

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL NO. 15 OF 2023 & IA NO. 1449 of 2022

Dated: 26th April, 2024

Present: Hon'ble Dr. Ashutosh Karnatak, Technical Member (P&NG)
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

GUJARAT GAS LIMITED

Through Mr. Ajitpal Singh, Manager
Having Registered Office at:
Gujarat Gas CNG Station, Sector 5C
Gandhinagar – 382006, Gujarat
Email: Ajitpal.Singh@GUJARATGAS.com
Phone: +917573018733

... Appellant

Versus

**PETROLEUM AND NATURAL GAS
REGULATORY BOARD**

Through The Secretary, PNGRB,
1st Floor, World Trade Centre, Babar Road,
New Delhi – 110 001
Email: secretary@pngrbgov.in
Phone: 9312061203

... Respondent

Counsel for the Appellant(s) : Piyush Joshi
Sumiti Yadava

Counsel for the Respondent(s) : Rahul Sagar Sahay
Sanskriti Bhardwaj
Kartikey Joshi
Harshita Tomar
Suyash Gaur
Puneet Sharma

JUDGEMENT

PER HON'BLE DR. ASHUTOSH KARNATAK, TECHNICAL MEMBER

The present appeal is being filed u/s 33 of the PNGRB Act, 2006 by the Appellant and has sought following relief:-

- a. *Allow the present Appeal and set aside the Impugned Order dated 28.07.2022 in Case No. Legal/28/2021 issued by the PNGRB/Respondent; and*
- b. *In light of the Respondent Board's decision to accept covid-19 pandemic as a force majeure, the Respondent Board has already recognised the impact of the Covid-19 pandemic on the implementation of the works relating to the milestones submitted under the Catch-Up Plan, direct the Respondent Board to extend the Catch Up Plan Period by the duration of the covid-19 pandemic and accordingly extend by two (2) years, the "Milestones for Project Implementation" provided to the authorisations for the Geographical Areas of Palghar District and Thane Rural GA;
Or, in the alternate*
- c. *Set aside the findings in Para 33 and 36 of Impugned Order that there was failure to achieve MWP since the review proceedings were not proceedings under Regulation 16 CGD Authorisation Regulations, which are mandatory to make a determination in relation to any failure to achieve MWP targets; and*
- d. *Direct the Respondent to provide due opportunity to the Appellant to make its submissions and provide an opportunity to be heard in relation to the amended review petition as was amended vide the application seeking permission to amend the Review Petition taken on record vide Order dated 05.07.2022; and*
- e. *Direct the Respondent to provide the Appellant with the source of the data in table stated in Para 33 of the Impugned Order and allow suitable time and opportunity to the Appellant to make its submissions in respect thereof; and*
- f. *Hold that in order for an order to be a valid order of the Respondent Board, the members hearing and deciding a petition must place their signature to the Order at the time of pronouncing the Order and certified copy of the Order or decision must have the signature of the Members who had heard and decided the petition; and*

- g. Pass any order or further orders, which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances.*

1.0 Facts of the case

- 1.1 The Appellant i.e the Gujarat Gas Limited (earlier known as GSPC Gas Limited) had been granted authorization vide letter(s) dated 01.04.2015 for Thane District (Maharashtra) excluding areas already authorized pursuant to the 4th CGD Bidding round as per the provision of the PNGRB Act as well as the Regulation 5 and 10(1) (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, which was duly accepted on 10.04.2015 by Appellant.
- 1.2 Respondent, PNGRB i.e. Petroleum and Natural Gas Regulatory Board (The Board) is a statutory body constituted under the provisions of the Petroleum and Natural Gas Regulatory Board Act, 2006 ("PNGRB Act") notified via gazette notification dated 31 March 2006 to regulate "the refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas excluding production of crude oil and natural gas so as to protect the interest of consumers and entities engaged in specified activities relating to petroleum, petroleum products and natural gas and to ensure uninterrupted and adequate supply of petroleum, petroleum products and natural gas in all parts of the country and to promote competitive markets and for matters connected therewith or incidental thereto.
- 1.3 It is relevant to mention herein that in 2015 GSPC Gas and GGCL were merged and the new Company was formed named Gujarat Gas Limited, the Appellant herein.
- 1.4 The details of the GA authorized to the Appellant under 4th CGD Bid Round along with the exclusivity are tabled hereunder:

GA Name	Palghar District and Thane Rural GA
Bidding Round	4 th CGD Bidding Round
GA ID	4.03
Authorised Entity	Gujarat Gas Limited
Date of Authorization	01.04.2015
Date of end of the exclusivity (from the purview of declaring common or contract carrier as per the authorization letter.)	60 months from the date of authorization.
Authorization	Authorised under Regulation 5 of CGD Authorization Regulation

- 1.5 It is relevant to mention herein that the authorization letter to the Appellant includes the break up of targets to be completed in each of the 5 years as mentioned in the Schedule D :-

Minimum Work Progress as per Regulation (to be completed during the first five years of exclusivity)	
Inch-Kms of Pipeline to be laid	Infrastructure for PNG Domestic Connection
1800	51452

Year Wise Break Up of targets					
Total Inch-Kms of Pipeline to be laid	Year 1 (20%)	Year 2 (50%)	Year 3 (80%)	Year 4 (90%)	Year 5 (100%)
1800	360.00	900.00	1440.00	1620.00	1800.00

Year Wise Break Up of targets					
Infrastructure for PNG Domestic Connections	Year 1	Year 2 (15%)	Year 3 (50%)	Year 4 (70%)	Year 5 (100%)
51452	-	7718	25726	36016	51452

	Rate
Network Tariff (from 1-25 Year) Rs. Per MMBTU	0.01
Compression Charge (from 1-25 Years) Rs. per Kg.	0.01

- 1.6 It is also pertinent to mention herein that the Appellant / authorized entity vide submission dated 30.11.2015 requested the Respondent Board to accept the scheme of amalgamation. The Respondent Board vide letter dated 25.01.2016 transferred the authorization of the aforesaid GAs in favour of the Appellant on the same terms and conditions as mentioned in the aforesaid authorization letter. In 2017, the Respondent Board changed the nomenclature of GA Thane District to Palghar District and Thane Rural.
- 1.7 In order to monitor the post authorization activities, the Board vide letter dated 23.02.2017, asked the Appellant to appear on 07.03.2017 to present the latest status of the project and tentative schedule to achieve the specified targets of the subject GA. The Respondent Board during the meeting held on 07.03.2017 asked the Appellant to submit the catch up plans to cover up targets specified in minimum work plan as per the terms & conditions of the authorization letters.
- 1.8 On 23.12.2018, the Respondent Board during the progress review meeting again observed that the progress with respect to subject GAs is unsatisfactory and advised to put all possible efforts to achieve the assigned targets for the CGD Network as per authorization terms and conditions to avoid any penal action.
- 1.9 On 21.06.2019, the Board called up the Appellant for the hearing under Regulations 16 of the PNGRB CGD Authorization Regulations. After presentation of the each of the GAs, the Board directed the Appellant to explain why action under Regulation 16 be not initiated against them for non achievement of targets. In response to the same, the Appellant vide letter dated 08.11.2019 submitted the updated project status.

- 1.10 That since the targets were not achieved, the Respondent Board vide letter dated 04.03-2020 sought reasons from the Appellant, for the shortfall in achievement of the targets along with information and details of likely achievement up to 31.03.2020 against the MWP targets of the Subject GA. It is relevant to mention herein that it was specifically mentioned in the said letter of the Respondent Board that submission of the Catch up Plan would not lead to revision/extension of MWP targets assigned as per authorization and the Respondent Board reserves its right to take action for non-achievement of targets.
- 1.11 That the Appellant in response to the Respondent Board's letter dated 04-03-2020, vide its letter dated 06-03-2020 requested extension of time till 20-3-2020 for submissions of the requisite information considering the quantum of updates.
- 1.12 That the Appellant in their latest Catch-Up Plan on 20.03.2020, had apprised the Respondent Board of the various challenges being faced by the Appellant in the Palghar-Thane GA such as delay in (i) achieving Connectivity from Natural gas Pipeline; (ii) issuance of permission from local state authorities such as PWD; (iii) permission from various other authorities such as Railways and Wild Life and also submitted revised milestones from March 2020 to March 2022 for completion of their MWP targets.
- 1.13 That thereafter, the Appellant vide two separate letters dated 24.04.2020 requested the Board to consider the following on account of the Covid-19 Pandemic
- i. Declaration of COVID -19 pandemic as Force Majeure event under the PNGRB CGD Authorization Regulations, 20008.
 - ii. An extension of 12 months w.r.t the milestones under the respective CGD Authorizations.

- iii. Change in law having an adverse impact on the implementation of CGD projects in the GAs awarded in the 4th CGD Bidding Round.
- iv. The various orders issued by the Government of India, the State Governments, and the various District Administrations in pursuance of the restrictions imposed due to the National Lockdown.

1.14 That from 20.03.2020 the pandemic of COVID 19 emerged, and the Government of India issued several notifications as a preventive measure. The Ministry of Home Affairs (MHA), Government of India took initiatives to scale down the menace of COVID-19 by way of several office orders. The Respondent Board, after taking cognizance of the various guidelines/orders issued by the Ministry of Home Affairs, Government of India, in light of the COVID -19 pandemic, issued 'Guidelines for the Consideration of FM in CGD Network' by way of the public notice Ref: PNGRB/Monitoring//Misc-FM/(3)/2020 dated 02.09.2020.

1.15 On 26.10.2020, the Respondent Board, in furtherance of the Guidelines/public notice dated 02.09.2020, issued "a clarification related to consideration of requests of CGD Entities for time extension under '*Force Majeure*' (ref no.: PNGRB/Monitoring/7/Misc-FM/(3)/2020 (P-810)) and categorically stated that securing permissions from statutory/local/or other authorities of Central/States is the prime responsibility of the CGD entities. Hence delays, if any, on this account do not qualify as "*Force Majeure*".

1.16 That in the meanwhile, Respondent Board vide public Notice Ref: PNGRB/Monitoring/1/ CGD-COVID-19/2020/Vol-II dated 05.11.2020 issued "*Extension of exclusivity period and shifting of year-wise MWP targets of Cumulative Work Program on account of 'Force Majeure' i.e. COVID-19 pandemic for the Geographical Areas (GAs) authorized to various CGD*

Entities” and granted an extension to 41 CGD Entities in respect of 185 GAs that had been considered eligible for *Force Majeure* extension on account of COVID-19 pandemic. However, the said notice has been withdrawn vide letter dated 27.05.2022.

- 1.17 Subsequently, the Respondent Board vide its letter dated 24-11-2020 took the cognizance of the various guidelines of the Ministry of Home Affairs, Government of India, and then suspended the service obligation of the Appellant towards MWP Targets and extension of exclusivity on account of “*Force Majeure*” due to rise in COVID-19 for the subject GA for 251 days.
- 1.18 However the Appellant vide letter dated 30-7-2021 sought suspension of the service obligation towards MWP targets and extension of exclusivity on account of “*Force Majeure*” due to rise in COVID- 19 cases since March 2021. Further in the said letter the Appellant also mentioned that “7. *Based on the current on-going pandemic situation we are presently not able to estimate the time frame by which our obligations under the said CGD Authorisation shall be adversely affected. We are however, estimating that currently the present Government Orders and Force Majeure events would continue to adversely affect our obligation to achieve the MWP (including the GAs for which revised catch-up plan were submitted in respect thereof) under the CGD Authorisations by atleast eighteen (18) months.*”.
- 1.19 That the Appellant being aggrieved, by the time period considered for suspension of the service obligation towards MWP targets and extension of exclusivity on account of *Force Majeure* due to rise in COVID-19, preferred the review petition bearing Case No. Legal/28/2021 before the Respondent Board.

- 1.20 Meanwhile the Board, in view to take a holistic view regarding the suspension of MWP Targets and extension of exclusivity from the purview of being declared as a common carrier or contract carrier, for the entire COVID -19 period (including all of the three waves), called up a meeting with the stakeholders on 08.04.2022.
- 1.21 That the Respondent Board took up the Review Petition for hearing on 24- 3-2022 wherein the Respondent Board heard the Ld. Counsel of the Appellant and rescheduled the matter.
- 1.22 The Respondent Board in view to take a holistic view regarding the suspension of MWP Targets and extension of Exclusivity from the purview of being declared as a common carrier or contract carrier, for the entire COVID-19 period (including all of the three waves), called up a meeting with the stakeholders on 8-4-2022.
- 1.23 In furtherance of the meeting dated 08.04.2022, the Board in its 112th (Emergency) Meeting held on 11.05.2022 took a decision for the suspension of the relative obligations of the entities towards their work program along with an extension for exemption from the purview of the common carrier/contract carrier for a period of 24 months w.e.f. 24.03.2020, for 179 GAs.
- 1.24 Consequent to the Emergency Board Meeting, the Respondent Board sent letter(s) dated 17.05.2022 and 18.05.2022, to the respective eligible entities w.r.t 179 GAs including the Appellant w.r.t said GAs about the above mentioned decision on account of restriction imposed by the respective Government due to COVID-19 pandemic in India.
- 1.25 It is pertinent to mention herein that vide letter dated 17.05.2022, the Respondent Board informed the Appellant that
- “ i. The entire period of Force Majeure for all waves of Covid-19 pandemic shall be considered en-bloc from 24.03.2020 onwards in totality*

- i. The relative obligations of the entities towards their work program to be suspended for a period of 24 (twenty-four) months w.e.f. 24th March 2020.*
- ii. The extension of exclusivity for exemption from the purview of Common carrier/Contract Carrier for an identical period of 24 months w.e.f. 24th March 2020*
- 3. It may be noted that any other extension granted which falls within the period of 24 months extension w.e.f. 24th March, 2020 on account of Covid-19 pandemic shall run concurrently.”*

1.26 That the review petition along with Application seeking permission to amend the review petition filed by the Appellant were taken up for hearing on 05-07-2022. A perusal of the Order dated 05-07-2022 would show that the Application for amendment was allowed and that the final arguments on the review petition were heard and the order was reserved.

1.27 Vide impugned order-1 dated 28.07.2022, the Respondent Board dismissed the review petition filed by the Appellant holding that :-

“as per the relevant provisions of the Act and CGD Authorization Regulations, the terms and conditions of the authorization are sacrosanct in nature, and, the service obligation of the authorized entity including MWP targets is a part of authorization letter, which cannot be amended unless specifically extension is granted by the Board. In addition to the above, the Catch-Up Plan submitted by the defaulting entities is merely a future plan in order to ascertain the time period for achieving the shortfall MWP Targets however, the submission of the Catch-Up Plan nowhere amends the time period for achieving the stipulated MWP Targets.

It will not be out of place to mention that the Board had already granted an en-bloc period of 24 months for the Subject GAs of the Review Petitioner as a benefit of COVID-19 on an account of Force Majeure, therefore, the prayers of the Review Petitioner for granting an 'additional period' is declined.”

1.28 Thereby the Impugned Orders which are the subject matter of the present appeal before the Tribunal under Section 33 of the PNGRB Act are:-

- (i) order dated 28.07.2022 of the PNGRB in the matter of Gujarat Gas Limited, Case No. Legal/28/2021 ("Impugned Order-1")

- (ii) not considering the remedial measures being undertaken as per the Catch Up Plans submitted and being implemented by the Appellant under the applicable regulatory framework as applicable on the 4th CGD Bid Round and the impact of *Force Majeure* claim on account of COVID-19 pandemic on the remedial work for authorisation for Palghar District and Thane Rural (GA ID 4.03) ("Palghar GA");
- (iii) Public Notice dated 05.11.2020 issued by PNGRB in which the revised MWP targets for Palghar GA was enumerated, and the same was communicated to the Appellant vide letter dated 24.11.2020, which did not take into consideration the Catch Up Plans submitted by the Appellant to the PNGRB ("Impugned Order-2"); and
- (iv) Letter dated 17.05.2022 from PNGRB to the Appellant for "Suspension of relative obligations towards MWP and extension of exclusivity for exemption from the purview of common carrier/contract carrier on account of restrictions imposed by the respective Government due to COVID-19 pandemic in India" ("Impugned Order-3").

2.0 Contention of the Appellant

2.1 It is the contention of the Appellant that the Impugned Order-1 dated 28.07.2022 is untenable in law and has to be set aside because of the following reasons:

- i. Impugned order-1 is in violation of principles of natural justice as no hearing of amended Review Petition was ever provided. Hearing on the application seeking to place on record the amended review petition was held on 05.07.2022 and vide said order, the Respondent Board admitted & took the

amendment application on record. However no hearing or no opportunity to submit the supporting fact was provided to the Appellant and on the next date of hearing 28.07.2022, instead only the operative portion of the Impugned order-1 was pronounced by the order.

- ii. PNGRB in Order dated 28.07.2022, could not have decided that the Marketing Exclusivity Period vested with Appellant had already expired since the CGD network in the Palghar GA authorised to the Appellant have not yet been declared as common carrier and is therefore wrong in law.
- iii. Para 33 of the impugned order-1 provides a table consolidating the data which was not submitted by the Appellant and was not part of the record.
- iv. In para 33 and 34 of the impugned order dated 28.07.2022, the Respondent Board has wrongly made a consequential determination that the Marketing Exclusivity period and consequentially the time period for achieving the stipulated MWP targets had already expired on 31.03.2022 for Palghar GA and that as on 31.05.2022 the Appellant was under default of non-achieving of stipulated MWP targets which is not only arbitrary, in violation of principles of natural justice, but also in direct violation of the Hon'ble High Court of Delhi's Order dated 11.10.2021 in the matter of *Gujarat Gas Limited v. PNGRB (LPA 254/2021)* which had stayed the Public Notices dated 13.09.2021, (including for Palghar GA) that had first communicated the decision of PNGRB that the Marketing Exclusivity Period of Appellant had expired.
- v. In the matter of *Gujarat Gas Limited v. PNGRB (LPA 254/2021)* Hon'ble High Court of Delhi's Order dated

11.10.2021 had stayed the Public Notices dated 13.09.2021, (including for Palghar GA) the entire process of declaring the CGD networks of the Appellant as common carrier including the determination that the Marketing Exclusivity.

- vi. The determination that the Marketing Exclusivity Period has expired is in violation of the settled principle that the Marketing Exclusivity Period does not end till the CGD network is declared as a common carrier by following the process laid down in s. 20(4) PNGRB Act read with the applicable regulations. This Hon'ble Tribunal's judgment dated 20.04.2022 in the matter of *Gujarat Gas Limited v. Saint Gobain India Private Limited and Anr.*, APL No. 174 of 2016, has also reiterated this wherein this Hon'ble Tribunal in para 32 held that:

*“32. ... **Moreover PNGRB itself has stated in its impugned order that merely expiry of the exclusivity period, the nature of the CGD network does not automatically result in the CGD network becoming a common carrier.** Thereby meaning that only after declaration of the pipeline as common carrier/contract carrier, PNGRB is empowered to determine the transportation rate of a CGD network for a third party access. In fact PNGRB itself has admitted in its impugned decision that “the issue of tariff which would be applicable on the transportation of natural gas on third party shall stand resolved with the finalization/notification of the relevant Tariff Regulations.””*

- vii. The decision of PNGRB that the Appellant is in default of the stipulated MWP Target has been taken without following the stipulated regulatory procedure mandated under Reg. 16 CGD Authorisation Regulation read with s.13(3) PNGRB Act for making any decision that Authorised Entity has committed a default in either MWP targets or any other term of the authorisation.

- viii. The Appellant had made a claim for *Force Majeure* relief which is regulated by the framework under Regulation 16 CGD Authorisation Regulation as were applicable at the time of the respective Bid process namely 4th CGD Bid Round. There was no such limitation relating to *force majeure* claims in the applicable regulations as have been stated in the Impugned Order. The provision of Reg. 7(1)(c) relied upon in para 32 in order dated 28.07.2022 is completely erroneous since Reg. 7(1)(c) does not regulate nor it is applicable to post commissioning monitoring or post authorisation obligations.
- ix. Reg. 7(1)(c) was only applicable for the purposes of determining the MWP in the 4th CGD Bid round since, in those bid rounds PNGRB set the MWP. Reg. 7(1)(c) regulated the manner in which the Board would establish the MWP and is not applicable post grant of authorisation and in any event the achievement of the MWP was always at all times subject to the occurrence of *Force Majeure* events. The CGD Authorisation Regulations as applicable in the 4th CGD Bid Round, did not provide a statutory definition of “*Force Majeure*” and the use of the term *Force Majeure* in Reg. 16 was therefore not subject to any stipulated limited definition. The PNGRB in para 31 has wrongly relied on the definition of “*Force Majeure*” that was in the bid document given in the 4th CGD bid Round since the bid document being only in the nature of invitation to submit applications did not and cannot be construed to have amended or in any manner limited the term *force majeure* used in CGD Authorization Regulations. Bid documents in law do not amend regulatory provisions. Furthermore, the *Force Majeure* claim by the Appellant was already accepted by the PNGRB as being a

Force Majeure under the limited definition (i.e. Covid-19 pandemic) and hence, there could be no dispute over the fact that it was a *Force Majeure* within the scope of the limited definition provided by PNGRB even in its bid document for the 4th Bid Round.

- x. The impugned order did not take in consideration the impact of COVID-19 pandemic *Force Majeure* on the catch up plan for Palghar District and Thane Rural GA submitted by the Appellant which is in violation of Regulation 16 of CGD.
- xi. Furthermore, the data relied upon and stated in the order dated 28.07.2022 in Para 3 was not part of the pleadings and it is not clear when and how this data was obtained. No due opportunity was provided to the Appellant to review this data and make submissions clarifying the same. The said order is therefore in violation of principles of natural justice and has to be set aside.
- xii. The Impugned Order-1 does not bear the signatures of the members who had heard the matter and whose decision it is seeking to communicate and neither has it, till date been duly communicated to the Appellant as required under Regulation 29 of the COB Regulations as it does not contain signatures of either the Members or the Secretary or any officer of the Board empowered in this behalf by the Chairperson but only carries type written words "Sd/-" above the names of each of the members.
- xiii. The Impugned Orders, particularly Impugned Order-1, by erroneously stating that there is no basis for Catch-Up Plan and not considering the impact of COVID-19 *Force Majeure* on the revised MWP targets is a breach of legitimate expectation of the Appellant since the Appellant has been investing and undertaking works since 2015 based on the same and the Respondent Board in compliance with Regulation 16 CGD

Authorization Regulations, not undertaken any further action or coercive measure since the remedial measures were and are being implemented by the Appellant.

xiv. The Respondent Board erroneously dismissed the review petition when it clearly records, in Para 38 thereof, that one of the main grounds for the *Force Majeure*, namely the issue of timely hook-up facility being provided for the relevant GAs being subject matter of appeals before the Hon'ble Supreme Court and at the same time holding that "*it will be premature to give a conclusion till Civil Appeal(s) No. 10 of 2022 and 347 of 2022 are adjudicated or attains finality by the Hon'ble Supreme Court of India*"

3.0 Contention Of The Respondent

3.1 The letter dated 24.11.2020 along with public notice dated 05.11.2020 (b) Letter dated 17.05.2022 in relation to extension of the Minimum work plan Targets by *en-bloc* period of 24 Months issued by the Respondent Board are not "**orders or decisions**" and therefore this Hon'ble Tribunal does not have the jurisdiction to test the vires of the aforesaid guidelines and public notices. ***(PTC India Limited Vs. Central Electricity Regulatory Commission. (2010) 4 SCC 603)***

3.2 Additional benefit of 24 months for covid-19 extension cannot be granted to the Appellant for exclusivity and MWP targets :-

- i. The GA of Palghar District was authorized on 01.04.2015 with a target completion time of 5 years w.r.t providing 51,452 D-PNG connections and laying 1800 inch-km of steel & MDPE pipeline, to be achieved by 30.03.2020, i.e., the end of their contract year.
- ii. The Respondent Board found the Appellant eligible for the benefit of *Force Majeure* in terms of the public notice dated

17.05.2022 in relation to extension of the Minimum work plan Targets and accordingly, granted the benefit of *Force Majeure* by giving *en-bloc* period of 24 Months to the Appellant and extended the date of end of exclusivity till 31.03.2022.

iii. Despite given the benefit of 24 months *en-bloc* COVID 19 extension, as of July 2022, the Appellant had only provided 10,059 domestic PNG connections against a target of 51,452 and 1130-inch km of steel & MDPE pipeline against a target of 1800 in Palghar District and Thane Rural GA.

3.3 That despite giving the remedial time till December,2022 the Appellant miserably failed to achieve the targets even after giving the benefit of *Force Majeure* of 24 months *en-bloc* extension. As of 31.08.2023 the Appellant had only provided 49,148 PNG domestic connections against a target of 51,452 and laid 1493-inch km of steel & MDPE pipeline against a target of 1800 in Palghar district & Thane Rural GA.

3.4 It is the contention of the Respondent Board that vide letter dated 04.03.2020, it was categorically mentioned in para 2 'that the submission of catch up plan and information sought does not lead to revision/extension of MWP targets, assigned as per authorization and the board reserves its right to take action for non-achievement of targets.' which was never challenged by the Appellant.

3.5 The said "catch up plans" were only requested by the Respondent Board in accordance with its functions under Regulation 13(3) of the CGD Authorization Regulation which deals with "post authorization monitoring of activities (pre-commissioning) as stated below:

“(3) The Board shall monitor the progress of the entity in achieving various targets with respect to the CGD network

project, and in case of any deviations or shortfall, advise remedial action to the entity”

- 3.6 That the Appellant accepted the authorization letter, which also includes the MWP obligations, and therefore it is a responsibility of the entity to provide PNG domestic connections within the timelines given in the authorization letters. In the eventuality the entity fails to achieve its MWP, then it is liable for penal action as per the PNGRB act, and regulations notified there under.
- 3.7 Regulation 16 of Petroleum and Natural Gas Regulatory Board (Authorizing entities to lay, build, operate or expand city or local natural gas distribution networks) regulations, 2008 is only a mechanism for encashment of performance bond in case of default by an entity and has no relation with a catch-up plan.
- 3.8 The Board never accepted the catch-up plan and the remedial measures being taken by the Appellant or even acknowledged the same. It is also contended by the Respondent Board that irrespective of the catch-up plans or the remedial measures submission from the Appellant, the same cannot be considered to be valid unless called upon by the Board through a notice. Further, the regulation also specifies that the remedial time granted under *Force Majeure* is separate and the procedure for allowing remedial time to fulfil the Appellant’s MWP obligations cannot be clubbed together with a Force Majeure extension.
- 3.9 The scope of *Force Majeure* cannot be limited by any defined term and therefore the concept of *Force Majeure* as applicable under general law will be applicable. is completely misplaced and contrary to established legal propositions.
- 3.10 Delay in granting the approval from administration cannot be considered as *Force Majeure* as mere hardship in completing the work or in achieving the targets are not the circumstances/events

which fall under the definition of *Force Majeure*. It is no more *res integra* that the performance of a contract is never discharged merely because it may become onerous to one of the parties.

- 3.11 The doctrine of frustration must always be within narrow limits. **[reference to Energy Watchdog vs. CERC (2017) 14 SCC 80]** observed in para 36 that “Ultimately, this Court concluded that a contract is not frustrated merely because the circumstances in which it was made are altered. The Courts have no general power to absolve a party from the performance of its part of the contract merely because its performance has become onerous on account of an unforeseen turn of events.”
- 3.12 Every term and condition given in the ACBD and the relevant regulations is applicable to the respective GA (and the entity) indefinitely once it is authorized. Therefore, the contention of the Appellant that the Board has erroneously determined the definition of “*Force Majeure*” in Clause 7 of the ACBD can modify Regulation 16 of the CGD Authorization Regulations is devoid of any merit and liable to be dismissed by this Hon’ble Court.
- 3.13 The data given in the tables at Para 33 is factual, which was in due knowledge of the Appellant. Further, the dates given in the table therein pertain to the date of authorization of the subject GAs and the end dates of their exclusivity period for exemption from the purview of common carrier or contract carrier, which dates are mentioned in the authorization letter issued to the Appellant by the Respondent Board. It is submitted that the Appellant had accepted the said authorization letter and sent an acknowledged copy of the same to the Respondent Board.
- 3.14 Further, regarding the Appellant’s contention that the source of the data given at point number (iii), (vi) and (vii) of table at Para 33 of

the Order impugned by it, is not known to it, it is submitted that the provisions of the CGD Authorization Regulations based on which the Schedule D was issued to the Appellant included the “Milestones for project implementation”, which has a breakup of targets to be completed in each of the 5 years. The data regarding the achievements as on 31.03.2022 and 31.05.2022 is based on the data submitted by the entities on the online portal of the Respondent Board and time period for MWP extended by the board.

3.15 The Respondent Board passed the Order impugned by the Appellant in terms of the pleadings made by the Appellant and the reliefs sought by it in the amended review Petition and therefore the Appellant cannot be allowed to inter alia, contend that the issues relating to default in performance are to be determined only under the specific provision of Regulation 16 CGD Authorization Regulation, which require a separate proceeding to be undertaken, as alleged or at all.

3.16 It is submitted that the Respondent Board on 13.09.2021 issued public notices declaring expiring of exclusivity period from purview of declaration as contract carrier or common carrier for thirteen GAs of the Appellant including the GAs authorized under Regulation 18 of the CGD Authorization Regulations, however the same was stayed only for the reason that when the said notice was issued, the quorum of the Board was not complete and not for any other reason.

3.17 On 31.5.2022, the Appellant sought time to file an amended Review Petition. Accordingly, the amended Review Petition was filed on 20-6-2022. The Review Petition was again listed for hearing on 23.06.2022 when again the Appellant sought an

adjournment. The Respondent Board again granted final opportunity for arguments and directed the matter to be listed on 05.07.2022 at 14:30 hours. On 05.07.2022, the Review Petition along with Application seeking permission to amend the review petition were taken up for hearing. A perusal of the Order dated 05.07.2022 would show that the Application for amendment was allowed and that the final arguments on the review petition were heard and the order was reserved. The principles of natural justice cannot be put in a straight-jacket formula. It is no unruly horse and the party contending the infraction of the principles of natural justice has to show the some real prejudice cause. ***PD Agrawal v. State Bank of India AIR 2006 SC 2064.***

3.18 With effect from April 2022, the Respondent Board adopted the general practice, similar to various other Tribunals, to not provide original signed Orders to the parties and only mention 'Sd/-' above the names of each of the members, and to retain the originally signed copy of the Order for itself. The Respondent Board sought liberty to produce the said original signed Order as and when directed by this Hon'ble Tribunal. The Order impugned by the Appellant is in conformity with Section 8(1), 8(3) and 8(4) read with Section 10 read with Section 13(3) of PNGRB Act read with the PNGRB Conduct of Business Regulations. It is the contention of the Respondent no provision as such requires the Respondent Board to communicate a signed copy of the Order to the parties appearing before it. The earlier practice of the Board was to upload the signed copy of the Order/Judgment(s). However, the said practice was discontinued later as mentioned hereinabove insofar as the signatures of the Board officials, were being misused and some fabricated documents were being created by some

anonymous person. Therefore, the Board in lieu of the abundant caution adopted the practice to upload the documents on the website with 'Sd/-'.

4.0 Issues:

- 1. Whether PNGRB is correct in holding that the Appellant is devoid of merits and is not eligible for benefitting further additional period of 24 months by suspending the relative obligation i.e the extension of MWP Targets & exclusivity on account of force Majeure i.e COVID-19.**
- 2. Whether the PNGRB is correct in holding that the submission of the catch up plan neither amends the terms and conditions of the Authorization nor revises the time period for completion of MWP targets.**
- 3. Whether the impugned order dated 28.07.2022 is bad in law in terms of principle of natural justice as the opportunity of being heard was not granted and therefore to be set aside.**
- 4. Whether the impugned order dated 28.07.2022 is a valid order of the Respondent Board as the said order and also the certified copy of the same does not have the signature of members hearing and deciding a petition.**

5.0 Deliberations

5.1 ISSUE No. 1:

Whether PNGRB is correct in holding that the Appellant is devoid of merits and is not eligible for benefitting further additional period of 24 months by suspending the relative obligation i.e the extension of MWP Targets & exclusivity on account of force Majeure i.e COVID-19.

- i. In order to analyse the above questions it is important to refer the relevant sections and scheme of the PNGRB Act. One of the prime mandates of the Board under the Act is to ensure that uninterrupted and adequate gas supply is made to all parts of the country. The Board is also under a duty to promote competitive markets. The Board is also mandated to protect the interest of consumers as well as entities engaged in activities relating to petroleum, petroleum products and natural gas. This mandate of the Board has been captured in the various regulations framed by the Board in exercise of its powers under the Act.
- ii. The Appellant had been granted authorization vide letter(s) dated 01.04.2015 for Thane District (Maharashtra) excluding areas already authorized pursuant to the 4th CGD Bidding round as per the provision of the PNGRB Act as well as the Regulation 5 and 10(1) (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, which was duly accepted on 10.04.2015 by Appellant.
- iii. Vide letter dated 25.01.2016, PNGRB while accepting the scheme of amalgamation and thereby amending the authorization in the name of Gujarat Gas Limited, did clearly mention that subsequent to the acceptance of the scheme of amalgamation, the name of the new authorized entity is Gujarat Gas Limited and the terms and conditions of all the authorization letter shall be read in conjunction with the respective authorization letters.
- iv. Thus in the present case there is no dispute that the authorization for the subject GA's was granted to the Appellant

with the project milestones to be achieved during the marketing exclusivity period, which is 60 months from the date of authorisation, in terms of an exemption from the purview of Common Carrier or Contract Carrier for CGD network while granting Authorization. Further the exclusivity period for laying, building & expansion of the CGD network is 300 months from the date of issue of authorization.

- v. As per the authorisation letter the date of end of exclusivity from the purview of declaring as a common carrier or contract carrier was 31.03.2020 as the GA of Palghar District was authorized with a target completion time of 5 years w.r.t providing 51,452 D-PNG connections and laying 1800 inch-km of steel & MDPE pipeline, to be achieved by 30.03.2020, i.e., the end of their contract year
- vi. The importance of MWP is detailed in 7(1)(c) of the CGD Authorization Regulations under the heading bidding criteria as enumerated hereinafter:

“7(1)(c) Minimum Work Programme for infrastructure for PNG domestic connections and inch-kilometer of pipeline to be laid by the successful bidder Infrastructure for PNG domestic connections. –

The Board shall work out the target for infrastructure for PNG domestic connections as five per cent of the households of the respective geographical area to be achieved by the successful bidder during the first five years from the date of grant of authorisation in Schedule D as under, namely:---

- (i) the successful bidder shall achieve fifteen per cent, fifty per cent, seventy per cent. and one hundred per cent of this target by the end of second year, third year, fourth year and fifth year respectively; and*
- (ii) the Board may consider carry forward of the target from one year to another within the period of five years.*

Inch-kilometer of pipeline. – The Board shall work out the target for inch kilometer of pipeline, for which both steel

pipeline and MDPE pipeline shall be considered, as per the following, namely:-

- (i) for geographical areas having an area of less than or equal to 1,000 square kilometers, product of 0.65 and the area in square kilometers of the respective geographical area;*
- (ii) for geographical areas having an area of more than 1,000 square kilometers and less than or equal to 5,000 square kilometres, product of 0.36 and the area in square kilometres of the respective geographical area subject to a minimum of 650 inch-kilometer of pipeline;*
- (iii) for geographical areas having an area of more than 5,000 square kilometres, product of 0.07 and the area in square kilometres of the respective geographical area subject to a minimum of 1,800 inch kilometer of pipeline.*

The target for inch-kilometer of pipeline worked out as per the above shall be achieved by the successful bidder during the first five years from the date of grant of authorization in Schedule D as under, namely:-

- (i) the successful bidder shall achieve twenty per cent., fifty per cent, eighty per cen., ninety per cent and one hundred per cent of this target by the end of first year, second year, third year, fourth year and fifth year respectively covering all the charge areas; and*
- (ii) the Board may consider carry forward of the target from one year to another within the period of five years.”*

vii. Thus it is clarified here that as per the aforesaid provisions the authorized entity has to achieve the Minimum Work Programme for the infrastructure of the PNG Domestic connections and Inch-Km Pipeline within stipulated time from the date of grant of authorization, which states as follows:

The infrastructure of PNG Domestic Connections: The successful bidder shall achieve fifteen percent, fifty percent, seventy percent, and one hundred percent of this target by the end of the second year, the third year, fourth year, and fifth-year respectively; and

The Inch-Kilometre of Pipeline: The successful bidder shall achieve twenty percent, fifty percent, eighty percent, ninety percent, and one hundred percent of this target by the end of the

first year, second year, third year, fourth year, and fifth year respectively covering all the charge areas.

- viii. After the outbreak of COVID -19 Pandemic , the Appellant vide two vide two separate letters dated 24.04.2020 requested the Board to consider the following :-
- i. Declaration of COVID -19 pandemic as *Force Majeure* event under the PNGRB CGD Authorization Regulations, 20008.
 - ii. An extension of 12 months w.r.t the milestones under the respective CGD Authorizations.
 - iii. Change in law having an adverse impact on the implementation of CGD projects in the GAs awarded in the 4th CGD Bidding Round.
- ix. In furtherance of the meeting dated 08.04.2022, the Board in its 112th (Emergency) Meeting which was held on 11.05.2022 took a decision for the suspension of the relative obligations of the entities towards their work program along with an extension for exemption from the purview of the common carrier/contract carrier for a period of 24 months w.e.f. 24.03.2020, for 179 GAs.
- x. Consequent to the Emergency Board Meeting, the Respondent Board sent letter(s) dated 17.05.2022 and 18.05.2022, to the respective eligible entities w.r.t 179 GAs including the Appellant GAs in dispute here and informed the Appellant that :-
- “i. The entire period of Force Majeure for all waves of Covid-19 pandemic shall be considered en-bloc from 24.03.2020 onwards in totality*

iii. *The relative obligations of the entities towards their work program to be suspended for a period of 24 (twenty-four) months w.e.f. 24th March 2020.*

iv. *The extension of exclusivity for exemption from the purview of Common carrier/Contract Carrier for an identical period of 24 months w.e.f. 24th March 2020*

3. *It may be noted that any other extension granted which falls within the period of 24 months extension w.e.f. 24th March, 2020 on account of Covid-19 pandemic shall run concurrently.”*

- xi. Since the Board found them eligible for the benefit of the force majeure, vide public notice dated 17.05.2022, granted the benefit of force majeure by giving enbloc period of 24 months and extended the date of end of exclusivity till 31.03.2022.
- xii. It is to be noted that despite given the benefit of 24 months en - bloc COVID -19 extension, the entity as of July, 2022 has provided 10059 domestic PNG connection against the target of 51452 and 1130 inch km against the target of 1800.
- xiii. Considering the slow progress of the achievement of MWP Targets, the PNGRB vide letter dated 21.09.2022 further granted remedial time period upto December, 2022 for achieving the targets.
- xiv. Thus it is seen that despite giving the benefit of force majeure of 24 months *en-bloc* extension and remedial time period upto December, 2022 for fulfilling its obligations, Appellant failed to meet the targets.
- xv. Appellant contended that they made a claim for *Force Majeure* relief which is regulated by the framework under Regulation 16 CGD Authorisation Regulation as were applicable at the time of the respective Bid process namely 4th CGD Bid Round. There was no such limitation relating to force majeure claims in the

applicable regulations as have been stated in the Impugned Order. The provision of Reg. 7(1)(c) relied upon in para 32 in order dated 28.07.2022 is completely erroneous since Reg. 7(1)(c) does not regulate nor is it applicable to post commissioning monitoring or post authorisation obligations. Reg. 7(1)(c) was only applicable for the purposes of determining the MWP in the 4th CGD Bid round since in those bid rounds PNGRB set the MWP. Reg. 7(1)(c) regulated the manner in which the Board would establish the MWP and is not applicable post grant of authorisation and in any event the achievement of the MWP was always at all times subject to the occurrence of Force Majeure events.

- xvi. With respect to the above contention of the Appellant, the Tribunal is of the view that Regulation 7(1)(c) is no doubt one of the bidding criteria and in accordance with the regulation the Board works out the targets for infrastructure for PNG domestic connection of the respective GA which the successful bidder has to achieve during the first five years from the date of the grant of authorisation in Schedule D. Similarly The target for inch-kilometer of pipeline worked out by the Board under Regulation 7(1)(c) has to be achieved by the successful bidder during the first five years from the date of grant of authorisation in Schedule D. Regulation 7(1) (c) is the mandatory framework to be followed by the successful entity post authorization.
- xvii. It is pertinent to mention herein that MWP was one of the bidding criteria based on which the authorization was granted.
- xviii. One of the contention by the Appellant is that the CGD Authorisation Regulations as applicable in the 4th CGD Bid Round, did not provide a statutory definition of “*Force Majeure*”

and the use of the term Force Majeure in Reg. 16 was therefore not subject to any stipulated limited definition. That the PNGRB in para 31 has wrongly relied on the definition of “Force Majeure” which was given in the bid document in the 4th CGD bid Round since the bid document being only in the nature of invitation to submit applications did not and cannot be construed to have amended or in any manner limited the term force majeure used in CGD Authorization Regulations. Bid documents in law do not amend regulatory provisions. Furthermore, the Force Majeure claim by the Appellant was already accepted by the PNGRB as being a Force Majeure under the limited definition (i.e. Covid-19 pandemic) and hence, there could be no dispute over the fact that it was a *Force Majeure* within the scope of the limited definition provided by PNGRB even in its bid document for the 4th Bid Round.

- xix. The *Force Majeure* as defined in Clause 7 of the Application cum bid document of the 4th CGD Bidding round (‘hereinafter referred to as ACBD’) is as enumerated below:-

“7.0 FORCE MAJEURE Force Majeure shall mean and be limited to the following:

a) War / hostilities

b) Major Riots or Civil Commotion

c) Earthquake, flood, tempest, lightening or other natural physical disasters

d) Restrictions imposed by Central Government or other statutory bodies which prevents or delays the execution of obligations under the Regulations.

The authorized entity shall within one week of occurrence of above causes notify PNGRB about the occurrence of the force majeure event and provide PNGRB all details of arising and ceasing of the impediment. The time and performance of the respective obligations suspended by the force majeure shall stand extended by the period(s) for which such conditions of force majeure last.

PNGRB's decision, whether such force majeure conditions did actually exist shall be final and binding"

- xx. It is clear from the definition of *Force Majeure* as mentioned in Clause 7 of ACBD, limits the expansion of the *Force Majeure* only to the war, major riots, natural calamities, and restrictions imposed by the Central Government or other statutory bodies. Further it is also mandated that the authorized entity shall within one week of the occurrence of the *Force Majeure* has to inform the Board about such incident.
- xxi. The Tribunal is of the view that that the Board has already given the benefit of force majeure of 24 months en-bloc extension and remedial time period upto December, 2022 for fulfilling its obligations by the Appellant after considering all the impossibilities/challenges being the ground for the exemption due to out break of COVID -19. It was also time and again highlighted by the Board that securing permissions from statutory/local/or other authorities of Central/States is the prime responsibility of the CGD entities Delays, if any, on this account does not qualify as "*Force Majeure*". Therefore the Appellant did receive the benefit of *Force Majeure*. It is also evident that even after getting the benefit of suspension of service obligation, the Appellant has failed to achieve the MWP Targets till date. Considering the low /non performance of the Appellant in achieving the MWP targets, the Board was fair for not providing further extension to the Appellant on the ground of not getting the permission from the statutory authorities.
- xxii. Thus the Board is correct in holding that Appellant is not entitled to seek further suspension from the obligation of the obligation towards MWP targets and extension of exclusivity on account of Force Majeure due to

COVID-19 . It is correct to say that Board duly considered the impact of COVID-19 pandemic *Force Majeure* on the catch up plan for Palghar District and Thane Rural GA submitted by the Appellant and granted the benefit of force majeure of 24 months enbloc extension and remedial time period upto December, 2022.

- xxiii. It was also contended by the Appellant that the Impugned Orders, particularly Impugned Order-1, by erroneously stating that there is no basis for Catch-Up Plan and not considering the impact of COVID-19 force majeure on the revised MWP targets is a breach of legitimate expectation of the Appellant since the Appellant has been investing and undertaking works since 2015 based on the same and the Respondent Board in compliance with Regulation 16 CGD Authorization Regulations, not undertaken any further action or coercive measure since the remedial measures were and are being implemented by the Appellant.
- xxiv. It is pertinent to mention herein that Regulation 17(1) C) specifies that the remedial time and extension granted under Force Majeure is separate. The procedure for allowing the remedial time to fulfil the MWP obligation cannot be clubbed together with Force Majeure extension.
- xxv. It is essential to highlight that the Board after due deliberation and keeping in mind all the related aspects took a unanimous decision and suspended the service obligations including the MWP Targets and exclusivity for an en-bloc period of 24 months, for all the eligible Geographical Area i.e. 179 GAs.
- xxvi. In the matter *Union of India v. Hindustan Development Corpn. (1993) 3 SCC 499*, the Hon'ble Supreme Court held that the doctrine of legitimate expectation is related to the need for fairness in administrative decision making. The Supreme Court while accepting the substantive aspect of doctrine has made it

clear that substantive relief can be granted to an applicant only if he can prove that the decision taken by the public authority is arbitrary, unreasonable and is not taken in the public interest. In the present case, the Respondent Board has already given fair opportunities to the Appellant for achieving the targets inclusive of extension given en bloc during pandemic. It is relevant to mention that the Appellant failed in achieving the targets till date. Also the extension given by the Board due to the impact of COVID- 19 cannot be termed as legitimate expectation for granting additional extension for achieving the obligation of achieving the targets.

Thus the Tribunal is of the view that considering the impact of COVID- 19 and the challenges faced by the Appellant due to pandemic, the Board did grant the extension of the benefit of force majeure of 24 months en-bloc extension and remedial time period upto December, 2022.

Further it is pertinent to mention herein that the Appellant cannot cover the shortcomings /failure of its performance in the garb of Force Majeure. It is also highlighted that this is the case where the Appellant was granted authorization through the bidding where as per Regulation 7(1) (C) it was one of the bidding parameter and MWP targets as per the authorization letter is sacrosanct.

Thus this Tribunal is of the view that the Respondent Board is correct in holding that the Appellant is devoid of merits and is not eligible for benefitting further additional period of 24 months by suspending the relative obligation i.e the extension of MWP Targets & exclusivity on account of force Majeure i.e COVID-19

5.2 **ISSUE 2:**

Whether the PNGRB is correct in holding that the submission of the catch up plan neither amends the terms and conditions of the Authorization nor revises the time period for completion of MWP targets.

- i. The GA of Palghar district was authorized on 01.04.2015 with a target completion time of 05 years w.r.t providing 51,452 D-PNG connection and laying 1800 inch-km of steel & MDPE pipeline, which was specifically mentioned in the authorization letter. These targets were to be achieved by the Appellant by 30.03.2020.
- ii. In order to monitor the progress, the Board vide letter dated 23.02.2017, asked the Appellant to appear on 07.03.2017 to present the latest status of the project and tentative schedule to achieve the specified targets of the subject GA. The Respondent Board during the meeting held on 07.03.2017 asked the Appellant to submit the catch up plans to cover up targets specified in minimum work plan as per the terms & conditions of the authorization letters.
- iii. On 23.12.2018, it was again observed by the Respondent Board during the progress review meeting that the progress with respect to subject GAs is unsatisfactory and advised to put all possible efforts to achieve the assigned targets for the CGD Network as per authorization terms and conditions to avoid any penal action.
- iv. On 21.06.2019, the Board called up the Appellant for the hearing under Regulations 16 of the PNGRB CGD Authorization Regulations. After presentation of the each of the GAs, the Board directed the Appellant to explain why action under Regulation 16 be not initiated against them for non achievement of targets. In response to the same, the Appellant vide letter dated 08.11.2019 submitted the updated project status.

- v. That since the targets were not achieved, the Respondent Board vide letter dated 04.03-2020 sought reasons from the Appellant, for the shortfall in achievement of the targets along with information and details of likely achievement up to 31.03.2020 against the MWP targets of the Subject GA. It is relevant to mention herein that it was specifically mentioned in the said letter that submission of the Catch up Plan would not lead to revision/extension of MWP Targets assigned as per authorization and the Respondent Board reserves its right to take action for non-achievement of targets.
- vi. That the Appellant, in response to the Respondent Board's letter dated 04-03-2020, vide its letter dated 06-03-2020 requested extension of time till 20-03-2020 for submissions of the requisite information considering the quantum of updates.
- vii. That the Appellant in their latest Catch-Up Plan on 20.03.2020, had apprised the Respondent Board of the various challenges being faced by the Appellant in the Palghar-Thane GA such as delay in (i) achieving Connectivity from Natural gas Pipeline; (ii) issuance of permission from local state authorities such as PWD; (iii) permission from various other authorities such as Railways and Wild Life and also submitted revised milestones from March 2020 to March 2022 for completion of their MWP targets.
- viii. It is relevant to mention herein that after considering the impact of COVID-19 the Appellant was granted the benefit of suspension of service obligation w.r.t MWP targets & extension of exclusivity for a period of 24 months to the Appellant and extended the date of exclusivity till 31.03.2022. Further vide letter dated 21.09.2022, the Respondent Board has further

given remedial period upto December, 2022 for achieving the targets.

- ix. It is relevant to mention herein that despite giving the benefit of 24 months en-bloc COVID 19 extension and further remedial extension till December 2022, the Appellant has failed to achieve the targets and as of now the present status is summarised below:-

S. No.	Thane GA MWP	Total MWP Target as per authorisation	Status as on July, 2022	Status as on 31.12.2023	Timeline by which the Appellant undertake to complete the remaining MWP vide affidavit pursuant to order dated 04.01.2024 & 11.01.2024
1	PNG-D	51452	10059	49801	31.03.2024
2	Inch-km Steel P/L	1800	1130	1677	31.03.2025

- x. It is also relevant to mention herein that achievement of MWP is not dependent on determination of exclusivity period or extension of exclusivity period. The yearly MWP targets are sacrosanct and accordingly an execution plan is required to be achieved yearly as per the milestones detailed in authorisation letter. The exclusivity period is limited which is 60 months in the present case for the Appellant w.r.t common carrier/contract carrier for CGD network & 300 month with respect to laying building & expansion of CGD network. The determination of exclusivity period & MWP Targets are independent of each other. The only relevance of MWP & exclusivity is the targets required to be achieved in each year in

the given exclusivity period w.r.t common carrier /contract carrier, which is clearly detailed in the authorization letter.

- xi. It is also a matter of fact that in present case the yearly MWP targets as detailed in the authorization letter that has been accepted by the authorized entity at the time of acceptance of authorization. Therefore in case the Appellant is not able to achieve various targets, the Board is empowered to take appropriate action against the defaulting entity in accordance with PNGRB Act & Regulations
- xii. As per the Regulation 13 (3) of the CGD Authorization Regulation which deals with post authorization monitoring of activities (pre-commissioning): *“(3) The Board shall monitor the progress of the entity in achieving various targets with respect to the CGD network project, and in case of any deviations or shortfall, advise remedial action to the entity”*. Thus it seems that submission of the catch up plans are sought from the entities with the view to speed up their works progress so that the entities achieve the targets as per the terms and conditions of the authorization, to suggest remedial action or if required, to take any adverse action for not achieving the targets as per the authorization.
- xiii. Board also explicitly mentioned in their letter dated 04.03.2020, while seeking the reasons for the shortfall in achieving the targets along with the information and details of likely achievement up to 31.03.2020 against the MWP targets, that the submission of catch up plan and information sought does not lead to revision/extension of MWP targets, assigned as per authorization. Thus the Board has reserved its right to take action for non-achievement of targets. There was also never a challenge to the aforesaid letter by the Appellant.

- xiv. Tribunal is of the view that once the catch up plan is sought from the entity, the Board should pass a proper order w.r.t the catch up plan, whether they are accepting or rejecting as being the regulator of the industry, they are empowered to monitor the progress and also the entity is aware of the repercussion of not achieving targets timely. It is clear that the submission of catch up plan by the Appellant does not automatically lead to revision / Extension of MWP Targets.
- xv. It is also relevant to mention herein the issue of Appellant exclusivity in relation to each of the relevant GAs is pending before Hon'ble High Court of Delhi's in the matter of *Gujarat Gas Limited v. PNGRB (LPA 254/2021)* wherein the stay on the operation, implementation and execution of the PNGRB's Public notice dated 13.09.2021 has been granted by the Hon'ble Court. The subject matter is still *sub judice*. Thus it will not be appropriate to adjudicate the issue of determination of exclusivity which is already pending before the Hon'ble High court.
- xvi. The submission of the catch up plans are sought from the entities with the view to speed up their works progress so that the entities achieve the targets as per the terms and conditions of the authorization, to suggest remedial action or if required, to take any adverse action for not achieving the targets as per the authorization.
- xvii. While seeking the reasons for the shortfall in achieving the targets along with the information and details of likely achievement up to 31.03.2020 Board also explicitly mentioned in their letter dated 04.03.2020, against the MWP targets, that the submission of catch up plan and information sought does not lead to revision/extension

of MWP targets, assigned as per authorization and the Board reserves its right to take action for non-achievement of targets.

- xviii. Hon'ble Supreme Court in ***Joshi Technologies International INC vs UOI & others (2015) 7SCC*** in para 70.5 has held *“that occurrence of commercial difficulty inconvenience or hardship in the performance of the condition agreed to in the contract can provide no justification in not complying with the terms of the contract which the parties has accepted with open eyes.”*
- xix. Tribunal is of the view that once the catch up plan is sought from the entity, the Board should pass a appropriate order, whether they are accepting or rejecting, w.r.t the catch up plan The catch up plan submitted by the entities provides the details regarding the permissions, resources, reasons for delay and other enablers and the future road map to cover up the gap in order to achieve the project's timeline
- xx. Being the regulator it is for the Board to accept/extend/reject the catch up plans for achieving the MWP targets in accordance with PNGRB Act & Regulation. The Respondent Board is empowered to take appropriate action in case of default or breach of the obligation by any entity as settled at the time of authorization. The Respondent Board should monitor the progress and pass appropriate orders/direction after due diligence and accordingly suggested to make proper procedure in line with applicable act, laws and regulations. The Respondent Board is suggested to make an SOP with respect to the same in order to streamline the gap between the targets given and targets achieved by the entities.
- xxi. The entity is aware of the repercussion of not achieving targets timely. It is clear that the submission of catch up plan by the Appellant does not automatically lead to revision / Extension of

MWP Targets and the Respondent being regulator has to analyse the cause of delay and issue appropriate direction accordingly.

- xxii. It is also clear from the contention of the Appellant that they were unable to achieve the said targets due to lack of various govt./ statutory Permission /approval In this respect it is relevant to mention herein the Board time and again clarified that statutory permission cannot be classified as the ground of benefitting due to force Majeure.

Thus it is undisputed that mere submission of catch up plan by the Appellant will not automatically suspend /extend relative obligation towards MWP under the terms and conditions of the authorisation unless specifically allowed by the Board.

5.3 Issue 3 :

Whether the impugned order dated 28.07.2022 is bad in law as the opportunity of being heard was not granted.

- i. As per the contention of the Appellant that on 20.06.2022 they submitted an application for amendment in the pending review petition. A hearing on the interim application for amendment was held on 05.07.2022 and on the same day the Respondent Board admitted and took it on record. However, no hearing or opportunity to submit supporting facts, data and arguments or even written submissions in relation to the amended petition was provided and instead the operative portion of the Impugned Order was first pronounced on 28.07.2022 and the detailed order comprising the Impugned Order was uploaded on the website of Respondent Board on evening of 28.07.2022 There was therefore no hearing provided in relation to the amended Review Petition.

- ii. Whereas the Respondent Board has contended that on 31.5.2022, the Appellant sought time to file an amended Review Petition which was duly filed on 20-6-2022. Thereafter the review petition was again listed for hearing on 23.06.2022 , where the Appellant sought adjournment.
- iii. The Board granted the final opportunity for arguments and directed the matter to be listed on 05.07.2022 wherein the Review Petition along with Application seeking permission to amend the review petition were taken up for hearing and the Application for amendment was allowed and that the final arguments on the review petition were heard and the order was reserved. The relevant extract of the order dated 05.07.2022 is :-

“By way of an interlocutory Application, the Review Petitioner seeks liberty to amend the original review petition & withdraw the prayer(s) made in the original petition to an extent of UT of Dadra & Nagar Haveli District GAs and confine the original petition and prayers in respect of GAs namely, Palghar district & Thane Rural.

In view of the submission made by the Ld. Counsel, the Interlocutory Application are taken on record and the Board allows to amend the original review petition as prayed.”

- iv. It is clear from the order dated 05.07.2022, that the Board has considered the amendment sought by the Appellant for withdrawal of other disputed GAs which was originally filed by the Appellant in review petition except the GAs in question. The same is also incorporated in the impugned order dated 28.07.2022.

Thus it clear that fair opportunity was granted to the Appellant and there is no violation of principle of natural justice and no prejudice has been caused to the Appellant.

5.4 Issue 4:

Whether the impugned order dated 28.07.2022 is a valid order of the Respondent Board as the said order and also the

certified copy of the same does not have the signature of members hearing and deciding a petition.

- i. It is the contention of the Appellant that the Impugned Order is *non-est* in law as it does not bear the signatures of the members that had heard the matter and neither has it till date been duly communicated to the Appellant as required under Regulation 29 Petroleum and Natural Gas Regulatory Board (Conduct of Business, Receiving and Investigation of Complaints) Regulations, 2007 (“COB Regulations”). but only carries type written words “Sd/-” above the names of each of the members. The certified copy also does not have the signatures of the Members who had heard and decided the review petition and only carries the typed written words “Sd/-” above the names of the members and has been marked as “certified copy” by the Secretary. The Impugned Order merely uses the phrase “Sd/-” and does not contain signatures of the Members or the Secretary or any officer empowered by the Chairperson of the Board in this regard as mandated by s.8(1), s.8(3) and s.8(4) r.w. S. 10 r.w s.13(3) PNGRB Act read with the PNGRB COB Regulations.
- ii. Where as it is the contention of the Respondent Board that with effect from April 2022, the Respondent Board adopted the general practice, similar to various other Tribunals, to not provide original signed orders to the parties and only mention ‘Sd/-’ above the names of each of the members, and to retain the originally signed copy of the Order for itself. Order impugned by the Appellant is in conformity with s.8(1), s.8(3) and s.8(4) r.w. S. 10 r.w s.13(3) PNGRB Act read with the PNGRB COB Regulations.
- iii. From the bare perusal of Section 24 (2)(a) of the PNGRB Act read with PNGRB COB Regulations mandates the PNGRB to issue a final decision or Order of the Board with signatures of members who heard the petition. The placing of the phrase “Sd/-” does not

substitute signature as required for orders and decisions of the Board under the PNGRB Act.

- iv. It is also relevant to mention that this is also not a case of digital signature/water mark being added so as to be considered as a valid signature having been placed on an official document in terms of the Information Technology Act, 2000.
- v. The said Impugned Order has not been signed in accordance with the PNGRB Act & Conduct of Business, Receiving and Investigation of Complaints, Regulations, 2007. It is to be highlighted that under Order 20, Rule 3 CPC a Judgment is required to be dated and signed by the Judge in open court at the time of pronouncing it and when once signed shall not afterwards be altered or added. Although the CPC is not applicable in totality it is instructive particularly in terms of s. 13(3) PNGRB Act in relation to principles of natural justice.
- vi. This Hon'ble Tribunal in the case of Mahanagar Gas Limited v PNGRB & ORS (Appeal 110/2020) vide judgement dated 16.07.2021 has also held that signature of the members of a quasi-judicial authority who have heard a petition is mandatory and an order not indicating consent of all members who heard the matter is in breach of natural justice.
- vii. Further Hon'ble Supreme Court in case ***State Bank of India and Another versus Ajay Kumar Sood (CA No. 5305 of 2022) in para22 clarified that*** “....All judicial institutions must ensure that the judgments and orders being published by them do not carry improperly placed watermarks as they end up making the documents inaccessible for persons with visual disability who use screen readers to access them. On the same note, courts and tribunals must also ensure that the version of the judgments and

orders uploaded is accessible and signed using digital signatures. They should not be scanned versions of printed copies. The practice of printing and scanning documents is a futile and time-consuming process which does not serve any purpose. The practice should be eradicated from the litigation process as it tends to make documents as well as the process inaccessible for an entire gamut of citizens.”

viii. The PNGRB Act and the regulations there under do not permit orders and decisions of the Board to be communicated otherwise than bearing the signatures of the Board. The present Impugned Order merely bearing the typed alphabets “Sd/-” is not in accordance with the provision of the relevant Act/Regulation.

ix. Section 24(2)(a) of the PNGRB Act provides that:

“The Bench constituted under sub-section (1) shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable by a civil court on any matter relating to – (a) refining, processing, storage, transportation and distribution of petroleum, petroleum products and natural gas by the entities...”

x. Section 28 of the PNGRB Act provide Civil penalty for contravention of directions given by the Board as detailed herein :-

“In case any complaint is filed before the Board by any person or if the Board is satisfied that any person has contravened a direction issued by the Board under this Act to provide access to, or to adhere to the transportation rate in respect of a common carrier, or to display maximum retail price at retail outlets, or violates the terms and conditions subject to which registration or authorisation has been granted under section 15 or section 19 or the retail service obligations or marketing service obligations, or does not furnish information, document, return of report required by the Board, it may, after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of civil penalty an amount which shall not exceed 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: Provided that in the case of a complaint on restrictive trade practice, the amount of civil penalty may extend to five times the unfair gains made by the entity or ten crore rupees, whichever is higher.”

xi. Section 29 of the PNGRB Act provides that:

“Every order made by the Board under this Act shall, on a certificate issued by an officer of the Board, shall be executable in the same manner as if it were a decree of a civil court...”

xii. As evident from above relevant clauses from the PNGRB Act, PNGRB has the power to impose civil penalty under Section 28 and order of the Board has been statutorily treated as Decree of a civil court under Section 29 of the Act. Therefore, the Board clearly has the essential trappings of a court. Any proceeding or an action by the PNGRB in a complaint may result in adverse consequences affecting the rights and interest of an entity.

xiii. In the Appellate Tribunal For Electricity at New Delhi (Appellate Jurisdiction) Appeal No. 233 of 2016: **Global Energy Pvt. Ltd. And Karnataka Electricity Regulatory Commission**, held that,

“..... All members of the Commission who heard the matter should sign the order. If the order is not signed by all the members who heard the matter it will be invalid as it will not be the order of the commission. This is in line with the fundamental proposition that a person who hears must decide and divided responsibility is destructive of the concept of judicial hearing. If a Member dissents he must give reasons for the dissent and that shall form part of the order. This is against the basic principle that one who hears the matter should sign the order.It has ignored the fundamental principle of judicial decision-making which applies to quasi judicial bodies as well that one who hears the matter must sign the order.

"59. It is quite true that a quasi-judicial Tribunal enjoys greater flexibility and freedom from the strict rules of law and procedure than an ordinary court of law, but however much informality and celerity might be considered to be desirable in regard to the proceedings of an Industrial Tribunal, Section 16 of the Industrial Disputes Act makes the imperative provision that the

award of a Tribunal shall be in writing and shall be signed by all the Members. So long as there is no change or alteration in the original notification which constituted the Tribunal, the expression "all the Members" must mean and refer to all the members whose names appear in this notification and, unless all of them sign the award, it would not be valid or operative award in the law."

- xiv. As contended by the Board that from the effect of April 2022, the Respondent has adopted the general practice similar to various other Tribunals do not provide original signed orders to the parties and only mention SD/- in the above of each of the name of each of the members and to retain the original signed copy of the order itself and to produce the said original signed order as and when directed.

In view of the above it is apposite to say that the proper notification in regard to such change in general practice of signing the order sheet as sd/- to be considered as signed must be given by the Board, until then the Respondent Board is bound by the mandatory provisions of the Act.

ORDER

In view of the above the Tribunal is of the view that:-

- 1. Considering the impact of COVID- 19 and the challenges faced by the Appellant due to pandemic, the Board did grant the benefit of *force majeure* of 24 months *en-bloc* extension and remedial time period upto December, 2022.**
- 2. This is the case where the Appellant was granted authorization through the bidding where as per Regulation 7(1) (C) it was one of the bidding parameter. MWP targets as per the authorization letter is sacrosanct and the Appellant cannot cover the shortcomings /failure of its performance in the garb of Force Majeure.**
- 3. The Respondent Board is correct in holding that the Appellant is devoid of merits and is not eligible for benefitting further**

additional period of 24 months by suspending the relative obligation i.e the extension of MWP Targets & exclusivity on account of force Majeure i.e COVID-19 .

4. Mere submission of catch up plan by the Appellant will not automatically suspend /extend relative obligation towards MWP under the terms and conditions of the authorisation unless specifically allowed by the Board.
5. The fair opportunity was granted to the Appellant and there is no violation of principle of natural justice and no prejudice has been caused to the Appellant..
6. The proper notification in regard to change in general practice of signing the order sheet as sd/- to be considered as signed must be given by the Board, until then the Respondent Board is bound by the mandatory provisions of the Act.

Having regard to the factual and legal aspects of the matter as stated above, the Appeal is dismissed.

IA's pending, if any, is disposed off accordingly.

No order to the cost.

PRONOUNCED IN THE OPEN COURT ON THIS DAY OF 26th

April, 2024.

**(Virender Bhat)
Judicial Member**

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

REPORTABLE / ~~NON-REPORTABLE~~