was a lack of seriousness, as despite grant of ample opportunity the review Petitioner had failed to achieve Financial Closure and capacity booking/natural gas tie up, and there was no physical progress on the ground; and, on perusal of the submissions made, the Board did not find any ground to invoke Section 13(1)(h) of the Act to review the Impugned Order dated 31.05.2022.

46. The PNGRB further observed that it was the case of the Review Petitioner that the authorization, granted for ENPL to the Review Petitioner by the Board, may be transferred to M/s IMC Limited; the PNGRB Act conferred diversified functions to be performed by the Board i.e. Judicial functions, Legislative functions, Regulatory functions, and Administrative/ Ministerial functions; the Board, while adjudicating the present review petition was exercising its adjudicatory functions; however the Board, while deliberating on the transfer of authorization of any pipeline/CGD Network, would exercise its regulatory function; the contention of the Review Petitioner to transfer the authorization of ENPL in favor of M/s IMC Limited could not be accepted in view of the fact that the power of the Court, while adjudicating the Review Petition, was limited, and could not go beyond it; since the Board,

while adjudicating the present Review Petition, is exercising Judicial functions, and therefore, the issue regarding transferring the authorization of ENPL in favor of M/s IMC Limited could not be dealt in the instant Review Petition.

47. In conclusion, the Board held that it was not inclined to intervene by way of the Review Petition, since more than 7 years had passed from the grant of authorization, and the Review Petitioner had failed to achieve Financial Closure; as per Regulation 9 of the NGPL Authorization Regulations, an entity can make an application for transfer/ surrender/renunciation of authorization only after three years from the date of grant of authorization, and the Board, after examining various factors and satisfying itself, may decide the same; thus, transfer of authorization is not a matter of right; Regulation 10 of the NGPL Authorization Regulations provided a period of 120 days to achieve financial closure; the spirit of the NGPL Authorization Regulations was that financial closure pre-dates the transfer/surrender/renunciation of authorization in favor of an entity which it may propose to seek; in view of the above observations, the Board did not find any sufficient reason to review its order dated 31.05.2022. Not finding any merits in the Review Petition, the PNGRB, accordingly, dismissed the Review Petition.

VI. RIVAL SUBMISSIONS:

48. Elaborate submissions - both oral and written – were put forth by Sri Gopal Jain, learned Senior Counsel appearing on behalf of the appellant, and Sri Rahul Sagar Sahai, Learned Counsel appearing on behalf of the Respondent-PNGRB. It is convenient to examine the rival contentions under different heads.

VII. FAILURE TO ACHIEVE FINANCIAL CLOSURE: ITS EFFECT:

(i) APPELLANT'S CONTENTIONS:

49. Sri Gopal Jain, Learned Counsel for the appellant, would submit that the contention, that the Appellant had failed to achieve FC even after 8 years of grant of authorisation, is misconceived; the PNGRB has failed to acknowledge that the delay in achieving FC, and natural gas tie-ups, is not attributable to the Appellant, as there have been roadblocks since the date of its authorisation; the process of grant of authorisation required the PNGRB to have already examined the financial capability of the bidding entities as part of the minimum eligibility criteria; the appellant was formed in terms of Regulation 5(6)(f) of the Petroleum and Natural Gas Regulatory Board (Authorising Entities to Lay, Build, Operate or Expand Natural Gas Pipeline), Regulations, 2008 (the "2008 Regulations" for short), which requires an authorised entity to convert itself into a company; the authorisation was transferred in the name of the Special Purpose Vehicle i.e., Appellant/GTIL only on 15.05.2015; the time for meeting any requirements should, therefore, be considered only from 15.05.2015; the Appellant submitted its Financial Closure in line with Regulation 10(5) of the 2008 Regulations as an internally financed project vide its letter dated 30.11.2015; Regulation 10(5) does not prescribe any specific format in which FC should be submitted; for internal FC, it only provided for approval of the Board of Directors for the Detailed Feasibility Report of the project; to the objections raised by the PNGRB to the FC in its letter dated 18.12.2015, that the appellant's '*net worth is much less than the total project cost'*, a reply was furnished on 26.12.2015 explaining that the combined net worth of the promoters (Ms. Shobana Kamineni of Apollo Group and others) was much more than the expected project cost, and also that the Appellant would be receiving investments into the company in addition to the funding by Indian Bank; all supporting

documents were also provided including the net worth certificates; this was followed up by another letter dated 31.12.2015, whereby further documents were provided; on 17.02.2016, the PNGRB encashed 25% of the Performance Bank Guarantee ("PBG") on the ground that FC had not been achieved; the doubts expressed by the Board were (i) whether a combined net worth of around Rs. 1070 crores, of which 80% is accounted for by an individual, can generate finance for the project in time; (ii) whether the entire net worth of individuals can be converted into investment in this specific project or whether the net worth of those individual has been committed elsewhere; the Appellant challenged the PNGRB's Order dated 17.02.2016 before the High Court of Judicature at Hyderabad in WP No. 6387 of 2016, wherein a Stay Order dated 29.02.2016 was passed; the challenge to the Order came to be withdrawn by the appellant on 25.01.2018, and the PBG was replenished to its original amount; immediately after the challenge was withdrawn, PNGRB conducted a hearing on 31.01.2018; the appellant, by three letters dated 17.03.2018, submitted a commitment letter from their promotors, and the gas tie up from customers, stating that the comfort/sanction letter from the banks would be submitted within 5-6 months, once extension of time is granted by the PNGRB or by 31.07.2018, whichever is later; and, in the hearing held on 26.03.2019, PNGRB directed the appellant to submit FC by 31st July 2019.

50. Sri Gopal Jain, Learned Senior Counsel for the appellant, would submit that, after an order was passed by this Tribunal on 15.12.2021, a hearing took place on 06.04.2022 wherein the appellant requested the PNGRB for 6-7 months' time to achieve FC, and 3 years' time to complete laying and commissioning of the pipeline project and yet, in the impugned Order dated 31.05.2022, the PNGRB only granted 1 months' time to complete FC and GTA; for non-submission of FC under Regulation 10, the PNGRB cannot straightaway resort to termination of the contract; the

PNGRB has to follow the process under Regulation 16; the scope of the said provision has been explained in the orders of this Tribunal in ***Jay Madhok Energy Private Limited Led Consortium v Petroleum and Natural Gas Regulatory Board*** **(Appeals No. 196-197 of 2016 dated 28 April 2017) (2017 SCC Online APTEL 11,** ***Hindustan Petroleum Corporation Limited v Petroleum and Natural Gas Regulatory Board*** **[Appeal No. 25 of 2022 dated 16.03.2022),** and ***Jay Madhok Energy Private Limited Led Consortium v Petroleum and Natural Gas Regulatory Board*** **[Appeals No. 160-162 of 2022];** and these judgments are critical in appreciating the procedure under which action is to be taken by the PNGRB.

(ii) RESPONDENT'S CONTENTIONS:

51. Sri Rahul Sagar Sahai, Learned Counsel for the Respondent-Board, would submit that a notice of hearing was sent to the Appellant on 31.03.2022 informing that a hearing was scheduled on 06.04.2022; the Appellant, thereafter, filed its written submissions and compilation of documents wherein they had requested the Board to (a) allow a period of 6-7 months to achieve Financial Closure and to execute an agreement for transport of natural gas, (b) allow a period of 3 years to complete laying and commissioning of the pipeline for Ennore-Nellore Natural gas project, and *(c)* approve renunciation in favour of IMC Limited; the earlier representations of the Appellant merged in the latest prayers to allow a period of 6-7 months to achieve Financial Closure as well as to execute an agreement for transport of natural gas; in its Order dated 31.05.2022*,* the Board held that the Appellant's conduct lacked intent and seriousness to perform its obligations; Regulation 10(4) required the authorized entity to obtain financial closure of the project within 180 days of the authorization; the Appellant had failed to achieve financial closure and capacity booking as per the Regulations; they had, time and again, sought extension; despite that

the Appellant had, in their written submissions, again sought almost 7 months, i.e., equivalent to 210 days, for achieving FC which was not acceptable as there was no Regulation which provided for the same; and the Board, in the exercise of its powers and in terms of Regulation 16(1)(c)(ii), has granted one-month time to the Appellant to meet its obligations as prescribed under Regulations 10(1) to 10(5) of the Regulations.

52. Learned Counsel would further submit that the Appellant has repeatedly shifted its stand with regards the requirement to achieve financial closure; the Appellant was required to achieve Capacity Booking and Financial Closure within 180 days from the date of authorization, as per Regulations 10(1) and (4) of the 2008 Regulations, which it failed to; KRPEPL had submitted an undertaking, vide letter dated 26.05.2015, that KRPEPL and RRAT put together would hold more than 50% equity shares in the appellant till the ENPL project was completed; this period of 180 days from the date of authorization expired on 01.06.2015; on repeated enquiries by the Respondent Board, the Appellant submitted letter dated 30.11.2015 along with board resolution dated 24.11.2015 where it had stated that the appellant had decided to take up the project as “internally financed”; when the Board enquired, vide letter dated 18.12.2015, as to how they would internally finance the project, they replied vide letters dated 26.12.2015 and 31.12.2015, with net worth statements of the promoters (which was also revised) where almost the entire net worth was based on movable assets; the stand of “internally financed” project was again changed during the hearing on 31.01.2018, and the Board had to direct the Appellant to infuse Rs 100 crores by 31.05.2018 and 31.05.2019, and submit a comfort letter from the bank by 31.07.2018; the Appellant gave repeated assurances with regard to commitment by the promoters and sanction letter by the bank; on show cause notice dated 04.07.2019 being issued by the .PNGRB, as financial closure had still not happened, the stand “commitment from

promoters and comfort/ sanction letter from bank" again started changing to "bringing in strategic partners" which is evidenced by the appellant's letter dated 31.07.2019; even then, the letters from the appellant did not disclose any firm steps having been taken in this regard; they kept on stating that agreements were being negotiated and being executed; it was only after the Board terminated the authorisation, vide its letter dated 30.10.2019, that it received letter dated 30.10.2019 on 31.10.2019, from the appellant seeking renunciation in favour of a third party; it is clear, therefore, that the Appellant had not made any substantial progress on the ground, even after five years of grant of authorization; in fact, the authorisation was subject to the entity achieving financial closure under Regulation 9(2) of the 2008 Regulations, which it miserably failed to do even after around 5 years, when the termination order dated 30.10.2019 was passed; the Appellant kept on changing its stands on how it would fund the project and, ultimately, seems to be using it as a commodity which can be transferred to a third party without investing substantial funds or doing anything substantial on the ground.

(iii) ANALYSIS:

53. Section 16 of the PNGRB Act, which deals with authorisation, provides 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. Under the proviso thereto, 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.

54. Section 19 of the PNGRB Act deals with the grant of authorisation. Section 19(1) stipulates that, 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. Section 19(2) enables the Board to select an entity in an objective and transparent manner as specified by regulations for such activities.

55. Regulation 5(6)(c)(iv)(e) of the 2008 Regulations deals with ascertaining the net worth of the bidders as part of the technical bid, and stipulates that the entity should have adequate financial strength to execute the proposed natural gas pipeline project and operate and maintain the same, and shall meet the financial criterion stipulated thereunder to qualify for bidding for a single natural gas pipeline. While this exercise is required to be undertaken during the bid evaluation exercise, the selected entity is required, soon after an authorisation is granted in its favour, to comply with the requirements of entering into a gas supply agreement and to achieve financial closure.

56. Regulation 9(2) of the 2008 Regulations provides that the grant of authorization is subject to the entity achieving a firm natural gas tie-up and financial closure as per Regulation 10. Clause 7 of the Authorisation for the ENPL, granted vide letter dated 02.12.2014, required the entity to submit a

detailed and clear financial closure report to the Board, within a period of one hundred and eighty days from the date of authorization, under Regulation 9 of 2008 Regulations. Regulation 10 of the 2008 Regulations relates to Capacity booking, natural gas tie-up and financial closure. Regulation 10(1) stipulates that the authorized entity shall achieve agreement for transport of natural gas with any entity equal to at least fifty percent of the natural gas pipeline volume bid as specified in clause (d) to sub-regulation (1) of Regulation 7 for each of the first five years following the commissioning of the natural gas pipeline. Regulation 10(2) provides that the agreement, specified under sub-regulation(1), shall be entered into a transparent manner and be based on the principle of at an arm's length. Under the proviso, up to ten percent of the throughput in the natural gas pipeline specified under sub-regulation (1) may be booked on firm and mutually agreed terms without insisting on physical delivery of natural gas. Regulation 10(3) requires the entity to submit Heads of Agreement or Memorandum of Understanding or both, specified under sub-regulation (1), to the Board within a period of one hundred and eighty days of the date of issue of the authorization. Regulation 10(4) requires the authorized entity to obtain financial closure of the project from a bank or financial institution within a period of one hundred and twenty days from the date of the authorization. Regulation 10(5) stipulates that, in case of an internally financed project, the entity shall submit the approval of its Board of Directors' for the detailed feasibility report (hereinafter referred as DFR) of the project along with its financial plan within one hundred and eighty days of the authorization. Under the proviso, the Board may ask the entity to submit any further details or clarifications on the financial closure. Regulation 10(6) stipulates that, in case the entity fails to meet the requirements at sub-regulations (1) to (5), the authorization of the entity for laying, building, operating or expanding natural gas pipeline shall be cancelled and the

performance bond shall be encashed, and the Board reserves the right to re-award the authorization in a transparent manner and the entity shall have no right whatsoever against the Board for seeking any compensation or remedy on this account.

57. Regulation 5(6)(f) of the 2008 Regulations deals with conversion of a successful bidder into a company, and stipulates that the entity, on being declared as a successful bidder and not being a company registered under the Companies Act, 1956, shall convert itself into a company registered under the Companies A*ct, 1956*. Consequently, on receipt of a request from KEI-RSOS Petroleum and Energy Pvt Ltd, vide their letter dated 14.02.2015, the PNGRB, vide its letter dated 15.05.2015, informed them that the authorisation granted in their favour on 02.12.2014 was hereby granted in favour of M/s. Gas Transmission India Pvt Limited (the Appellant) and, except for the change of name in the authorisation dated 02.12.2014 from the promoters to the appellant, all the other terms and conditions of the authorization shall remain the same. The change of name, in the authorisation letter dated 15.05.2015, was necessitated to comply with Regulation 5(6)(f), and nothing more.

58. As the only change made by the PNGRB, to the authorisation letter dated 02.12.2014, in the subsequent proceedings dated 15.05.2015, was to the name of the entity in whose favour the authorisation was given earlier, all other conditions in the authorisation dated 02.12.2014 continued to remain in force, even after the amendment letter dated 15.05.2015, including clause 7 which required a clear financial closure report to be submitted within 180 days from 02.12.2014.

59. The 180 days period, stipulated in Clause 7 of the authorisation for submitting a detailed and clear financial closure report to the Board, computed from 02.12.2014, ended on 01.06.2015. The Appellant's request

for the time schedule for financial closure be considered from 15.05.2015 was rejected by the PNGRB which, vide its letter dated 15.06.2015, informed the Appellant that no such provision for extension and modification of the time schedule for financial closure was available under the 2008 Regulations. The Appellant was directed to submit the gas sale-agreement and comply with financial closure within 15 days from the date of the letter ie on or before 30.06.2015.

60. By its letter dated 05.10.2015, the PNGRB informed the Appellant that they were again being given an opportunity to appear before the Board for a hearing on 26.10.2015, prior to the Board initiating action under Regulation 16(1)(c) of the 2008 Regulations. On financial closure through supplier credit, the PNGRB, in the hearing held on 26.10.2015, observed that the mode of financial closure of the project should be through one of the provisions mentioned in the Regulations; the Entity had failed to quote any provision of the Regulations which allowed an additional period for submission of GTA and FC. The record of the PNGRB hearing dated 26.10.2015 was directed to be treated as a notice under Regulation 16(1)(c) of the 2008 Regulations, and the Appellant was informed that, in case they failed to achieve GTA and FC on or before 30.11.2015, 25% of the Performance Bank Guarantee would be encashed by the PNGRB in accordance with the Regulation 16(1)(c)(i) of the 2008 Regulations. A reminder was also sent, by the PNGRB to the Appellant, thereafter on 28.10.2015 to submit the financial closure documents by 30.11.2015.

61. The Appellant, vide their letter dated 30.11.2015, informed PNGRB that they had decided to take up the project as an internally financed project, and the financial closure documents were being submitted to the PNGRB vide their letter dated 30.11.2015. In reply thereto, the PNGRB, by its letter dated 18.12.2015, directed the appellant to clarify, within ten days, how they

would finance the project with its internal resources, when its total net worth was much less than the total project cost committed during the time of bidding for the said pipeline project. In its reply thereto, vide letter dated 26.12.2015, the Appellant informed the PNGRB that the promoters of the company possessed enough financial capability to initially fund the project; the Chairperson, and the major shareholder of their company, Ms. Shobana Kamineni was the Executive Vice-Chairperson of APOLLO Hospitals group, which is a very high net worth and reputed business group in India; she was also the Vice-President of the Confederation of Indian Industry; the Project cost was initially estimated at Rs. 788 Crores; subsequently, the Project cost had been revised and pegged at Rs. 625 Crores; notwithstanding this, the appellant had submitted the Performance bank guarantee, considering the higher project cost ie. Rs. 788 Crores though the revised cost of the project was Rs. 625 Crores; as per the latest valuation, certified by the auditors/Chartered Accountants, the promoters had the net worth mentioned in the said letter; Ms. Shobana Kamineni's net worth was valued at Rs. 500 Crores as on 31.03.2014; Lieutenant J.V. V.S.Murthy's net worth was valued at Rs. 139 Crores including the net worth of his spouse of Rs. 78 Crores as on 31.03.2015; Ms. Riverbay Resorts and Agritech's net worth was valued at Rs. 92 Crores as on 31.03.2015; and M/s. KEI-RSOS Petroleum and Energy Pvt Ltd's net worth was valued at Rs. 25 Crores as on 31.03.2015. The PNGRB was informed that the combined net worth of the promoters totalled to Rs. 756 Crores which was a fairly reasonable net worth to execute the project of Rs. 625 Crores.

62. The PNGRB, vide letter dated 17.02.2016, informed the Appellant that internal financing of the project, by equity holders, needed careful examination ie whether a combined net worth of around Rs. 1070 Crores, of which 80% was accounted for by an individual, could generate finance for the project in time; it remained doubtful whether the entire net worth of

individuals could be converted into investment in this specific project, or whether the net worth of those individuals had been committed elsewhere; the Appellant had failed to fulfil the requirements of the extant regulations to submit FC for the said pipeline project; the entity had been frequently extending timelines, and submitting documents for enhanced net worth from Rs. 400 Crores to Rs. l000 Crores, within a span of approximately 18 months; the Board had provided to the entity ample opportunities of being heard and reasonable time to fulfil its obligations, ie, over and above the time prescribed in the Regulations; therefore, in accordance with the terms and conditions of the authorization and the provisions under Regulation 16(1)(c)(i) of the 2008 Regulations, as already informed vide proceedings dated 26.10.2015, the PNGRB had come to the conclusion that breach of the authorization had occurred with respect to achievement of GTA and FC; and hence, as per the provisions of the Regulations, 25% of the PBG, amounting to Rs. 1,82,50,000, was being encashed from the PBG dated 14.11.2014; and they should make good the encashed PBG within two weeks.

63. The minutes of the hearing, held by the PNGRB on 11.01.2018, records that the Appellant had not concluded FC even by then. The minutes, of the hearing of the PNGRB held on 31.01.2018, records the Appellant's statement that the total project cost was Rs.625 crores + taxes and, from their net worth, the four promotors would initially infuse Rs.100 crores in the project by 31.05.2018 provided extension in completion of the pipeline project was granted by the PNGRB; the promoters would infuse another Rs.100 crores in the project by May, 2019, considering the proposed debt equity ratio for financing as 70:30; they were also trying to obtain finance from banks; they agreed to submit a commitment/resolution from the promoters regarding capital infusion of Rs.100 crores by 31.05.2018, and additional infusion of Rs.100 crores by 31.05.2019; they further agreed to

submit comfort letter/sanction letter from banks within 5-6 months, once extension was granted by the PNGRB; and the ENPL project would not face any financial constraints, even if it failed to tie up with banks for loans.

64. The minutes further record that, based on discussion and the presentation of the Appellant, the PNGRB had directed the Appellant to submit the commitment/resolution from the promoters regarding capital infusion of Rs.100 crores by 31.05.2018, and additional infusion of Rs.100 by 31.05.2019, along with affirmation from the promoters, that the ENPL project would not face any financial constraints even if the finance is not provided by the banks, by 15.02.2018.

65. By their letters dated 17.03.2018, the Appellant informed the Board that the promoters were committed to infuse the required funds into the project; the promoters commitment/comfort letter was attached, and the sanction letter from the bank would be submitted by 31.07.2018; they would submit comfort letter/sanction letter from the banks within 5 to 6 months, once extension is granted by the PNGRB or 31.07.2018, whichever was later; this was owning to the fact that the authorization had lapsed and, owing to the current financial situation in the country, the bankers would entertain the request by the appellant only after formal extension by PNGRB.

66. The minutes of the hearing, held by the PNGRB on 26.03.2019, records the Appellant having stated that they had so far incurred Rs.25 Crores for the ENPL project, and the Board to have observed that the appellant had to infuse Rs. 100 Crores each by 31.05.2018 and 31.05.2019. Pursuant to the said hearing, the Appellant had, by its letter dated 27.03.2019, assured the Board that submission of financial closure, and infusion of equity funds as required by the banks for sanction of the project loan, would be achieved by 31.07.2019 and, to demonstrate their seriousness towards execution of the project, the Appellant would accept

and abide by the decision of the Board in case they failed to comply with the above commitment. The Board directed the Appellant to submit, within 10 days from the date the minutes were issued, firm Financial Closure as per the extant Regulations by 31.07.2019. A copy of the minutes of the hearing dated 26.03.2019 was communicated to the Appellant on 11.04.2019. The Appellant informed, by email dated 01.05.2019, of their earlier letter dated 26.04.2019 wherein they had stated that they had already submitted letter dated 27.03.2019 assuring the Board that Financial Closure would be achieved by 31.07.2019.

67. The Board issued show cause notice, under Regulation 16 of the 2008 Regulations on 04.07.2019, wherein it is stated that, despite completion of more than 5 years since authorization was granted to the Appellant for developing the ENPL project, the Appellant had not achieved financial closure for the project. The Appellant was asked to show cause why action should not be taken, under Regulations 10 and 16 of the 2008 Regulations, for their failure to achieve Financial Closure.

68. By their letter dated 31.07.2019, the Appellant informed that, as per the commitment letter dated 27.03.2019, they were submitting the status of financial closure and details of the EPC contractor; as informed, vide letter dated 30.11.2015, they were taking up the project as an 'Internally financed project' as per Regulation 10(5) of the 2008 Regulations; the combined net-worth of IMC Ltd & APOLLO Hospitals family, which was substantially high, would help in raising the required funds for timely execution of the project; the current net-worth of their initial group promoters in 2019 was Rs.944 Crores, which was a reasonably good net-worth to execute this project; M/s IMC Limited had already existing sanctioned bank term loans for other Petroleum infrastructure projects, which would now be utilized for the fast-track execution of the ENPL project; and all details of IMC Ltd would be

submitted to the PNGRB after the binding documents had been entered into between IMC Ltd. and the Appellant within August 2019.

69. The PNGRB, in its letter dated 30.09.2019, referred to the hearing held on 04.09.2019, the subsequent letters of the Appellant dated 04.09.2019 and 23.09.2019, and informed the Appellant that financial closure had not been completed even after five years from the date of authorization; and hence, in accordance with the provision of Regulations 10 & 16 of the 2008 Regulation, they were required to appear for a hearing before the PNGRB on 09.10.2019 to explain why action be not initiated in terms of Regulations 10 & 16 read with Section 23 of the PNGRB Act, 2006 for non-achievement of the milestones specified in the Authorization Letter of ENPL.

70. The PNGRB passed Order dated 30.10.2019 taking note of all the events commencing from the letter of authorization dated 02.12.2014 which stipulated the completion date for ENPL as 01.12.2017, till the hearing held on 09.10.2019. The Board observed that Regulation 10(4) required the authorised entity to obtain financial closure of the project within 180 days of the authorization; accordingly, the Appellant was required to achieve financial closure for ENPL by 01.06.2015; Regulation 10(5) of the 2008 Regulations provided that, in case of internally financial projects, the entity shall submit approval of its Board of Director's for detailed feasibility report ("DFR") of the project along with its financial plan within 120 days of the authorization; Regulation 10(6) provided that, in case an entity fails to meet the requirement of sub-regulations (1) to (5), the authorization of the entity for laying, building, operating or expanding natural gas pipeline shall be cancelled, and the performance bond shall be encashed; the Appellant had failed to fulfil its obligations and the commitments made by it in respect of completion of financial closure; while IMC had assured the Board that FC

would be achieved within 90 to 120 days from the formal approval of the Board in respect of transfer of authorization, the Board had conveyed its apprehension of the capability of IMC to achieve FC for ENPL in view of IMC itself failing to achieve FC for the Kakinada-Vijayawada-Nellore Natural Gas (KVNPL) pipeline authorised to it; IMC conveyed that, in the light of issues relating to the Indian banking system and viability of the KMPL project, it could not yet achieve FC for the same; however with the authorization of the tie-in connectivity from Odalarevu to Mallavaram and Kakinada by the Board, this issue had been resolved; IMC had assured the Board that it would be able to achieve FC within another 5 to 6 months for both KVMPL and ENPL pipeline; the Board had also directed the Appellant and IMC to submit their plan for infusion of equity funds as required by the Bank for sanction of the project, and which IMC had committed would be done within seven days from approval of transfer of authorization in their favour; and the Board had, in the hearing held on 09.10.2019, directed the appellant to submit the Detailed Feasibility Report (DFR) for ENPL project within 02 days ie 11.10.2019. In its order dated 30.10.2019, the Board noted that there was no communication from the Appellant and from IMC, from the hearing held on 09.10.2019 till the date of the Order i.e. on 30.10.2019 as against the time commitment of two days i.e. 11.10.2019 and, therefore, the authorization of the appellant was being terminated, and 100% of the PBG of Rs. 7.31 Crores was being encashed.

71. As has been rightly contended by Sri Rahul Sagar Sahai, Learned Counsel for the PNGRB, the Appellant has been repeatedly shifting its stand with regards the requirement to achieve financial closure. Having failed to achieve financial closure within 180 days, as stipulated both in the 2008 Regulations and in the authorisation letter dated 02.12.2014, ie by 01.06.2015, they sought computation of the 180 day period from 15.05.2015 when the name of the promoter was substituted in the authorisation with the

name of the appellant. On being informed that this was contrary to the letter dated 15.05.2015 itself, they sought further extensions to comply with the requirement of achieving financial closure. On repeated reminders by PNGRB, they then contended that they would, in terms of Regulation 10(5), treat the project as internally financed, and would infuse Rs.100 Crores by 31.05.2018, and another Rs.100 crores by 31.05.2019. Having failed to infuse even this capital into the project, the appellant then informed that they would bring in a strategic investor. They initially informed that the strategic investor would hold 49% stake in the appellant till the project was completed. They changed their stance thereafter, and sought renunciation of authorisation in favour of the strategic partner who was to hold the entire share capital of the appellant. In the petition filed them, seeking review of the order of the PNGRB dated 31.05.2022, the appellant sought further time of four months to achieve financial closure. This period again underwent a change, and in their written submissions filed on the eve of the impugned order being passed on 31.05.2022, the appellant sought 6 to 7 more months' time to achieve financial closure, and for the authorisation to be transferred in favour of IMC Ltd. It appears to be the intention of appellant, that the obligation to achieve financial closure would be discharged not by them, but by IMC Ltd after the authorisation in transferred in their favour. What was left unsaid, but which is evident, is that the promoters of the appellant (ie the successful bidders in whose favour authorisation was initially granted on 02.12.2014) seek permission to exist the project, without being fastened with any liability under the 2008 Regulations, for their failure to achieve financial closure for more than 8 years.

(iv) JUDGEMENTS RELIED ON BEHALF OF THE APPELLANT:

72. In **Jay Madhok Energy Private Limited v. Petroleum & Natural Gas Regulatory Board, (2017 SCC OnLine APTEL 11),** the grounds which were

addressed by this Tribunal were: (i) the Board had served the show-cause notice on the Appellant for cancellation of the authorization by quoting both Regulations 11 and 16 of the 2008 Regulations, whereas cancellation of authorization was effected by the impugned order relying only on Regulation 11; and (ii) the authorization was cancelled by the impugned order on the ground that the Appellant did not submit the Gas Supply Agreement and the Financial Closure acceptable to the Board, whereas both the documents i.e. the Gas Supply Agreement and the Financial Closure were duly submitted by the Appellant.

73. This Tribunal observed that authorization is issued to the selected entity after furnishing the performance bank guarantee; furnishing of performance bond is covered under Regulation 9, and grant of authorization is covered under Regulation 10; as per Regulation 10, the grant of authorization to the selected entity is issued in the form of Schedule D which clearly spells out the terms and conditions of authorization; along with the other terms and conditions, clause 8 of Schedule D talks of Financial Closure as one of the terms and conditions of authorization; Regulation 10, dealing with grant of authorization, is linked to Regulation 11 which also talks of natural gas tie-up along with Financial Closure; though cancellation of grant of authorization is stipulated in Regulation 11, the cancellation procedure is not mentioned in the said Regulation; the consequences of default, leading to termination of the authorization, are dealt with in Regulation 16; as per Regulation 16(1), if an authorized entity commits any breach of the terms and conditions specified in these regulations, it shall be dealt with in accordance with the procedure contemplated in Regulation 16(1)(a), (b) and (c); no clear and specific format is given, in the relevant Regulations for CGD network, for submission of financial closure except the stipulations provided under Regulation 11(4) which talks of legally binding commitment of equity holders and debt financiers; under Regulation 11(5), the Board could have

cancelled the authorization of the Appellant then and there only, since the Appellant failed to meet the requirements, as per Regulations 11(1) and 11(4), within 180 days of the authorization, but it was not done; lot of communications was going on between the rival parties till 04.07.2016 when a show-cause notice was issued by the Board; after hearing the matter, the Board cancelled the authorization on 15.07.2016; and the impugned order was based on the fact that the Appellant failed to submit the GSA and FC within 180 days of authorization.

74. This Tribunal then observed that, even if the Appellant had submitted an acceptable FC and GSA after expiry of 180 days of authorization, the Board could not have declared the same to be valid to continue with the authorization since the Board cancelled the authorization relying on the fact that the Appellant could not submit FC and GSA within the stipulated time period of 180 days of authorization; this lead them to believe that the Appellant was not given any scope to re-submit the FC and GSA which would have been acceptable to the Board, though lot of correspondences was going on between the rival parties after the show-cause notice was issued to the Appellant; after going through Regulation 16, they found that such scope existed under Regulation 16(1)(a) to allow reasonable time to fulfill the obligations; their considered view was that Regulation 11(5) of the 2008 Regulations could have authorized the Respondent Board to cancel the authorization based on Regulation 11(1) to11(4), but the procedure for implementation of cancellation should have been followed as per Regulation 16(1)(c) which was also the intent of the show-cause notice; Regulation 16 was a specific regulation which dealt with the consequences of default, and the procedure to be followed for cancellation of authorization; and moreover, having mentioned Regulation 16 in the show cause notice, the Board should have followed the said procedure. This Tribunal set aside the impugned

orders, directed the PNGRB to follow Regulation 16 of the 2008 Regulations, and pass orders in accordance with law.

75. All that this Tribunal held, in **M/s Jay Madhok Energy Private Limited vs. Petroleum & Natural Gas Regulatory Board (Judgement in Appeal Nos. 196 & 197 of 2016 dated 28.04.2017 [2017 SCC Online APTEL 11],** was that the procedure for cancellation of authorization, prescribed under Regulation 16 of the 2008 Regulations, should have been followed, as the said Regulation was a specific Regulation which dealt with the consequences of default, and the procedure to be followed for cancellation of authorization. This Tribunal then directed the PNGRB to follow Regulation 16 of the 2008 Regulations, and pass orders in accordance with law.

76. In the present case, the PNGRB has acted strictly in accordance with Regulation 16 of the 2008 Regulations. As noted hereinabove, in the hearing held on 26.10.2015 in terms of Regulation 16 of the 2008 Regulations, the Appellant was called upon to achieve GTA and FC on or before 30.11.2015, and was informed that, if they failed to do so, 25% of the PBG would be encashed by the PNGRB in accordance with Regulation 16(1)(c)(i) of the 2008 Regulations, which relates to the first default. Since the Appellant failed to comply with the said directions, the order dated 17.02.2016 came to be passed whereby the PNGRB issued directions, under Regulation 16(1)(c) (i) of the 2008 Regulations, for encashment of 25% of the PBG for an amount of Rs.1,82,50,000/-. While the said order was initially subjected to challenge before the High Court at Hyderabad, the Appellant later withdrew the said Writ Petition and, in compliance with the order dated 17.02.2016, also made good the encashed PBG for Rs.1,82,50,000/-.

77. The Respondent–PNGRB has followed the procedure prescribed in Regulation 16 in the impugned order dated 31.05.2022 also and has, in terms of Regulation 16(1)(c)(ii) of the 2008 Regulations, granted the

appellant one month's time to fulfil its obligations under Regulations 10(1) to 10(5) of the 2008 Regulations, and the terms and conditions of the authorization letter. Detailed reasons have also been assigned by the Board, in the order dated 31.05.2022, for issuing such directions.

78. Since action had been taken earlier under Section 16(1)(c)(i) of the 2008 Regulations for the first default of the Appellant, by way of the order dated 17.02.2016, the impugned order dated 31.05.2022, directing them to take remedial action, is for the Appellant's second default, and is in terms of Regulation 16(1)(c)(ii) of the 2008 Regulations. Reliance placed, on behalf of the appellant, on **M/s Jay Madhok Energy Private Limited vs. Petroleum & Natural Gas Regulatory Board [2017 SCC Online APTEL 11]** is, therefore, misplaced.

79. In **HINDUSTAN PETROLEUM CORPORATION LTD. V. PETROLEUM & NATURAL GAS REGULATORY BOARD (Judgement in Appeal No.25 of 2022 dated 16-03-2022)**, (on which reliance is placed on behalf of the appellant), the appeal was preferred by the Hindustan Petroleum Corporation Limited ("HPCL") challenging the Order dated 06.03.2020 passed by the Board, whereby their request for refund of Rs. 77.50 lakhs, encashed by the Board through invocation of the bank guarantee, was rejected vide its earlier decision dated 04.03.2016. The bank guarantee, which had been invoked, was furnished by the appellant (HPCL) in relation to the authorization granted by the Board in its favour under the 2008 Regulations. In terms of the authorization granted by the Board, HPCL was required to complete the works of the said project within a period of thirty-six months. The timeline was extended subsequently, upon a request of the appellant, till March, 2017. Indisputably, there were delays in completion of the project within the timeline prescribed by the Board. The Board, by its Order dated 04.03.2016, had directed encashment of 25% of

the Performance Bank Guarantee (PBG) submitted by the appellant, amounting to Rs.77,55,000/-, under Regulation 16(I)(c)(i). The said order was challenged by the appellant before this Tribunal in Appeal No.102 of 2016. The appeal was allowed by judgment dated 09.01.2019, having the effect of setting aside the earlier order dated 04.03.2016, remitting the matter to the Board for taking a fresh decision within a period of four months directing, inter-alia, the Board "to afford fresh reasonable opportunity of hearing to the appellant" and "in accordance with law and in the interest of natural justice and equity". While issuing such directions, this Tribunal held that the Board was not careful enough to examine the reasons submitted by the Appellant for the delay; the impugned order lacked proper reasoning for not extending the scheduled completion time as requested by the Appellant before encashing 25% of the PBG; a more elaborate analysis would need to be carried out by the Board on the correspondence made, and the documents submitted by the Appellant, while requesting to extend the time schedule for completion of the project before encashing the PBG; the Appellant needed to be heard by the Board afresh before taking a final decision; and they felt it prudent to remand the matter to the Board for a fresh and independent review.

80. In its judgement in **HINDUSTAN PETROLEUM CORPORATION LTD**, this Tribunal then held that it was the common case of both parties that, in the wake of the earlier decision of this Tribunal dated 09.01.2019, the Board had called the appellant for a hearing on 22.02.2019; the appellant informed the Board at that stage that 92% of the project had been completed, only about four kilometers of the pipeline remained to be laid; thereafter the appellant furnished details of the status of the completion of the project requesting the Board to extend the time for completion of the project till August, 2019; while it found no reason or justification for refunding the amount of Rs. 77.5 Lakhs encashed earlier through invocation of Bank

Guarantee, the Board, considering the various submissions of the entity, had accepted completion of the project on 14.11.2019 without any further penalty.

81. This Tribunal, in **HINDUSTAN PETROLEUM CORPORATION LTD**, also observed that the bank guarantee had been encashed by the earlier decision dated 04.03.2016 of the Board at a stage of first default only; the said Order dated 04.03.2016 had been set aside by this Tribunal in appeal, and the matter was remitted to the Board for a proper consideration in the light of the guidance given by the judgment dated 09.01.2019; the impugned order had been passed not on the basis of any fresh notice of the second or third default, but in the proceedings taken out on the basis of the said remit by judgment dated 09.01.2019; the justification for penalizing the appellant under Regulation 16(c)(i) had to be examined afresh by the Board in light of the facts then prevailing though, of course, also factoring in the subsequent conduct seen particularly in the light of later order rendered by the Board on 09.05.2019; the judgment dated 09.01.2019, dealing with the earlier Order dated 04.03.2016 of the Board, clearly showed that the Board was found remiss in adopting a proper procedure and also in exercising effective guidance to the authorized entity (appellant) by not taking any meaningful steps for monitoring its activities in terms of Regulation 13; further, the Board had not given any thought to its duty under Regulation 16(a) to afford “reasonable time” to the appellant to fulfil its obligations before examining whether penalty was required to be imposed by invocation of 25% of the amount of the performance bond; the objective of Regulation 16 was not to penalize an entity for delays beyond its control; and, in these circumstances, the conclusion reached by the Board was not only incorrect but also wholly unfair and inequitable. The impugned order of the Board, declining refund of Rs.77.5 lakhs to the appellant, was set aside and they were directed to refund the said amount to the appellant forthwith.

82. The judgment of this Tribunal, in **Hindustan Petroleum Corporation Limited vs. Petroleum & Natural Gas Regulatory Board (Judgement in Appeal 25 of 2022 dated 16.03.2022)**, on which reliance is placed on behalf of the appellant, does not also support their case. In the said judgment, the challenge was to the order passed by the PNGRB rejecting the Appellant's request for refund of Rs.77.50 lakhs. The said amount was encashed from the PBG furnished by the Appellant under Regulation 16(1)(c)(i) by order of the PNGRB dated 04.03.2016, which order was set aside by this Tribunal in its order in Appeal No. 102 of 2016 dated 09.01.2016, and the matter was remanded to the PNGRB to pass an order afresh. While a fresh order was no doubt passed by the PNGRB, the said amount, representing the encashed bank guarantee of Rs.77.50 lakhs, was not returned to the Appellant therein.

83. This Tribunal, in **Hindustan Petroleum Corporation limited,** had allowed the appeal, since the order, based on which such a PBG had been encashed, had itself been set aside and, consequently, encashment of the bank guarantee, in terms of an order which has been set aside, was also illegal. Reliance placed on behalf of the appellant, on **Hindustan Petroleum Corporation limited,** is also of no avail.

84. Reliance placed, on behalf of the appellant, on the judgement of this Tribunal in **Jay Madhok Energy (P) Ltd. Led Consortium v. Petroleum & Natural Gas Regulatory Board, 2022 SCC OnLine APTEL 83**, is also misplaced. The said judgement was considered by this Tribunal in its subsequent judgement in **H-Energy (P) Ltd. v. Petroleum & Natural Gas Regulatory Board, 2023 SCC OnLine APTEL 17,** and it was held as under:

> "*…… In **Jay Madhok Energy (P) Ltd. Led Consortium v. Petroleum & Natural Gas Regulatory Board, 2022 SCC OnLine APTEL 83**, this Tribunal held that the*

regulatory power to grant authorization under Section 19 was complemented by the power vested in the Board to suspend or cancel such authorization in terms of Section 23; from the scheme of the law, and the regulations framed there under, particularly the Authorization Regulations, it was clear that the authorization in favour of an entity for, amongst others, laying, building, operating, etc. of CGD network, comes with certain conditions not only for being in full compliance with the eligibility requirements, illustratively, for the authorized entity to become a company - but also to show the requisite or desired performance, meeting the timelines or if in default suffer the risk, inter alia, of imposition of civil penalty under Section 28 or even suspension or cancellation of authorization under Section 23; and the detailed procedure for visiting an entity with such consequences, as envisaged in the provisions, inter alia, contained in Sections 23 and 28 of the PNGRB Act, was provided by Regulation 16 forming part of the Authorization Regulations……

***……** This Tribunal thereafter held that the authority given by Regulation 16(1)(c) to "encash the performance bond of the entity", to the extent specified, is a consequence not different from but same as the one conferred on the Board by Section 28, being "civil penalty"; from this perspective, the act of encashment of the performance bond, in exercise of jurisdiction under Regulation 16(1)(c) by the Board, will necessarily have to be preceded by imposition of civil penalty under Section 28; the Board will first have to impose the penalty, and then is permitted to recover it by encashing the performance bond; encashment of the performance bond is only the mode of execution of the order imposing the civil penalty, and not imposition of a penalty by itself; and the procedure prescribed by Regulation 16 is for exercising the power to impose*

civil sanctions, particularly of the kind envisaged in Sections 23 and 28 of the PNGRB Act……

……This Tribunal further held that Sections 23 and 28 of the PNGRB Act, being penal in nature, should be construed and applied strictly; cancellation of authorization or imposition of civil penalty are acts of serious nature, import and consequence; punishment cannot be meted out unless the guilt has been properly proved; the Board must, therefore, arrive at a definitive conclusion as to the guilt (on account of contravention or default) before it can proceed to impose the penalty which is to be recovered by encashment of the performance bank guarantee; in this context, clauses (a) & (b) of Regulation 16(1) are of significance; a case may come up before the Board wherein defaults or contraventions are palpable but the Board is not permitted, only on that basis, to proceed to impose penalty or cancel the authorization; it must assess and give "reasonable time" to the defaulting entity to "fulfill its obligation", and even after lapse of such "reasonable time" it must examine the conduct to ascertain if "remedial action" has or has not been taken; and it is only thereafter that the Board is permitted to avail of its power under Section 23 or 28 to suspend/cancel the authorization or impose civil penalty, and not otherwise……

***……**This Tribunal also held that the bank guarantees, furnished in the context of the authorization granted by the Board under its regulatory framework, are to ensure due performance of the obligations under the authorization; they are subject to inquiry with regard to failure to abide by the terms and conditions specified in the Authorization Regulations; as observed in GSPL India Gasnet (supra), encashment of bank guarantee is execution of the penalty that is imposed; therefore, the Board is obliged by*

Regulation 16 to first consider as to whether a case of imposition of penalty is made out and, if so, assess and specify the penalty and, thereafter, proceed to recover it from the performance bank guarantee already secured; and a finding that the authorized entity is guilty of default, cannot be returned unless the Board makes an assessment as to the reasonable period within which corrective steps may be taken by the entity, and grants such period for remedial action……"

85. On the question whether the order in **"Jay Madhok Energy (P) Ltd. Led Consortium"**, was binding, this Tribunal, in **H-Energy (P) Ltd. v. Petroleum & Natural Gas Regulatory Board, 2023 SCC OnLine APTEL 17**, held that, for more than one reason, reliance placed on behalf of the Appellant on ***Jay Madhok Energy (P) Ltd. Led Consortium***, was wholly misplaced; unlike in **Jay Madhok Energy (P) Ltd. Led Consortium,** encashment of the Performance Bank Guarantee and termination of authorization in the present case, was because of repeated defaults on the part of the Appellant in adhering to the specified timelines and failure to achieve the targets stipulated for laying the JMPL; the PNGRB is empowered to take action against the authorised entity in accordance with either Regulation 16 or Section 28 or Chapter IX of the Act, independently or simultaneously as the case may be, in the light of the defaults, contraventions or offences committed by the authorised entity, after following the procedure prescribed either under the relevant provisions of the Act or the applicable Regulations; the scope and purport of Regulation 16(1)(e) of the 2008 Regulations, especially that part which provides that "***without prejudice to as provided in clauses(a) to (d), the Board may also levy civil penalty as per section 28 of the Act***…", was not brought to the notice of this Tribunal in ***Jay Madhok Energy (P) Ltd. Led Consortium*****;** the action which the Board is entitled to take under Section 28 and Chapter IX

of the Act must be understood to be in addition to, and not in derogation of, its power to encash the Bank Guarantee under Regulation 16(1)(c) of the 2008 Regulations; on a harmonious reading of both the PNGRB Act and the 2008 Regulations, it was difficult to hold that Regulation 16 merely prescribes the procedure for imposing a civil penalty under Section 28, and is not an independent source of power enabling the Board to encash the Bank Guarantees for violation of the terms and conditions of the authorization; this view was fortified from the expression "may also" used in Regulation 16(1)(e); use of the words "without prejudice", in Section 28 also showed that the civil penalty which may be imposed thereunder is in addition to (and not in lieu of) any other penalty which such person may be liable under the Act; it was no doubt true that Section 28 applied where a person has contravened a direction issued by the Board under the Act, or has violated the terms and conditions subject to which authorisation has been granted under Section 19, and Regulation 16(1) of the 2008 Authorization Regulations prescribes the procedure by which an authorized entity, which has failed to abide by the terms and conditions specified in the 2008 Regulations, shall be dealt with; but the fact, however, remained that both Section 28 of the Act and Regulation 16(1) of the 2008 Regulations provided for different consequences.

86. This Tribunal, in **H-Energy (P) Ltd. v. Petroleum & Natural Gas Regulatory Board, 2023 SCC OnLine APTEL 17**, further held that Section 28 itself prescribed a penalty which was for a sum not exceeding one crore rupees for each contravention and, in case of a continuing failure, with additional penalty which may extend to ten lakh rupees for every day during which the failure continues after contravention of the first such direction; reference in Regulation 16(1)(e), to the power of the Board to also levy a civil penalty as per Section 28 of the Act, does not make the said Regulation itself a penal provision or a procedural provision to be followed in imposing

civil penalty under Section 28 of the Act; both Section 28 and Regulation 16(1)(e) use the words "without prejudice", and provide for distinct and different consequences; use of these words in Regulation 16(1)(e) make it clear that the said Regulation is without prejudice to Section 28, and can be resorted whether or not Section 28 has also been invoked; the Board can take action both under Regulation 16(1) of the 2008 Regulations and under Section 28 of the Act, or either one of them; Regulation 16(1) was not merely a procedure for imposing penalty under Section 28 of the Act, but was independent thereof; and none of these aspects were brought to the notice of this Tribunal, in **Jay Madhok Energy (P) Ltd. Led Consortium.**

87. This Tribunal, in **H-Energy (P) Ltd. v. Petroleum & Natural Gas Regulatory Board, 2023 SCC OnLine APTEL 17**, also held that, as the scope and purport of Regulation 16(1)(e) of the 2008 Regulations, especially that part which provided that "***without prejudice to as provided in clauses(a) to (d), the Board may also levy civil penalty as per section 28 of the Act***…" was not brought to the notice of this Tribunal in **Jay Madhok Energy (P) Ltd. Led Consortium**, the conclusions, in the said judgement, were arrived at without reference to the relevant provision of law; and reliance placed on behalf of the Appellant, on **Jay Madhok Energy (P) Ltd. Led Consortium,** was therefore of no avail.

88. Viewed from any angle the contentions, urged on behalf of the appellant under this head, necessitate rejection.

VIII. IS GRANT OF ONE MONTH TIME INSUFFICIENT:

(i) APPELLANT'S CONTENTION:

89. Sri Gopal Jain, Learned Senior Counsel appearing on behalf of the appellant, would submit that the Order of the PNGRB dated 31.05.2022 lacks reasons and justification which led to their granting only one month

time to the Appellant to achieve FC and GTA, and for having rejected the Appellant's request for extension of time; and the one month time granted by the PNGRB was hardly sufficient or reasonable, given that the 2008 Regulations itself provides for 120/180 days for achieving FC .and GTA.

(ii) ANALYSIS:

90. In the impugned order dated 31.05.2022, the Board observed that Regulation 16 of the 2008 Regulation mandates the Board to grant time to the entity to take remedial action and, in case the entity failed to do so, the Board may encash the performance bond submitted by the entity as well as terminate the Authorization in the manner stipulated in the said Regulation. After extracting Regulation 16, the Board observed that the pipelines were of national importance and, in terms of Regulation 16(1)(c), the Board was required to grant time to the entity to take remedial action in order to fulfill its obligations. The Board, in the exercise of its powers and in terms of Regulation 16(1)(c)(ii) of the 2008 Regulations, granted the Appellant one month's time to meet its obligations as prescribed under Regulations 10(1) to 10(5) of the 2008 Regulations, and in terms of the Authorization letter.

91. As noted hereinabove, Regulation 10(1) of the 2008 Regulations requires the authorized entity to achieve capacity booking of at least 50% of the natural gas pipeline volume bid for each of the first 5 years, and Regulation 10(4) requires the authorized entity to obtain financial closure of the project within 180 days of the authorization. Regulation 10(5) enables the entity, in case of internally financed project, to submit the approval of its Board of Directors, for the detailed feasibility report (DFR) of the project along with its financial plan, within 180 days of the authorization, and Regulation 10(6) provides that, in case the entity failed to meet the requirements of sub-regulations (1) to (5), the authorization of the entity shall be cancelled and the performance bond shall be encashed.

92. As noted hereinabove, the Appellant was given numerous opportunities to achieve financial closure which, in terms of Regulation 10(4), ought to have been achieved by 01.06.2014 (180 days from the date of the original authorization dated 02.12.2014). The communications, referred to under the previous head, would itself disclose that the PNGRB had granted repeated extensions to the Appellant to achieve financial closure, though the 2008 Regulations require its compliance within 180 days. While the Appellant complains that the one month's time stipulated in the impugned order dated 31.05.2022 was insufficient, the PNGRB, in the review order dated 13.09.2022 (passed nearly 3½ months after the earlier order dated 31.05.2022), observed that more than 7 years had passed from the grant of authorization, and the Appellant had failed to achieve financial closure; in the review petition, the Appellant had sought an additional period of 4 month, and in their written submissions 6 to 7 months to achieve financial closure, that too with a simultaneous request for transfer of authorization in favour of IMC Ltd; and, while the impugned order was passed on 31.05.2022, and though almost three months had elapsed thereafter (ie the date of the review order i.e. 13.09.2022), the Appellant had not achieved financial closure.

93. While the Appellant claims that one months' time granted by the Board in the impugned order dated 31.05.2022, for achieving financial closure, was insufficient, what they have failed to refer to is their failure to achieve financial closure, in terms of Regulation 10 of 2008 Regulations, despite being given several opportunities, for the past more than 7 years. It does appear that this bogey of insufficient time is only being raised by the appellant, to avoid its obligations of achieving financial closure, and for their promoters to exit the project on renunciation of authorization in favour of IMC Limited.

IX. IS THE ORDER DATED 17.02.2016 ILLEGAL?

(i) APPELLANT'S CONTENTIONS:

94. Sri Gopal Jain, Learned Senior Counsel appearing on behalf of the appellant, would submit that the Order of the PNGRB dated 17.02.2016 (a) was not in compliance with Regulation 16 which provides that, in case of non-compliance of the terms and conditions of. authorisation, the PNGRB is required to issue a notice to the defaulting entity allowing it a reasonable time to fulfil its obligations under the Regulations; (b) on the PNGRB seeking clarifications by letter dated 18.12.2015, the Appellant had provided clarifications on 26.12.2015 and 31.12.2015; thereafter, straightaway, the Order dated 17.02.2016 was passed without even rejecting the clarification provided on 26.12.2015 and 31.12.2015; if the PNGRB had any "doubt", or it wanted to undertake "careful examination" as expressed above, it could not have straight away held that there has been no achievement of FC; (b) the present was not a case where the Appellant had not achieved FC, but was a case where the Appellant had achieved FC; however, the PNGRB had certain doubts and, instead of seeking clarification of those doubts, it straightaway proceeded to impose penalty; therefore, there was procedural and substantive illegality in the Order encashing 25 % of the PBG; the Appellant and its project suffered due to the wrongful action of the PNGRB; as a result of this wrongful invocation of the PBG by the PNGRB, the project suffered immensely, and it seriously interdicted the efforts of the Appellant towards the pipeline; the PNGRB was hell bent on somehow not accepting the FC of the Appellant, and rather imposing penalties contrary to the procedure and the law; when, at the very first stage, the PNGRB imposed penalty (wrongly, illegally and *de hors* the procedure), and arrived at a conclusion that there was no FC achieved (without even seeking any clarification or seeking any undertaking for further examination), no project proponent would have proceeded with the project; the PNGRB ought to have followed its own Regulations which it did not; it did not also undertake any

further examination which it had itself so recorded in the Order dated 17.02.2016; and this illegal Order dated 17.02.2016 of the PNGRB caused delay in the progress of the project.

(ii) ANALYSIS:

95. By the order of the PNGRB dated 17.02.2016, the Appellant was informed of the repeated time extensions, net worth escalations and downward revision of the project cost; of their repeated requests for extension of timelines even to comply with the requirements of financial closure; and their failure to achieve the requirements of the Regulations to submit GTA and FC for the said pipeline project. The appellant was informed by the Board that they were given ample opportunities of being heard, and were granted reasonable time to fulfil their obligation, over and above, the time prescribed in the extant regulations; no substantive action had been taken by them within the specified period to the satisfaction of the Board; and therefore, in accordance with the terms and conditions of the authorisation and Regulation 16(1)(c)(i) of the 2008 Regulations, and as had been informed to the appellant by the letter of the PNGRB dated 26.10.2015, the Board had come to the conclusion that breach of authorisation had occurred with respect to achievement of GTA and FC and, as per the Regulation, 25% of the PBG, amounting to Rs. 1,82,50,000/-, was being encashed.

96. Regulation 16 of the 2008 Regulations deals with consequences of default and termination of authorisation procedure. Regulation 16(1) provides that an authorized entity shall abide by all the terms and conditions specified in these Regulations and any failure in doing so, except for the default of the service obligation under sub-regulation (1) of Regulation 14 and force majeure, shall be dealt with as per the following procedure, namely (a) the Board shall issue a notice to the defaulting entity allowing it a

reasonable time to fulfil its obligations under the regulations; (b) no further action shall be taken in case remedial action is taken by the entity within the specified period to the satisfaction of the Board; (c) in case of failure to take remedial action, the Board may encash the performance bond of the entity on the following basis, namely:- (i) twenty five percent of the amount of the performance bond for the first default; (ii) fifty percent of the amount of the performance bond for the second default. Under the proviso thereto, the entity shall make good the encashed performance bond in each of the cases at sub-clause (i) and (ii) within a week of encashment, failing which the remaining amount of the performance bond shall also be encashed and authorization of the entity terminated; (iii) one hundred percent of the amount of performance bond for the third default and simultaneous termination of authorization of the entity; (d) the procedure for implementing the termination of an authorization shall be as provided in Schedule G; and (e) without prejudice to as provided in clauses (a) to (d), the Board may also levy civil penalty as per Section 28 of the Act in addition to taking action as prescribed for offences and punishment under Chapter IX of the Act.

97. The Appellant's claim to have achieved financial closure is without any basis and, as detailed hereinabove, they had failed to achieve financial closure even till the impugned orders of termination dated 31.05.2022. and the review order dated 13.09.2022, was passed. The Appellant's contention that they were not given enough time, to take remedial action, is therefore without any basis. As noted, in the impugned order dated 31.05.2022 itself, the Appellant was informed that their request for extension of time to submit a Gas Transportation Agreement and to achieve financial closure, was granted up to 30.09.2015, and their subsequent request, vide letter dated 09.09.2015, was for extension up to 30.12.2015; they had failed to quote any provision of the Regulations which allowed an additional period for submission of GTA and FC; their contention that, as the authorisation dated

02.12.2014 was amended on 15.05.2015, they must be allowed 180 days' time from 15.05.2015 to achieve GTA and FC, could not be acceded to since, in the amended authorisation dated 15.05.2015 itself, it was made clear that, except for amendment in the name of the authorised entity, all other terms and conditions of the authorisation would remain the same; a default had occurred because GTA and FC was to be completed on or before 01.06.2015; in the hearing held on 26.10.2015 the Appellant was informed by the Board that there was no provision in the Regulations for grant of additional time to submit GTA and FC; the record of the hearing dated 26.10.2015 should be treated as a notice under Regulation 16(1)(a) of the 2008 Regulations; and failure of the Appellant to achieve clear GTA and FC on or before 30.11.2015 would entail 25% of the Performance Bank Guarantee being encashed by the PNGRB in accordance with the provisions of Regulation 16(I)(c)(i) of the 2008 Regulations. A copy of the minutes of the hearing held on 26.10.2015 was communicated to the Appellant vide letter dated 28.10.2015.

98. It is evident, therefore, that compliance with the requirement of submitting a Gas Transportation Agreement and achieving financial closure was required to be achieved by 01.06.2015. The Appellant was granted several extensions of time till 30.11.2015 to comply with these requirements and was put on notice, of their failure to do so, several times including in the hearing held by the PNGRB on 26.10.2015. It is because they failed to do so even by 30.11.2015 that the Board, vide its order dated 17.02.2016, had perforce to resort to encashment of 25% of the Performance Bank Guarantee treating it as a first default under Regulation 16(I)(c)(i) of the 2008 Regulations.

99. In this context, it is necessary to note that the Appellant had filed WP No. 6387 of 2016 before the High Court at Hyderabad for the State of

Telangana and State of Andhra Pradesh. They had also filed an Interlocutory Application, in WPMP No. 8228 of 2016, seeking stay of all further proceedings pursuant to the order of the PNGRB dated 17.02.2016. The High Court, in its order dated 29.02.2016, took note of the fact that 25% of the PBG had already been encashed, and only directed stay of para 12 of the order dated 17.02.2016 in terms of which the Appellant was required to make good the encashed amount of Rs. 1,82,50,000/- by way of a fresh Bank Guarantee, and their failure to do so attracted the provisions of Regulation 16(1)(d) which stipulates that the procedure for implementing the termination of an authorization shall be as provided in Schedule G of the 2008 Regulations.

100. It is relevant to note that the Appellant, in the hearing held on 11.01.2018, offered to withdraw the case pending before the High Court of Hyderabad, and to submit the balance 25% of the PBG amount of Rs. 1,82,50,000/- by 22.01.2018 (thereby replenishing the Performance Bank Guarantee to the originally prescribed sum of Rs.73 million or Rs.7.3 crores). As noted in the minutes, of the hearing held on 31.01.2018, the Appellant withdrew the court case (Writ Petition before the High Court at Hyderabad) against the PBG encashment, and furnished a fresh PGB for the entire amount of Rs. 7.30 Crores. The appellant had, by withdrawing WP No. 6387 of 2016 before the High Court at Hyderabad, accepted their failure to adhere to the stipulated timelines for submission of the GTA and for achieving financial closure; and their promoters, by furnished a fresh bank guarantee for Rs. 7.30 Crores thereafter and replenishing the encashed 25% of the PGB also, have complied even with para 12 of the Order of the PNGRB dated 17.02.2016. Having withdrawn their challenge, to the order of the PNGRB dated 17.02.2016 before the High Court at Hyderabad, and having complied with the directions issued by the PNGRB in the said Order, it is not

open to the appellant to now contend that the order dated 17.02.2016 necessitates interference, and should be set aside.

X. EFFECT OF AMENDMENT OF THE AUTHORISATION EXTENDING THE DATE OF COMPLETION FROM 12.02.2017 TO APRIL 2020:

(i) APPELLANT'S CONTENTIONS:

101. Sri Gopal Jain, Learned Senior Counsel appearing on behalf of the appellant, would submit that, on 12.07.2018, the PNGRB issued an amendment to the earlier authorisation letter amending clause 2 of the Schedule D and revising the date of completion of the project to April 2020; as the date of project completion was now re-fixed as April 2020, the effect of amendment of the Authorisation letter, and refixation of the date, would mean that the PNGRB had waived any alleged earlier defaults of the Appellant; this is also material because, otherwise going by the original grant of authorisation dated 15.05.2015, the three-year period had already come to an end in May 2018; this was effectively a fresh grant of authorisation; and, therefore, past actions and violations, if any, cannot now be made the basis of any action against the Appellant.

(ii) ANALYSIS:

102. Authorisation, for the Ennore-Nellore Natural Gas Pipeline, was granted in favour of M/s. KEI-RSOS Petroleum and Energy Pvt. Ltd., vide letter dated 02.12.2014, informing them that the authorisation shall be governed by the provisions of the relevant Regulations, the various terms and conditions contained in the application-cum-bid documents, and the clarification issued by the PNGRB with respect to the bid. The said authorisation, in Schedule D, was in terms of Regulation 9(1) and 18(7) of the 2008 Regulations. Clause 2, of the authorisation dated 02.12.2014,

allowed the entity a maximum period of thirty six months from the date of issue of the authorization letter for commissioning of the natural gas pipeline project. It also stipulated that any failure, in complying with the targets prescribed in the time schedule, shall lead to consequences specified under Regulation 16 of the 2008 Regulations.

103. By their letter dated 30.11.2015, the appellant assured the Board that the final date of completion of the project would not be delayed, and they would complete the project within the original date of 1st December, 2017. The minutes, of the hearing of the PNGRB held on 31.01.2018, records the Appellant's statement that they had submitted the revised project implementation schedule, and they envisaged to commence activities from 15.03.2018 and complete the project by 30.04.2020. By their letter dated 17.03.2018, the Appellant again requested the PNGRB to grant extension for commissioning of the pipeline till April, 2020.

104. Thereafter, by their letter dated 12.07.2018, the PNGRB conveyed its approval for revision of the completion schedule until April, 2020, and modified Clause 2 of Schedule -D enclosed with the PNGRB letter dated 02.12.2014, stipulating that the activities shall be completed by April, 2020 as agreed to by the Appellant. The said letter stated that all other conditions stipulated in the authorisation letter would remain the same.

105. In this context, it is relevant to refer to Regulation13 of the 2008 Regulations which relates to Post-authorization monitoring of activities (pre-commissioning). Regulation 13(1) stipulates that an authorized entity is required to provide, on a quarterly basis, a progress report detailing the clearances obtained, targets achieved, expenditure incurred, works in-progress and any other relevant information in the form at Schedule E. Regulation 13(2) provides that the Board shall seek compliance by the entity to the relevant regulations for technical standards and specifications,

including safety standards through conduct of technical and safety audit during the pre-commissioning phase, as well as on an on-going basis thereafter, for ensuring safe commissioning and operation of the natural gas pipeline. Regulation 13(4) provides that the Board shall monitor the progress of the entity in achieving various targets with respect to the natural gas pipeline project, and, in case of any deviations or shortfall, advise remedial action to the entity. Consequently, in compliance with Regulation 13, the PNGRB was obligated to monitor whether the authorised entity was adhering to the timelines even after it had extended the completion date, in the authorisation letter, to April,2020.

106. The minutes, of the hearing held by the PNGRB on 26.03.2019, records the Appellant assuring that they would complete the entire ENPL project by December, 2020. The Board, however, observed that the same was required to be completed by April, 2020 as per the revised completion schedule for the project. The order of the PNGRB dated 30.10.2019 records that, despite nearly five years having passed since issuance of authorization for ENPL on 02.12.2014, there was actually no progress in execution of the project by the Appellant.

107. The Appellant's contention that amendment of authorisation dated 02.12.2014, by the proceedings of the PNGRB 15.05.2015, amounts to waiver of the earlier defaults, is not tenable since it was made clear, in the said letter dated 15.05.2015 itself, that the amendment was confined only to the change in the name of the authorised entity to that of the Appellant, and nothing else. It is no doubt true that the period to complete the project was extended till April, 2020 vide letter of the Board dated 12.07.2018. It is relevant to note that the extension granted, by letter dated 12.07.2018, was at the request of the Appellant in its letter dated 17.03.2018 wherein, while requesting the Board to extend the time for commissioning of the ENPL

pipeline, the Appellant had stated that they had submitted the commitment/resolution from the promoters, regarding capital infusion of Rs.100 Crores by 31.05.2018, and additional infusion of Rs. 100 Crores by 31.05.2019 along with affirmation from the promoters that the project would not face any financial constraints, even if finance was not provided by the Banks by 31.07.2018. The PNGRB has, no doubt, taken an extremely lenient view of the Appellant's non-compliance with the 2008 Regulations, and of their failure to furnish a GTA and achieve financial closure within the stipulated time. The extension granted to them, to complete the project, till April 2020 vide PNGRB letter dated 12.07.2018, was in view of the assurance given by the Appellant in its letter dated 17.03.2018. Further the said letter dated 12.07.2018 makes its abundantly clear that, except for clause 2 of Schedule D of the letter dated 12.02.2014 (the authorisation letter) in terms of which the date of completion was extended till April, 2020, all other terms and conditions stipulated in the original authorisation letter dated 12.02.2014 would remain same. The other conditions stipulated. in the authorisation letter dated 02.12.2014 included, among others, the requirement to achieve financial closure within 180 days. It is therefore difficult to agree with the Appellant's submission that, extension of time for completion of the project till April, 2020, would result in automatic waiver of all the Appellant's defaults prior thereto. As shall be detailed later in this Order, despite the PNGRB periodically monitoring adherence to the timelines, and compliance with its assurances, by the appellant, in terms of Regulation 13 of the 2008 Regulations, the Appellant had, even after grant of extension of time vide letter dated 12.07.2018, failed to comply with the assurances given by them in their letter dated 17.03.2018.

XI. TRANSFER/RENUNCIATION OF AUTHORISATION:

(i) APPELLANT'S CONTENTIONS:

108. Sri. Gopal Jain, Learned Senior Counsel appearing on behalf of the appellant, would submit that, after the authorisation was amended on 12.07.2018, PNGRB held a hearing on 26.03.2019, in which the appellant informed that they were in discussions with various entities such as IMC, Bharat Gas Resource Limited and others for strategic partnership in the project; they also assured PNGRB that the project execution would commence by May 2019, and mechanical completion would be ensured by April 2020; at this stage, there was no protest by PNGRB with regard to the involvement of strategic partners by the appellant; in reply to the show cause notice issued by the PNGRB on 04.07.2019, the appellant, vide letter dated 31.07.2019, informed the PNGRB that a strategic investor, IMC, would acquire major shareholding in the Appellant, which would help adhere to the timelines; in the hearing held on 4.09.2019, the PNGRB completely ignored the fact that introduction of IMC as a strategic partner was already informed by the appellant, and involvement of the strategic partner was central to achieving FC; in the hearing held on 09.10.2019, representatives of IMC were also present, and it was agreed that the appellant would submit an application for transfer of authorisation in favour of IMC; the appellant was waiting for the formal minutes of the meeting; however, the minutes were never received by it; the PNGRB's own record, of what transpired at the meeting of 09.10.2019, is as set out in the Order of the PNGRB dated 30.10.2019; while the formal minutes of the meeting dated 09.10.2019 were still awaited, the appellant and IMC finalised the terms of the transfer of authorisation, and executed a binding memorandum of agreement; this agreement along with a formal request to the PNGRB, for renunciation of authorisation in favour of IMC, was made by the appellant on 30.10.2019; however, since the formal minutes of the meeting dated 09.10.2019 were not available (which minutes have still not been made available), there was a delay of a few days in finalising the terms of transfer; however, PNGRB on

31.10.2019, passed an Order dated 30.10.2019, straightaway terminating the authorisation (even though, under Regulation 16, a maximum of 25% of the PBG could have been invoked), and also invoking 100% of the PBG amount; and the appellant filed a Review Petition against the termination order dated 30.10.2019 before PNGRB, but it was dismissed by the PNGRB's Order dated 18.05.2020.

109. Learned Senior Counsel would further submit that the termination order dated 30.10.2019 specifically records that IMC attended the meeting with PNGRB; no occasion should have arisen for IMC (a potential transferee of the authorisation) to attend the meeting if the PNGRB was not cognisant of the transfer of authorisation issue; further, PNGRB directed the appellant to submit legally binding agreements, as well as submit a formal application for transfer of authorization of ENPL in favour of IMC, which meant that the matter had progressed to the next stage; having done so, the PNGRB, for more than 3 years thereafter, did not even consider the said application for transfer, and instead wrongly terminated the appellant's authorisation and invoked the PBG of 100% value; no reasons for non-consideration were set out in the Termination Order; the usual practice is that the PNGRB prepares and shares the minutes of the meeting, which it failed to do; representatives of the strategic partner, IMC, also attended the said hearing, and it was informed to the PNGRB that definitive documents of transfer of shareholding in the appellant to IMC, and the application for approval of such transfer by PNGRB, would be submitted by the appellant to the PNGRB; an unreasonably short timeline of 2 days was set by the PNGRB for submission of these documents; ultimately, these documents (as well as an application for approval of transfer) were submitted by the Appellant to the PNGRB, but with a delay of a few days, albeit in the month of October, 2019 itself (on 31st October 2019); however, PNGRB, without any basis and without first sharing the minutes of the meeting, issued the termination order; admittedly,

no decision has yet been made by the Respondent on the said documents or application for transfer; despite what is stipulated in Regulation 9(4) & (5) of the 2008 Regulations, the PNGRB, in the present case, neither approved the transfer nor rejected it, leaving the appellant hanging; transfer of authorisation to IMC Limited would have aided timely completion of the project, since all necessary documentation was already undertaken by the Appellant; even though the transfer application had been filed way back in 2018, it has still not been considered despite specific permission to do so having been granted in the meeting held on 09.10.2019 and the Orders of APTEL; IMC (the proposed transferee) is an eligible entity which is engaged in the business of laying natural gas pipelines and CGD Network, and is financially strong and willing to take up the project; therefore, PNGRB should not have any reason to not accept the appellant's transfer request; PNGRB's conduct defeats the mandate of Regulation 9(5); it failed to even address the issue of renunciation of authorisation in favour of IMC, though agreements for renunciation had already been entered into between the Appellant and IMC; after the remand order was passed by this Tribunal on 15.12.2021, a hearing took place on 06.04.2022 wherein the appellant requested the PNGRB to approve its request for renunciation; and the PNGRB failed to even consider the appellant's request for renunciation of authorisation in favour of IMC.

(ii) RESPONDENT'S CONTENTIONS:

110. Sri Rahul Sagar Sahai, Learned Counsel for the Respondent-Board, would submit that it is only after the PNGRB passed the order of termination dated 30.10.2019 that it, subsequently, came to its knowledge that the Appellant had filed letter dated 30.10.2019, with a stamp of its being received by the Respondent Board on 31.10.2019, requesting renunciation of the authorisation in favour of M/s IMC Limited; and the appellant had attached

thereto a copy of the binding memorandum of agreement dated 30.10.2019 (stamp paper bought at 04.07 P.M on that day); the letter of the Appellant dated 30.10.2019 was received by the Respondent Board only after the authorization of the Appellant was terminated, and consequential proceedings were completed; and, since the authorisation itself had been terminated by then, the PNGRB could not have taken any decision on the appellant's letter dated 30.10.2019 seeking renunciation of authorisation.

(iii) ANALYSIS:

111. The change in the name of the entity in the authorisation letter dated 02.12.2014, to that of the appellant vide PNGRB letter dated 15.05.2015, was subject to KRPEPL, (ie the promoters of the appellant in whose favour authorisation was originally granted on 02.12.2014), furnishing an undertaking within 15 days that the promoters ie KRPEPL and RRAT put together would hold more than 50% of the equity shares in the appellant - GTIL till the ENPL project is completed. An undertaking was furnished, vide their letter dated 26.05.2015, that both KRPEPL and RARP together would hold more than 50% of the equity shares in the appellant till the ENPL project was completed.

112. The minutes of the hearing, held by the PNGRB on 26.03.2019, records that the Appellant had conveyed that discussions were being held with Bharat Gas Resource Limited (BGRL), IMC Limited, L&T Hydrocarbon Engineering Limited, AG&P and Petronas Energy Limited for strategic partnership in the ENPL project, and that the PNGRB had directed the appellant to provide, within 10 days from the date of issuance of minutes, the latest status and correspondence towards finalization of the strategic partners for ENPL. A copy of the minutes of the hearing dated 26.03.2019 was communicated to the Appellant on 11.04.2019.

113. In reply to the email sent by the Board on 22.04.2019, the Appellant informed, by email dated 01.05.2019, of their earlier letter dated 26.04.2019 informing, with regards the latest status of strategic partners for ENPL, that discussions with two companies had graduated to an advanced stage, and the process would be completed by 31.07.2019.

114. By their letter dated 31.07.2019, the Appellant informed that the Board had accorded extension till 30.04.2020 for execution of the pipeline; they had finalized on IMC Limited which was joining their company as a major shareholder within August 2019, (49% as per the PNGRB Regulations and would increase their shareholding after execution of the pipeline), and would induct the funds necessary for execution of the project; and the Appellant would complete all activities for commissioning their first stretch (from Ennore LNG terminal till Sricity, Nellore District) by April, 2020. They sought an appointment with the Board, in the third week of August 2019, to enable the senior management of IMC Ltd and APOLLO Hospitals family to call on the Board to demonstrate their commitment for the timely completion of the project.

115. In reply to the letter of the PNGRB dated 26.08.2019, asking them to appear for a hearing on 04.09.2019 to explain why action be not initiated in terms of Regulations 10 & 16, the Appellant informed the Board, by its letter dated 04.09.2019, that certain strategic partners had shown keen interest in partnering in the ENPL project; being a major transaction and, in view of the current financial slowdown in the country, the process of finalization was taking more than the Appellant had expected; finalization of M/s BGRL or M/s ADANI as a strategic partner, or signing of the binding documents with M/s IMC, would be completed within the month; and, if they were not able to satisfy the Board with the strategic investor/financial closure/firm execution

plan during the next hearing, they would relinquish authorization of the ENPL, and would abide by any decision taken by the Board.

116. The Appellant informed the Board, by their letter dated 23.09.2019, that they had finalised M/s IMC Ltd as the strategic investor into their pipeline company, and necessary documents were being executed; and they, accompanied by the IMC Ltd Team, wished to make a presentation to the Board about their firm plans for timely execution of the project. They sought an appointment in the week commencing 30.09.2019. The Appellant was informed, by the letter of the PNGRB dated 30.09.2019, that their strategic partner may also appear for the hearing on 09.10.2019 with relevant agreements etc.

117. The order of the PNGRB dated 30.10.2019 records that, during the hearing held on 09.10.2019, the Appellant had confirmed that it had reached an understanding with IMC for transfer of authorization for ENPL to IMC, and the legally binding agreement would be signed on 11.10.2019; the Board had observed that the Appellant should have finalized binding agreements before appearing for the hearing; IMC had informed that it had finalized the terms of ENPL authorization, but wanted certain clarifications as to whether the Appellant could renunciate the authorization in favour of IMC in terms of Regulation 9(4) of the 2008 Regulations; both the Appellant and IMC had assured to finalize their legal binding agreements, and submit the same to the Board within two days i.e. 11.10.2019; the Appellant had agreed to submit a formal application for transfer of authorization in favour of IMC by 11.10.2019, and had informed that this may be treated as the last opportunity; the Board had conveyed that, in case authorization is transferred in favour of IMC, IMC would have to execute two pipelines i.e. KVMPL and ENPL, and both the projects had been delayed; the Appellant and IMC had, on their part, assured the Board that this would be done; IMC

had also conveyed that the net-worth of ENPL and AVPL were Rs. 110 crores and Rs. 200 crores respectively; IMC had a consolidated networth of Rs. 1029.67 crores as on 30.03.2018 which was more than the net-worth requirement for both the projects put together; in the hearing held on 09.10.2019, the Board had directed the appellant (i) to submit legally binding agreements to the Board within two days i.e. on 11.10.2019; (ii) to submit activity chart for ENPL for all critical activities including, but not limited to, the procurement of all material, tendering process of materials and works, clearances etc. and the target date for completion of the project; and (iii) to submit formal application for transfer of its authorization of ENPL in favour of IMC to the Board within two days i.e. on 11.10.2019.

118. In its order dated 30.10.2019, the Board noted that there was no communication from the Appellant and from IMC, after the hearing held on 09.10.2019 even till the date of the Order i.e. on 30.10.2019, as against the time commitment of two days i.e. 11.10.2019; and, therefore, the authorization of the appellant was being terminated, and 100% of the PBG of Rs. 7.3 Crores was being encashed.

119. The Appellant informed the PNGRB, by their letter dated 30.10.2019, (copy of which, the Board claims to have received only on 31.10.2019) that the process had been delayed due to legal vetting by their strategic investors; the binding agreement had been finalized; those were being signed at Chennai on 30.10.2019; and they would be submitted to the Board on 31.10.2019. The Appellant requested the Board to stop encashment of the performance bank guarantee, and assured the Board of their sincere services. By another letter dated 30.10.2019, the Appellant informed the Board that the binding Memorandum of Agreement between IMC Ltd and themselves was attached. They assured the Board that both the companies would complete the transaction for approval of ownership within seven days

from the Board's approval; and, as instructed by the Board, IMC would be forwarding their credentials, net-worth and timelines, and execution plans for the ENPL on a separate letter. The Appellant requested the Board to permit them to transfer 100% equity in the Appellant to IMC Ltd, or their group companies, at the earliest.

120. It is only after an order was passed on 30.10.2019, terminating the authorisation and directing encashment of the bank guarantee, that the PNGRB had called upon the bank to encash the bank guarantee and transfer its proceeds in their favour. The very fact that the letter of the appellant dated 30.10.2019 requests the Board to stop encashment of the performance bank guarantee, would show that this letter was sent to the PNGRB only after the order of termination was passed. Even more curious is the fact that while the appellant had, in their letter dated 30.10.2019, informed the PNGRB that a binding agreement (between them and IMC Ltd) had been finalized, it was being signed at Chennai on 30.10.2019, and would be submitted to the Board on 31.10.2019, by another letter dated 30.10.2019, the appellant had informed the PNGRB that the binding Memorandum of Agreement, between IMC Ltd and themselves, was attached. If the binding MOU had been submitted to the PNGRB before the order of termination was passed, the aforesaid inconsistencies would not have arisen. Further, no explanation is forthcoming from the appellant as to why two separate letters, both bearing the same date ie 30.10.2019 were addressed to the PNGRB, more so when one of them states that the binding Agreement would be submitted on 31.10.2019, and the other states that the said agreement is attached. The letter of M/s IMC Ltd, requesting the Board to approve renunciation of the ENPL authorization in their favour, and informing that they would submit a copy of the Memorandum of Agreement entered into with the Appellant, is also dated 30.10.2019. If the MOU had been submitted on 30.10.2019, there

was no reason for IMC Ltd to inform on 30.10.2019 that they would submit a copy of the MOU.

121. The said letter of IMC Ltd dated 30.10.2019 further states that, in anticipation of PNGRB approval, they were providing necessary due diligence process; PNGRB should allow renunciation of ENPL in favour of IMC Group, and settle any financial dues/transactions that may be pending between the Appellant and PNGRB on account of authorization/execution and delay by the Appellant, before conclusion of the definitive agreement which would be executed upon receipt of the Board's approval for renunciation of ENPL. They requested the Board to provide a sufficient time frame so that the pipeline can be executed in a timely manner, and informed that they would submit the pipeline execution first level schedule with compressed timeframe of 2½ years. The request of IMC, in the said letter dated 30.10.2019, was for the Appellant to renunciate the authorisation in their favour by way of transfer of 100% equity shares from the Appellant's promoters to IMC; and, as part of the transaction, IMC would conduct a systematic due diligence of the appellant/ shareholders as advised by its auditors and legal consultant.

122. The Appellant filed a Review Petition before the Respondent Board, and thereafter filed an Appeal in DFR No. 2427 of 2019 before this Tribunal challenging the termination order dated 30.10.2019 passed by the PNGRB. This appeal was later numbered as Appeal No. 17 of 2021. While a reference was no doubt made in the said appeal to the Appellant's letter dated 30.10.2019, no relief was however sought therein for renunciation of authorization in favour of IMC Limited, or to permit the latter to acquire the entire share capital of the former. During the pendency of Appeal No. 17 of 2021, PNGRB dismissed the Review Petition filed by the Appellant vide order dated 18.05.2020. In para 10 of the said Order, the PNGRB observed

that, after the order of termination of the authorisation was webhosted and a letter was sent to the Bank on 30.10.2019 for encashment of the PBG, an agreement dated 30.10.2019 was emailed on 30.10.2019 which was an afterthought. Even after the order of the Board dated 18.05.2020, the appellant did not seek any amendment to the Appeal filed by them before this Tribunal earlier.

123. After the coming into force of the PNGRB Act, no entity is entitled to lay, build, operate or expand a natural gas pipeline without obtaining authorisation under the PNGRB Act. Regulation 9 of the 2008 Regulations deals with transfer of authorisation. Regulation 9(3) provides that the grant of authorization to the entity shall not be renunciated by way of sale, assignment, transfer or surrender to any person or entity during the period of three years from the date of its issue. Under the first proviso thereto, the entity may induct eligible new partner as long as it remains a lead partner without impacting the eligibility criteria as provided in the regulations. Under the second proviso, for the purpose of remaining to be a lead partner, the entity shall have equity of more than fifty per cent, after inducting the new partner. Regulation 9(4) stipulates that the entity, intending to renunciate the authorization in favour of another entity after the end of the three years period, shall submit a proposal to the Board at least thirty days in advance, and shall provide all information as may be called for by the Board. Regulation 9(5) provides that the Board, after satisfying itself that the proposal will not adversely affect the existing or proposed activities of laying, building, operating or expansion of the natural gas pipeline, shall either accept the proposal in full or with such modifications as it may deem fit and, in case where the entity is permitted by the Board to take over the activities of laying, building, operating or expanding the natural gas pipeline, such entity shall abide by the existing or modified terms and conditions of the authorization including compliance with the service obligations. Under the

proviso thereto, the Board reserves the right to reject the proposal in public interest and, in such a case, the Board shall provide in writing the reasons for such rejection.

124. While Regulation 9(3) prohibits renunciation of the authorisation during a period of three years from the date the authorisation is issued, the first proviso thereto enables the entity to induct eligible new partners as long as it continues to hold more than 50% of the shares of the entity even after inducting a new partner. Well within this period of three years the authorised entity is required, in terms of Regulation 10(1), to enter into an agreement for transportation of natural gas within 180 days, and Regulation 10(4) requires the authorised entity to obtain financial closure of the project from a bank or financial institution within a period of 180 days from the date of the authorization. Regulation 10(5), however, provides that, in case of an internally financed project, the authorised entity shall submit approval of its Board of Directors for a detailed feasibility report of the project, along with its financial plan, within 180 days of the authorization and, under the proviso thereto, the Board is empowered to call upon the entity to submit further details or clarifications on the financial closure.

125. The authorisation granted to the Appellant, vide letter dated 02.12.2014, required them, in terms of clause 7 thereof, to submit a detailed and clear financial closure report within a period of 180 days from the date of authorisation. After the authorisation was amended by letter dated 15.05.2015, an undertaking was given to the Board on 26.05.2015, in compliance with the requirement of the provisos to Regulation 9(3), that the promoters put together would hold more than 50% of the equity share capital of the Appellant till the project was completed. Since the PNGRB had, vide its letter dated 28.05.2015, directed them to submit financial closure documents and proof of gas tie up before 30.11.2015, the Appellant informed

the Board, vide letter dated 30.11.2015, that they had decided to take up the project as internally financed project. The financial closure documents they submitted on 30.11.2015 was as if the project was an internally financed project.

126. It is evident therefore that the change of mind, vide letter dated 30.11.2015, was only because the Appellant was not in a position to obtain financial closure from banks/financial institutions as required under Regulation 10(4) of the 2008 Regulations. By 30.11.2015, nearly one year had elapsed from the date of authorisation ie 02.12.2014, and the period of 180 days from 02.12.2014 had expired by 01.06.2015. The minutes of the hearing held on 28.03.2015 records that, while the Appellant had sought 180 days from 15.05.2015 to achieve GTA and financial closure, the PNGRB had informed them that there was no provision in the Regulations permitting them additional time; and they should achieve GTA and FC on or before 30.11.2015, failing which 25% of the Performance Bank Guarantee shall be encashed by the Board in accordance with Regulation 16(1)(c)(i) of the Regulations. It is only to avoid the possibility of action being taken by the Board, to encash 25% of the Performance Bank Guarantee, that the Appellant appears to have intimated that they would take up the project as an internally financed project. Unlike Regulation 10(4) which requires financial closure to be obtained from banks/financial institutions, Regulation 10(5) requires the approval of the Board of Directors for the detailed feasibility report.

127. The resolution, of the Board of Directors of the appellant, dated 24.11.2015 records that the existing shareholders agreed to infuse funds into the project which was estimated at Rs. 625 Crores, and infusion of funds by the shareholders for execution of the project would be in proportion to their existing share-holding in the company. Thereafter the Appellant informed the

PNGRB, by letter dated 26.12.2015, of the net worth of the promoters of the Appellant in support of their claim that the combined net worth totalled Rs. 756 Crores which was sufficient to execute the project of Rs. 625 Crores, and this was in addition to the funding by the banks. The PNGRB, however, informed the Appellant, by their letter dated 17.02.2016, that there had been changes in the financing pattern from external to internal, raising doubts on the bankability of the project; internal financing of the project by the equity holders needed careful examination, e.g., whether a combined networth of around Rs. 1070 Crores, of which 80% was accounted for by one individual, could generate finance for the project in time; it remained doubtful whether the entire networth of individuals could be converted into investment in this specific project or whether the networth of those individuals had been committed elsewhere. The Appellant was further informed that they had failed to achieve the requirements of the extant regulations to submit GTA and FC for the said pipeline project and, therefore, action was taken to encash 25% of the bank guarantee.

128. Even after the PNGRB had granted extension for completion of the project till April 2020, vide their letter dated 12.07.2018, the Appellant was informed, by the letter of the PNGRB dated 08.03.2019, that progress, with respect to the project, was unsatisfactory and they should appear for the hearing to be held on 26.03.2019. In the hearing held on 26.03.2019, the Appellant had conveyed to the PNGRB that discussions were being held with Bharat Gas Resources Limited, IMC Limited, L&T Hydrocarbon Engineering Limited, AG&P and Petronas Energy Limited for finalization of the strategic partners for ENPL project.

129. The PNGRB then noted that, pursuant to the hearing held on 26.03.2019, the Appellant had, vide letter dated 27.03.2019, assured the PNGRB that the activities ie (i) submissions of financial closure, (ii) infusion

of equity funds as required by the banks for sanction of the project loan, and (iii) finalisation and issue of letter of award to the EPC contractor, would all be achieved by 31.07.2019 in order to instil confidence and demonstrate their seriousness in the project. The minutes of the hearing dated 26.03.2019 further records that the PNGRB had, therefore, directed the Appellant to submit the following information/documents within 10 days from 26.03.2019 (a) to submit firm Financial Closure as per the extant Regulations by 31.07.2019; (b) submit a detailed activity chart section/phase wise for ENPL; (c) to provide the latest status and correspondence towards finalization of the strategic partners for ENPL.

130. As noted hereinabove, the Board had, in the hearing held on 09.10.2019, directed the appellant to submit the Detailed Feasibility Report (DFR) for ENPL project within 02 days ie 11.10.2019; and had, in its order dated 30.10.2019, noted that there was no communication from the Appellant and from IMC, from the hearing held on 09.10.2019 till the date of the Order i.e. on 30.10.2019 as against the time commitment of two days i.e. 11.10.2019. While great stress is laid on the fact that the minutes of the hearing dated 09.10.2019 was not communicated to them, the appellant does not dispute that they were required to submit the information, sought for by the PNGRB by 11.10.2019, and the basis on which they had submitted that grant of two days' time was insufficient, if, as they now contend, they did not receive a copy of the minutes. In any event, details of what transpired during the hearing held on 09.10.2019 are not disputed by the appellant. It is evident therefore that failure of the appellant to submit the information before 30.10.2019, which they had agreed to furnish by 11.10.2019, had resulted in the termination order dated 30.10.2019 being passed by the PNGRB. As the authorisation itself had been terminated by order dated 30.10.2019, the question of transfer of an authorisation, which no longer

existed (at least till the order dated 30.10.2019 was set aside by the Order of this Tribunal dated 15.12.2021), did not arise.

XII. IS FAILURE TO SERVE, A COPY OF THE TERMINATION ORDER DATED 30.10.2019, FATAL:

(i) APPELLANT'S CONTENTIONS:

131. Sri Gopal Jain, Learned Senior Counsel appearing on behalf of the appellant, would submit that the appellant did not even receive a copy of the termination order which was directly uploaded on the PNGRB's website on 31.10.2019; the appellant only got to know about the termination of authorisation, when it was informed by the Bank that it had received a request for encashment of 100% of the PBG; no reasons were given by the PNGRB for terminating a valid authorisation prior to the expiry of the deadline set by the PNGRB itself; and the conduct of the PNGRB was, therefore, arbitrary and illegal.

(ii) ANALYSIS:

132. The Appellant's complaint, that the termination order dated 30.10.2019 was directly uploaded on the website on 31.10.2019 without giving them a copy thereof, even if true, matters little at the present stage of the proceedings. The correspondence, referred to hereinabove, clearly show that the Appellant was aware of the contents of the termination order and had, in fact, preferred Appeal No. 17 of 2021 there against. In any event, since the said order of termination dated 30.10.2019 was set aside by this Tribunal, by its order in Appeal No. 17 of 2021 dated 15.12.2021, this contention is of no consequence, since the order of termination dated 30.10.2019 itself is no longer in existence.

XIII. DID THE PNGRB FAIL TO COMPLY WITH THE REMAND ORDER PASSED BY APTEL ON 15.12.2021:

(i) APPELLANT'S CONTENTIONS:

133. Sri Gopal Jain, Learned Senior Counsel appearing on behalf of the appellant, would submit that the appellant filed an appeal, and this Tribunal, by its Order dated 15.12.2021, set aside the termination order dated 30.10.2019, and remanded the matter to the PNGRB for its fresh consideration after giving the appellant an effective opportunity of hearing; and this Tribunal, in paras 5 and 7 of its judgment, recorded as follows:

> "*(5). The grounds of challenge primarily are that the respondent Board did not take into account the delays that occurred at its end; the Board had not taken into account the time incurred by the consortium of lending banks to achieve the financial closure; no reasons have been given as to why the order was passed prior to completion of the deadline issued by the Board itself; reasonable opportunity to be heard having not been afforded this being in violation of principles of natural justice; failure to take into consideration the representations made by the strategic partner that had proposed to acquire the appellant; failure to take into consideration the financial figures and net worth values submitted by the strategic partner which demonstrated the capabilities to meet the specified project requirements; and failure to provide any reasons as to why adequate time was not provided to the appellant and its strategic partner to formulise its relationship with regard to acquisition of shares of the appellant which would have, per the appellant, demonstrated that targets as had been prescribed had been achieved.*
>
> *….*
>
> *(7) In the forgoing facts and circumstances, we set aside the impugned order dated 30.10.2019 and remit the matter arising*

out of the show cause notice referred to above to the respondent Board for further proceedings and fresh decision in accordance with law. Needless to add, the respondent Board will not feel bound by the view taken in the order which has been set aside and take an appropriate decision, after affording effective opportunity of hearing to the appellant and pass a fresh order in accordance with law."

134. Learned Senior Counsel would submit that, even after the directions of this Tribunal in its Order dated 15.12.2021, to consider the matter afresh in light of the challenges made (which included the issue of non-consideration of the application for transfer of authorisation to IMC), PNGRB proceeded with its pre-conceived notion that the delay caused in timely completion of the project was wholly attributable to the appellant, though it was the PNGRB which continued to create hurdles in execution of the project by the Appellant**.**

(ii) RESPONDENT'S CONTENTIONS:

135. Sri Rahul Sagar Sahai, Learned Counsel for the Respondent-Board, would submit that, on 15.12.2021, this Tribunal had passed an order setting aside the termination order dated 30.10.2019, and had remanded the matter to the Respondent Board for fresh consideration; the said order of this Tribunal dated 15.12.2021 neither mentioned the contents of the letter of the Appellant dated 30.10.2019, nor did it require the Respondent to deal with the same; this Tribunal had only remitted the matter, arising out of the show cause notice dated 04.07.2019, to the Respondent Board for further proceedings and fresh decision in accordance with law, making it clear that the Board would not feel bound by the view taken in the order which had been set aside, it should take an appropriate decision after according effective opportunity of hearing to the Appellant, and pass a fresh order in

accordance with law; the Impugned Orders are in accordance with this Tribunal's remand order dated 15.12.2021; when the show cause notice was issued on 04.07.2019, there was no application for renunciation or transfer of shareholding before the Board; the request made by the Appellant vide letter dated 30.10.2019, (received by the PNGRB on 31.10.2019), was with regards acquisition/transfer of "equity shareholding" in the Appellant by a third party; there was no intended transfer or renunciation of "authorization" by the Appellant in favour of a third party which is contemplated in the regulations, which the Board could consider; transfer of authorization of ENPL or shareholding was not the subject matter of Appeal No. 17 of 2019; the subject matter remained termination of the authorization which was set aside by the order of this Tribunal dated 15.12.2021; the Respondent did not entertain the request for transfer of authorization or shareholding in favour of IMC Limited, as it was not the subject matter either in the previous hearing or before this Tribunal.

(iii) CONTENTS OF THE ORDER OF THIS TRIBUNAL DATED 15.12.21:

136. In its Order, in Appeal No. 17 OF 2021 dated 15.12.2021, this Tribunal observed that the appeal was filed challenging the order passed by the Board in Case No. PNGRB/Monitoring/2/NGPL- ENPL/(1)/2015 dated 30.10.2019, terminating the authorisation in favour of the appellant, and encashing 100% (One Hundred Per Cent) of the performance bank guarantee for Rs. 7,30,00,000/- (Rupees Seven Crore Thirty Lakhs) which had been furnished by the appellant unto the Board; the respondent-Board had granted an authorisation on 02.12.2014, for the aforementioned pipeline, in favour of M/s KEI-RSOS Petroleum and Energy Private Limited; the grant of authorisation in favour of the said entity was amended by the Board, vide letter dated 15.05.2015, in favour of the appellant subject to certain conditions; the amendment had been sanctioned pursuant to a

request made by the entity that had been authorised previously; there was a delay in compliance with the conditions and, on the request of the appellant by letter dated 12.07.2018, the completion schedule was extended until April, 2020; the further delay, in completion of the necessary works, led to issuance of a show cause notice on 04.07.2019 calling upon the appellant to explain why action be not taken under Regulation 10/16 of the Authorisation Regulations for failure to achieve financial closure, and failure to lay the project within the stipulated time as required under the terms and conditions of the authorisation letter; the said show cause notice culminated in the impugned order being passed, which was under challenge; the grounds of challenge primarily were that the respondent Board did not take into account the delays that had occurred at its end; the Board had not taken into account the time incurred by the consortium of lending banks to achieve financial closure; no reasons had been given as to why the order was passed prior to completion of the deadline issued by the Board itself; reasonable opportunity to be heard had not been afforded, and this was in violation of principles of natural justice; there was failure to take into consideration the representation made by the strategic partner that had proposed to acquire the appellant; there was failure to take into consideration the financial figures and net worth values submitted by the strategic partner which demonstrated their capabilities to meet the specified project requirements; and there was failure to provide any reasons as to why adequate time was not provided to the appellant and its strategic partner to formalise its relationship with regard to acquisition of shares of the appellant which would have, per the appellant, demonstrated that targets as had been prescribed had been achieved.

137. This Tribunal then observed that, during the hearing, the learned counsel appearing for the respondent Board had submitted that, given the grounds relating to non-compliance with the procedure envisaged in law for

impugned sanctions to be imposed, the Board was inclined to re-hear the appellant, and pass a fresh order in accordance with law; in this view, it was fairly conceded that the impugned order dated 30.10.2019, under challenge by the present appeal, may be set aside and the matter arising out of the show cause notice, referred to above, be remitted for further proceedings and fresh decision in accordance with law; and the learned counsel for the appellant, having taken time to seek instructions, submitted that he had nothing to say on the submissions made by the learned counsel for the Board, and that appropriate orders, in such light, may be passed.

138. This Tribunal then held that, in the forgoing facts and circumstances, the impugned order dated 30.10.2019 was being set aside and the matter, arising out of the show cause notice referred to above, was being remitted to the respondent Board for further proceedings and fresh decision in accordance with law; the respondent Board would not feel bound by the view taken in the order which had been set aside; and they should take an appropriate decision, after affording effective opportunity of hearing to the appellant, and pass a fresh order in accordance with law.

(iv) ANALYSIS:

139. The Appellant has extracted only Paras 5 and 7 of the order of APTEL, in Appeal No.17 of 2021 dated 15.12.2021, creating an impression that the impugned order dated 30.10.2019 was set aside and the matter was remanded to the Board to consider, among others, the Appellant's claim that they should be permitted to renunciate their authorization in favour of IMC Ltd. After noting the grounds of challenge put-forth on behalf of the Appellant in Para 5 of its order dated 15.12.2021, which no doubt refers also to the appellant having challenged the failure of the Board to take into

consideration the representation made by their strategic partner, this Tribunal, in Paragraph 6 of its order dated 15.12.2021, observed as under:

> *"6. At the hearing, the learned counsel appearing for the respondent Board submitted that given the grounds relating to non-compliance with the procedure envisaged in law for impugned sanctions to be imposed, the Board is inclined to re-hear the appellant and pass a fresh order in accordance with law. In this view, it is fairly conceded that the impugned order dated 30.10.2019, as under challenge by the present appeal, may be set aside and the matter arising out of the show cause notice referred to above be remitted for further proceedings and fresh decision in accordance with law. The learned counsel for the appellant, having taken time to seek instructions, now submits that he has nothing to say on the submissions made by the learned counsel for the Board, and that appropriate order in such light may be passed."*

140. The words "in the forgoing facts and circumstances, we set aside the impugned order dated 30.10.2019", in Paragraph 7, can only mean the facts and circumstances referred to in the afore-extracted para 6 of the Order of APTEL. The words "and remit the matter arising out of the show cause notice, referred to above, to the respondent Board for further proceedings and fresh decision in accordance with law" make it clear that the remand order required the PNGRB to pass a fresh order with respect to the show cause notice issued by it earlier on 04.07.2019, to which the Appellant had furnished its reply on 31.07.2019. In the review order passed by it on 13.09.2022, the Board has opined that the appellant had not sought renunciation of the authorization, in favour of IMC Limited, in its letter dated 31.07.2019, submitted in reply to the show cause notice.

141. The contents of the reply dated 31.07.2019 show that, during the hearing held on 26.03.2019, the PNGRB had taken note of the appellant's discussions with their strategic partners for entering the company; they had finalized IMC Limited as their partner for the project; LOI from IMC Limited, for acquiring equity shareholding in the Appellant from KEI-RSOS Petroleum, was attached; IMC Limited was joining their company as a major shareholder before the end of August, 2019 (initially 49% as per the PNGRB Regulations and would increase their shareholding after execution of the pipeline); and they would induct the funds necessary for the execution of the project. All that the Appellant had stated. in its letter dated 31.07.2019, was that IMC Limited would be joining them as a strategic partner acquiring 49% of the share-capital of the appellant. Acquisition of 49% of the appellant's share capital would not have violated either the authorization granted in favour of the Appellant on 02.12.2014 or the undertaking furnished by them that they would continue to hold more than 50% of the share capital of the Appellant till the project was completed, or for that matter Regulation 9 of the 2008 Regulations.

142. The review order, passed by the PNGRB on 13.09.2022, records the substance of grounds invoked by the appellant which includes: (ii) that the Board had overlooked that the Review Petitioner had already submitted the documents in 2019 and had requested the Board to accept and approve the renunciation by way of transfer of 100% shareholding of the Review Petitioner to M/s IMC Ltd under Regulation 9(4) of the 2008 Regulations; (iii) it is only after the transfer of authorization is permitted by the Board in favour of IMC Ltd that any step towards achieving financial closure can be taken by IMC Ltd; (iv) the grant of the period to complete financial closure, without granting permission for transfer of authorization, would not be of any relevance and, without allowing the same, M/s IMC Ltd would not be able to take steps towards achieving financial closure; (v) it is impractical to

complete the obligation to achieve financial closure within a month as the procedure to achieve financial closure would take six months; and (vi) the present review petition was for the limited purpose of seeking directions from the Board to permit the transfer of authorization in favour of M/s IMC Ltd and extend the time granted by the Board.

143. As opined by the PNGRB, in its review order dated 13.09.2022, as per Regulation 9 of the 2008 Regulations, an entity can make an application for transfer/surrender/renunciation of authorization only after three years from the date of grant of authorization, and the Board after examining various factors and satisfying itself, may decide the same; transfer of authorization is not a matter of right; the spirit of the 2008 Regulations was that financial closure predates the transfer/surrender/renunciation of the authorization in favour of an entity which it may propose to seek. It does appear that the promoters of the Appellant are seeking to exit from the project completely, by transferring the entire share capital (100%), in the appellant, in favour of IMC Limited, without incurring any liability for violation of the several provisions of the 2008 Regulations, and the letter of authorization dated 02.12.2014. They now contend that, technically, the three-year period from the date of authorization i.e. 02.12.2014 expired on 01.12.2017 and, even if computed from 15.05.2015, the three year period expired on 14.05.2018, and their request for renunciation is being made only thereafter. This submission conveniently ignores the fact that the primary conditions, required to be fulfilled post grant of authorization, i.e. achieving financial closure within 180 days of the authorization and entering into a gas transmission agreement within the same period of 180 days, was not fulfilled by the Appellant, and they were seeking repeated extensions, even beyond 15.12.2018, to comply with these requirements.

144. Since renunciation of authorization, in terms of the 2008 Regulations, cannot be claimed as a matter of right, the Appellant cannot be heard to contend that, without complying with the requirement of achieving financial closure, the PNGRB should be directed to permit renunciation of authorization by the appellant in favour of IMC Ltd. Viewed from any angle, the appellant's contention, that the order of remand required the Board to consider their application for renunciation, does not merit acceptance.

XIV. HAS THE PNGRB, IN PASSING THE IMPUGNED ORDER, FAILED TO COMPLY WITH REGULATION 16:

(i) APPELLANT'S CONTENTIONS:

145. Sri Gopal Jain, Learned Senior Counsel appearing on behalf of the appellant, would submit that the PNGRB completely disregarded other factors such as obtaining permissions from authorities, funding issues, delays arising on account of Covid-19 etc which contributed to the delay in completion of the project by the Appellant; the Respondent entirely overlooked the delay that was caused due to incessant actions on its own part such as imposition of penalty, and termination of the Appellant's authorisation in complete disregard to the procedure laid down under Regulation 16 of the Authorisation Regulations, which have time and again been subject to judicial review in litigation; PNGRB ought to have strictly complied with Regulation 16 of the Authorisation Regulations; and the Order passed by the PNGRB is in the teeth of this Tribunal's Order dated 15.12.2021, as well as the law laid down by this Tribunal in **Jay Madhok Energy Private Limited Led Consortium v Petroleum and Natural Gas Regulatory Board [Appeals No. 160-162 of 2022].**

(ii) ANALYSIS:

146. Regulation 16 of the 2008 Regulations, as noted hereinabove, deals with the consequences of default and termination of authorization procedure. While Regulation 16(1) obligates the authorized entity to abide by all the terms and conditions specified in the Regulations, it further stipulates that, on any failure to do so, the Board shall issue a notice to the defaulting entity allowing it a reasonable period to fulfil its obligations under the Regulations. If remedial action is taken by the entity, within the specified period to the satisfaction of the Board, the Board is required not to take any further action.

147. It is evident, from the correspondence referred to hereinabove, that the Appellant failed to achieve financial closure even till 13.09.2022 when the Board dismissed their review petition. It is because of the failure of the appellant (an authorized entity) to take remedial action, that Regulation 16(1)(c) applies and, for the first default, 25% of the performance bond can be encashed, for the 2nd default, 50% of the performance bond can be encashed and, for the third default, 100% of the performance bond can be encashed and, simultaneously, the authorization can be terminated. In terms of the impugned order dated 31.05.2022, the Appellant was granted one month's time to comply with their obligations of achieving financial closure. The Appellant has not been able to show how, though nearly 7 years had elapsed from 02.12.2014 (the date of authorization) till the impugned order dated 31.05.2022 was passed) during which period the appellant was granted several opportunities to achieve financial closure which they failed to comply, grant of one more month's time to take remedial action to achieve financial closure was insufficient. In any event, the Board took no action even after one month or even till the Appellant's review petition was dismissed three months thereafter on 13.09.2022. The contention of non-compliance with Regulation 16 does not, therefore, merit acceptance.

148. The scope and purport of the Judgments of this Tribunal, in **M/s Jay Madhok Energy Private Limited vs. Petroleum & Natural Gas Regulatory Board (Appeal Nos. 196 & 197 of 2016 dated 28.04.2017) [2017 SCC Online APTEL 11]**, **M/s Jay Madhok Energy Private Limited led Consortium vs. Petroleum & Natural Gas Regulatory Board (Order in Appeal Nos. 160, 161 & 162 of 2022 dated 28.09.2022) [2022 SCC Online APTEL 83]**, and **Hindustan Petroleum Corporation Limited vs. Petroleum & Natural Gas Regulatory Board (Order in Appeal 25 of 2022 dated 16.03.2022)** has been explained earlier in this Order. The subsequent judgement of this Tribunal, in **H-Energy Private Limited vs. Petroleum & Natural Gas Regulatory Board (2023 SCC Online APTEL 17],** wherein the scope of the Judgment in **Jay Madhok Energy Private Limited led Consortium [2022 SCC Online APTEL 83]**, was explained, has also been referred to hereinabove, and does not bear repetition.

XV. REVIEW ORDER PASSED BY PNGRB:

(i) APPELLANT'S CONTENTIONS:

149. Sri Gopal Jain, Learned Senior Counsel appearing on behalf of the appellant, would submit that the Review Order also suffers from certain infirmities as the PNGRB has wrongly observed that the Appellant had failed to complete the project despite being given several opportunities; PNGRB failed to acknowledge the fact that there had been several roadblocks in the Appellant's way, and the PNGRB had itself repeatedly tried to impede the project issuing premature hearing notices, and show cause notices to them; for instance, even after granting extension till April 2020, the PNGRB issued a hearing notice dated 08.03.2019, followed by a show cause notice dated 04.07.2019, i.e., within 9 months of grant of extension.

(ii) RESPONDENT'S CONTENTIONS:

150. Sri Rahul Sagar Sahai, Learned Counsel for the Respondent-Board, would submit that, in the order passed in Review Petition No. 14 of 2022 on 13.09.2022, dismissing the said review petition, the PNGRB held that the PNGRB Act conferred diversified functions to be performed by the Board i.e. Judicial functions, Legislative functions, Regulatory functions, and Administrative/Ministerial functions; the Board, while adjudicating the present review petition, was exercising its adjudicatory functions; while deliberating on the transfer of authorization of any pipeline/CGD Network, the Board would exercise its regulatory functions; it was not inclined to intervene with the order dated 31.05.2022, by way of the Review Petition, since more than 7 years had passed from the grant of authorization and the Review Petitioner has failed to achieve Financial Closure; transfer of authorization is not a matter of right; the spirit of the 2008 Regulations was that Financial Closure pre-dated transfer/surrender/renunciation of authorization in favour of another entity; transfer of authorization of ENPL was not the subject matter of Appeal No. 17 of 2019; this Tribunal, while setting aside the order dated 30.10.2019 and remanding the matter for fresh adjudication, did not direct the PNGRB to consider the appellant's request to amend the authorization, and transfer it in the favour of IMC Limited; and the Respondent Board did not entertain the request for transfer of authorization in favour of IMC Limited, as it was not the subject matter either in the previous hearing or before this Tribunal.

(iii) ANALYSIS:

151. The Appellant's contention, that the PNGRB had failed to acknowledge that there were several hurdles in the Appellant's way and PNGRB had itself sought to impede the project by issuing premature notices of hearing and show cause notices, is only to be noted to be rejected. From the correspondence referred to hereinabove, it is amply clear that the hearings

held by the PNGRB was necessitated only because of the Appellant's failure to comply with the requirements of achieving financial closure, of entering into a gas transmission agreement, and their failure to ensure progress in completion of the pipeline project. The Appellant has chosen to gloss over the fact that it had repeatedly requested the PNGRB to grant extension of time to comply with these requirements, and now seeks to shift the blame on to the Board.

152. The contention that, even after granting extension to complete the project till April 2020, the PNGRB issued a hearing notice on 08.03.2019 followed by a show cause notice dated 04.07.2019, must be examined in its context. Extension of time till April, 2020, for completion of the project, was granted by the PNGRB only at the Appellant's request. In the hearing held on 31.01.2018, the Appellant had informed the Board that their four promoters would initially infuse Rs.100 crores in the Appellant's project by .31.05.2018, and another Rs.100 crores by May 2019, and they were trying to obtain finance from the banks. The Appellant had also agreed to submit a commitment/resolution from the promoters regarding capital infusion of Rs.100 crores by 31.05.2018 and additional infusion of Rs.100 crores by May 2019, and to submit comfort letter/sanction letter from the banks within 5 to 6 months once extension was granted by the Board. They had also informed the Board that they envisaged commencing the project by 15.10.2018 and completing the project by 30.04.2020.

153. What was recorded by the Board, in the minutes of the hearing held on 31.01.2018, finds support from the letter of the Appellant dated 17.03.2018, wherein it is stated that it is only because the Appellant had assured that additional capital would be infused and comfort letter will be obtained from banks that the Board had granted extension till April, 2020. Approval of extension of time, to complete the project till April, 2020, was

granted by the PNGRB by its letter dated 12.07.2018 only at the request of the Appellant in its letter dated 17.03.2018, whereby they had requested the Board to kindly grant extension for commissioning of the ENPL pipeline till April, 2020.

154. The letter of the PNGRB dated 12.07.2018 refers to the letter of authorization dated 02.12.2014, and the Appellant's letter dated 17.03.2018 requesting extension for commissioning of the ENPL pipeline authorized in their favour. Thereafter the said letter records the PNGRB's approval for revision of the completion schedule, for laying, building, operating or expanding ENPL pipeline as a single project of the appellant, until April, 2020.

155. After granting extension till 30.04.2020, by its letter dated 12.07.2018, the PNGRB, by notice dated 08.03.2019, called upon the appellant to participate in the hearing, under Regulation 16, to be held on 26.03.2019 since progress of the pipeline project was not satisfactory. The appellant was called upon to present the latest status of the project and their modus operandi for completion of the said pipeline project within the stipulated time. The minutes of the hearing dated 26.03.2019 discloses that the promoters of the Appellant had failed in their commitment to infuse Rs.100 Crores each by 31.05.2018 and 31.05.2019; and that the Right of Use (RoU) of the pipeline was yet to be acquired. It is in such circumstances that the Board directed the Appellant to submit, within 10 days, a detailed activity chart section/phase-wise for ENPL and to provide the latest status and correspondence towards finalization of the strategic partners for ENPL. Even thereafter the Appellant, by letter dated 27.03.2019, assured that completion of financial closure, infusion of equity funds as required by the banks for sanction of the project loan etc, would be achieved by 31.07.2019.

156. The show cause notice dated 04.07.2019 came to be issued because the Appellant had failed to abide by its own assurance given in the hearing held on 26.03.2019, and in its letter dated 27.03.2019; and their failure to adhere to the directions issued by the PNGRB. The letter of the PNGRB dated 08.03.2019, and the show cause notice dated 04.07.2019, were issued only because the Appellant had failed to comply with its assurance in its letter dated 17.03.2018, based on which the Board had granted extension up to April 2020 by their letter dated 12.07.2018. The Appellant's contention that the letter dated 08.03.2019 and the show cause notice dated 04.07.2019 impeded progress of the project is, therefore, wholly untenable.

XVI. ALLEGATION THAT THE APPELLANT WAS SELLING THE AUTHORISATION:

(i) APPELLANT'S CONTENTION:

157. Sri Gopal Jain, Learned Senior Counsel appearing on behalf of the appellant, would submit that the PNGRB has tried to unnecessarily create a negative impression that the Appellant is "selling" the license/authorisation; approval of the PNGRB was only sought, for transfer of shares in the Appellant company, by their promoters to IMC Limited; the authorisation would still remain in the name of the Appellant; PNGRB has never, on previous occasions, pointed out any issue with IMC Limited taking over 100% shareholding of the Appellant; this issue has been raised by the PNGRB for the first time in their Reply to the Appeal; and the PNGRB had, in the meeting held on 09.10.2019, asked the Appellant to submit a formal application for transfer, though it could have expressed its disagreement with the transfer to IMC Limited.

(ii) ANALYSIS:

158. While it is true that, even if the Appellant's request for renunciation is accepted, it would only result in IMC Limited acquiring the entire share capital of the Appellant, and the authorization may still remain in the name of the Appellant, this would also mean that the promoters of the Appellant, whose bid had been accepted and a Letter of Authorization was granted in their favour on 02.12.2014, would be able to exit from the project absolving themselves of all liability for their failure to complete the project for nearly 8 years from the date of the original authorization, though the authorization letter dated 02.12.2014 required the project to be completed within 36 months ie by 01.12.2017. In any event, Regulation 9 of the Authorization Regulation does not obligate the PNGRB to accept renunciation of authorization and the decision which the Board would be required to take, on any such request, would be based on various factors which need not be gone into as at present, since the Board has not considered the Appellant's request for renunciation.

159. While the Appellant may be justified in its submission that there is no material on record to show that they were selling the Authorization, it cannot also be lost sight of that renunciation of Authorization would, in effect, mean that the promoters of the Appellant would exit from the project, though it was they who had submitted their bid and were granted an authorization on 02.12.2014. In case their request for renunciation is accepted, it would be a wholly new entity (IMC Ltd) which would be required to execute the project, thereby further delaying completion of the project.

160. It is relevant to note that IMC Ltd, by its letter dated 30.10.2019, had requested the PNGRB to allow renunciation of ENPL pipeline in their favour, and to settle any financial dues/transactions that may be pending between the appellant and the PNGRB on account of authorization/execution, and delay by the Appellant before the conclusion of definitive agreement, which

would be executed upon receiving PNGRB approval for renunciation of ENPL. They requested the PNGRB to provide them sufficient time frame so that the ENPL pipeline can be executed in a timely manner, and informed that they were submitting a pipeline execution first level schedule with a compressed time frame of two and half years. It is clear therefrom that it would take at least a further two and half years, in case the Board decides to grant approval for transfer/renunciation, for the pipeline to be completed, ie if IMC Ltd were to adhere to their time schedule, and there is no further delay on their part.

XVII. LAYING OF PIPELINE IS IN PUBLIC INTEREST:

(i) APPELLANT'S CONTENTIONS:

161. Sri Gopal Jain, Learned Senior Counsel appearing on behalf of the appellant, would submit that PNGRB acknowledges, in the Impugned Orders, that development of this pipeline is in the national interest, and plays a vital role; however, the conduct of the PNGRB has been otherwise; both the Appellant and IMC are keen to continue with the project, and IMC Limited is on board to acquire 100% shareholding of the Appellant, and to continue with the project; if, at this stage, the PNGRB decides to take any adverse steps against the Appellant, and re-initiates the bidding process, considerable time and resources will be lost which will have a critical impact on the development of the pipelines in the country; transfer of authorisation to a strategic investor, who is waiting to acquire the shares of the Appellant, is a beneficial option, and is in the interest of public at large; and the ultimate purpose is to complete the pipeline project which is for the benefit of the public at large.

(ii) ANALYSIS:

162. It is not in doubt that development of this pipeline is in the national interest. It is, however, not open to the Appellant, having failed to complete the project both within the original time stipulated i.e.by 01.12.2017 or the extended time granted up to 30.04.2020, to now contend that, since a fresh bidding process would take time, the Board should not take any action against them, and should permit renunciation of the Authorization by them in favour of IMC Limited. In any event since the order under challenge, i.e. order dated 31.05.2020, only required the Appellant to achieve financial closure within one month from the said date, it would be wholly inappropriate for us to consider this aspect at the present stage.

XVIII. EXTENSION GRANTED TO OTHER ENTITIES:

(i) APPELLANT'S CONTENTION:

163. Sri Gopal Jain, Learned Senior Counsel appearing on behalf of the appellant, would submit that, moreover, the Respondent Board has, on other occasions, granted extensions to various entities which had also delayed commissioning of their respective projects; however, the PNGRB has not taken any adverse action, such as termination of authorisation, as in the present case, against any of these entities.

(ii) ANALYSIS:

164. We see no reason to delve into the Appellant's claim of the Board having granted extension to other entities, since none of them are parties to the present Appeal, and this Tribunal is not aware of the circumstances under which extension was granted to the other entities with whom the Appellant seeks to compare themselves with.

165. Generally speaking, the mere fact that the respondent-PNGRB has chosen not to take action in the case of some others, who the Appellant

claims are similarly situated, can never be a ground for granting a similar relief in favour of the Appellant on the plea of discrimination. The action of PNGRB, with respect to other parties, may be legal or may not be. That has to be investigated first before it can be directed to be followed in the case of the Appellant. **(Chandigarh Admn. v. Jagjit Singh,(1995) 1 SCC 745; Inox Green Energy Services Ltd. & others vs Central Electricity Regulatory Commission & others (Order in Appeal No.292 of 2022 dated 24-02-2023).** None of the other parties, referred to by the Appellant in its table, are parties to this Appeal. This Tribunal is in no position to ascertain the facts and circumstances in which the PNGRB had refrained from taking precipitative action against the other entities.

166. If the order of the PNGRB, in favour of the others, is contrary to law or is otherwise not warranted, such illegal or unwarranted acts cannot be made the basis either to compel them to repeat that illegality over again or for an order to passed by this Tribunal which will have the effect of repeating the illegality in the present case also. **(Chandigarh Admn. v. Jagjit Singh, (1995) 1 SCC 745; Inox Green Energy Services Ltd. & others vs Central Electricity Regulatory Commission & others (Order in Appeal No.292 of 2022 dated 24-02-2023).** We see no reason, in such circumstances, to undertake a comparative exercise, or to grant the appellant relief only on this score.

XIX. RELIEF SOUGHT IN THIS APPEAL:

(i) APPELLANT'S CONTENTIONS:

167. Sri Gopal Jain, Learned Senior Counsel appearing on behalf of the appellant, would submit that the PNGRB should be directed to examine the matter as per the status prevailing as on 30.10.2019 (when it had passed the earlier termination order that had come to be set aside by this Tribunal

by judgment dated 15.12.2021), including to take decisions on the proposal for renunciation of the Appellant's authorisation in favour of IMC, and granting reasonable time in case it finds violation of the terms and condition of authorisation.

(ii) RESPONDENT'S CONTENTIONS:

168. Sri Rahul Sagar Sahai, Learned Counsel for the Respondent-Board, would submit that, pursuant to its order dated 31.05.2022, the PNGRB issued a notice to the Appellant under Section 23 and 28 of the Act on 07.10.2022, fixing the date of hearing as 13.10.2022; the Appellant preferred this present appeal, and *ex-parte* stay was granted vide order dated 19.10.2022; the PNGRB, being unaware of the *ex-parte* stay granted by this Tribunal a day before, passed the order dated 20.10.2022 pursuant to the hearing held on 13.10.2022 under Section 23 and 28 of the PNGRB Act, read with Regulation 10 and 16 of the 2008 Regulations, for termination of the authorization; the order dated 20.10.2022 was uploaded at around 11.46 a.m. on the. same day; thereafter, the Board issued the letter for invocation of Performance Bank Guarantee (PBG) to the Bank; receipt of the same was provided by the Bank at 12.08 p.m. on 20.10.2022; and the Respondent Board was only informed about the order dated 19.10.2022 through an email dated 20.10.2022 received at around 4 pm.

169. As we are satisfied that the impugned order passed by the PNGRB dated 31.05.2022 is in accordance with law, we see no reason to interfere with the said order or to direct the Board to reconsider the matter in terms of the situation prevailing on 30.10.2019, when the PNGRB had passed the earlier order, which was set aside by this Tribunal in its Order dated 15.12.2021. While it is true that the order of this Tribunal dated 15.12.2021 did not require the PNGRB to consider the appellant's application dated 30.11.2019 seeking transfer/renunciation of authorisation, the fact remains

that, in its subsequent order dated 31.05.2022, the PNGRB chose not to pass an order similar to that passed by them on 30.10.2019, and instead granted the appellant one month time to take remedial action for achieving financial closure. As Regulation 9 of the 2008 Regulations requires the Board to consider a request for transfer/renunciation of authorisation, 30 days after an application is made in this regard, we are of the view that the PNGRB ought to have examined the request, independent of any action they choose to take against the appellant for non-compliance with its order dated 31.05.2022.

170. Before parting with this appeal, we must consider yet another aspect, though it relates to events after the orders, impugned in this appeal, were passed by the PNGRB. After the impugned Orders were passed on 31.05.2022 and 13.09.2022, the PNGRB issued a notice to the Appellant under Section 23 and 28 of the Act on 07.10.2022, fixing the date of hearing as 13.10.2022, and passed order dated 20.10.2022 terminating the authorization, and invoking 100% of the Performance Bank Guarantee. This Order passed by the PNGRB on 20.10.2022, was after the Appellant had preferred the present appeal, and *ex-parte* stay, of the PNGRB dated 31.05.2022, was granted by this Tribunal vide its order dated 19.10.2022.

171. This Tribunal, in its subsequent interim order dated 30.11.2022, held that the order dated 20.10.2022 of the Board, resulting in authorization being terminated and Bank guarantee being encashed, must be treated as non-est since it lay in the teeth of the ad-interim ex-parte injunction granted on 19.10.2022, therefore status quo ante would have to be restored, and the Board would be duty bound to return the money received as a result of encashment of the bank guarantee to the appellant which, in turn, would be obliged in law, and under the extant regulations, to furnish a fresh bank guarantee of the requisite amount.

172. As this Tribunal has, in its order dated 30.11.2022, held the termination order dated 20.10.2022 passed by the PNGRB to be non-est, the said order has evidently ceased to exist from its very inception. Dismissal of the present appeal shall not be understood as reviving the order of the PNGRB dated 20.10,2022 which was passed in the face of, and contrary to, the interim order passed by this Tribunal on 19.10.2022, As permitting the non-est order, of the PNGRB dated 19.10.2022, to operate would only encourage parties, including in the present case the PNGRB, to defy appellate orders passed by this Tribunal in the mistaken belief that action taken or orders passed in complete disregard to, and in blatant defiance of, the appellate orders passed by this Tribunal would go unchecked, we hold that, while it is open to the Board to take action from the stage of the show cause notice dated 07.10.2022 and pass orders afresh after giving the appellant a reasonable opportunity of being heard, it shall not give effect to or enforce its non-est order dated 19.10.2022.

XX. CONCLUSION:

173. The impugned orders, passed by the PNGRB dated 31.05.2022 and 13.09.2022, are legal and valid, and do not necessitate interference in the present appeal. However, as the order of PNGRB dated 20.10.2022, terminating the appellant's authorisation and directing encashment of the Performance Bank Guarantee, is non-est, the said order shall not be given effect to.

174. Suffice it to make it clear that the order now passed by us shall not disable the PNGRB from taking action against the appellant afresh, pursuant to the show cause notice dated 07.10.2022 and in accordance with law, after giving them a reasonable opportunity of being heard. Independent of any action which it may take against the appellant, pursuant to the show cause notice dated 07.10.2022, the PNGRB may also consider their application

dated 30.10.2019 for transfer/renunciation of their authorisation in favour of IMC Ltd, in terms of Regulation 9 and other applicable provisions of the 2008 Regulations and in accordance with law, uninfluenced by any observations made in this order.

175. Subject to the aforesaid observations, the appeal fails and is, accordingly, dismissed. Consequently, pending IAs, if any, shall stand disposed of.

Pronounced in the open court on this the **4th day of October, 2023**.

(Dr. Ashutosh Karnatak) Technical Member	(Justice Ramesh Ranganathan) Chairperson

REPORTABLE / ~~NON-REPORTABLE~~