

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 688 OF 2023 & IA Nos. 833 & 1706 of 2023
and 584 of 2024

Dated : 8th May, 2024

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

In the matter of:

THINK GAS LUDHIANA PRIVATE LIMITED

Through: Mr. Siddhesh Redkar, Head (Legal and Compliance)

Having registered office at:

A-49, Ground Floor, Lane No.1

Guru Nanak Pura, Laxmi Nagar, East Delhi,

Delhi – 110092

Email: siddhesh.redkar@think-gas.com

...APPELLANT

Versus

**PETROLEUM & NATURAL GAS
REGULATORY BOARD**

Through the Secretary

First Floor, World Trade Centre,

Babar Road, New Delhi – 110001

Email: secretary@pngrb.gov.in

...RESPONDENT NO. 1

JAY MADHOK ENERGY PVT. LTD.

Through Mr. Mandeep Singh Suri, Director

F-249 (G.F.) New Rajinder Nagar,

New Delhi – 110060

Email: jaymadhokenergy2009@gmail.com

...RESPONDENT NO. 2

JAY MADHOK HOLDINGS PVT. LTD.

Through Mr. Mandeep Singh Suri, Director
F-249 (G.F.) New Rajinder Nagar,
New Delhi – 110060

Email: jaymadhokholdings@gmail.com

...RESPONDENT NO. 3

ISHAR GAS LUDHIANA PVT. LTD.

(Struck off and Dissolved vide Registrar of Companies notification dated 20.04.2022)

Through Mr. Mandeep Singh Suri, Director
F-249 (G.F.) New Rajinder Nagar,
New Delhi – 110060

Email: ishargasludhiana@gmail.com

...RESPONDENT NO. 4

ISHAR GAS JALANDHAR PVT. LTD.

(Struck off and Dissolved vide Registrar of Companies notification dated 20.04.2022)

Through Mr. Mandeep Singh Suri, Director
F-249 (G.F.) New Rajinder Nagar,
New Delhi – 110060

Email: ishargas@gmail.com

...RESPONDENT NO. 5

Counsel for the Appellant(s)	:	Sumiti Yadava Piyush Joshi for App.1
Counsel for the Respondent(s)	:	Utkarsh Sharma Sakie Jakharia Tanuja Dhoulakhandi Mohit Budhiraja Sanskriti Bhardwaj

Kartikey Joshi
Harshita Tomar
Suyash Gaur for R.1

Aakriti Dawar
Sourav Agarwal
Ayushman Chowdhury
for R. 2

JUDGMENT

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The Appellant Company is aggrieved by the Order dated 13th March, 2023 of the First Respondent Petroleum and Natural Gas Regulatory Board (hereinafter referred to as PNGRB or “the Board”) wherein it has been held that the pipeline laid by the Respondents from tap off point at Doraha to their City Gate Station (CGS), which passes through the geographical area authorized to the Appellant is a sub-transmission pipeline (STPL) which is permissible under the provisions of Petroleum and Natural Gas Regulatory Board Act (PNGRB Act) and extant Regulations framed thereunder and the said STPL does not infringe the infrastructure exclusivity of the Appellant.

2. The Appellant is the successor of the consortium of Think Gas Investment Pte. Limited and Think Gas Distribution Private Limited and duly authorized by PNGRB for laying, building or expanding the City Gas

Distribution Network (CGD Network) in the geographical area of Jalandhar (except areas already authorized), Kapurthala & SBS Nagar Districts (**“Think Gas Jalandhar GA”**); and Ludhiana District (except areas already authorized), Barnala District and Moga District (**“Think Gas Ludhiana GA”**). These two geographical areas were initially awarded to the above noted consortium and the authorization was subsequently amended in favour of the Appellant vide order dated 16th May, 2019 of the Board.

3. The 2nd Respondent, Jay Madhok Energy Private Limited (**“JMEPL”**) was incorporated as a new company on 17th September, 2009 vide a Board Resolution passed by the Board of Directors of M/s. Jay Polychem (India) Limited which was planning to start a new business of distribution of natural gas.

4. The 3rd Respondent Jay Madhok Holdings Pvt. Ltd. (JMHP) was incorporated on 19th May, 2011.

5. PNGRB issued a public notice dated 23rd July, 2010 inviting bids for the development of city gas distribution network for certain geographical areas including, inter alia, Jalandhar and Ludhiana. The geographical area

of 338 sq. km. comprising of Jalandhar city was demarcated in the map provided on the official website of the Respondent Board. Similarly, GA of 211 sq. km. comprising of Ludhiana city was also demarcated in the said map. This was the 3rd CGD bidding round.

6. A consortium comprising of 2nd Respondent – JMEPL and a partnership firm of M/s Jay Madhok Holdings, (hereinafter referred to as “JMEPL led Consortium”), participated in the said Bidding Round conducted in the year 2010, and submitted its bid for specified areas within Jalandhar and Ludhiana. Subsequently, the partnership firm M/s. Jai Madhok Holdings was dissolved and in its place 3rd Respondent - JMHPL was incorporated with the object of taking over the business carried on by Jay Madhok Holdings as well as to take over its assets/liabilities.

7. The Respondent-Board issued authorization to JMEPL led Consortium on 6th September, 2013 for laying, building, operating or expanding the city gas distribution network in the geographical area of Jalandhar city to the extent of 338 sq. km. Similarly, the consortium was issued authorization by the Board on 25th June, 2015 for laying, building,

operating or expanding the CGD network in the geographical area of Ludhiana to the extent of 211 sq. km.

8. On 28th September, 2015, the Respondent-Board encashed 25% of Performance Bank Guarantee of 2nd Respondent JMEPL for violation of the terms of grant of authorization for Jalandhar GA. The order was assailed by JMEPL before this Tribunal by way of Appeal No. 13 of 2016.

9. Meanwhile a writ petition bearing CWP No. 13490 of 2008 had also come up for hearing before the Punjab and Haryana High Court wherein order dated 28th May, 2016 was passed which records that JMEPL had submitted an affidavit stating that it shall fully endeavor to set up CNG stations in the cities of Jalandhar and Ludhiana within four month from the date of the affidavit.

10. Thereafter, the authorization of JMEPL led consortium with regard to the Ludhiana GA was cancelled on 15th July, 2016 and entire Performance Bank Guarantee submitted by JMEPL was encashed. This order was also assailed by JMEPL before this Tribunal by way of Appeal No. 197 of 2016 and this Tribunal, vide order dated 28th April, 2017, set aside the show

cause notices issued to the consortium as well as the encashment of bank guarantee. The Respondent-Board was directed to follow the Regulation 16 instead of Regulation 11 of the PNGRB Authorization entities to lay, build, operate or expand City or Local/Natural Gas Distribution Networks Regulations, 2008 (hereinafter referred to as CGD Authorization Regulations, 2008) and pass an order accordingly. At the same time, this Tribunal dismissed the Appeal No. 13 of 2016 filed by JMEPL vide order dated 26th May, 2017 thereby upholding the Board's order regarding encashment of a portion of the performance bank guarantees in respect of the Jalandhar GA.

11. On 2nd February, 2018, the JMEPL submitted a letter to NHAI seeking permission for laying a 12" dia gas pipelines from JMEPL CGS at Doraha to Smarala Chowk approximately 24 km in length.

12. The Board launched 9th CGD bidding rounds in April, 2018 for 86 geographical areas, including (i) geographical area of Jalandhar (except areas already authorized), Kapurthala and SBS Nagar Districts and (ii) the geographical area of Ludhiana (except the areas already authorized), Barnala District and Moga District. The GAs already granted to the

consortium led by JMEPL in the year 2021-22 in Jalandhar and Ludhiana districts were specifically excluded.

13. On 18th June, 2018 Registrar of Companies NCT of Delhi & Haryana, Ministry of Corporate Affairs, Government of India, (hereinafter referred as “ROC”) issued a public notice under s. 248(1) of the Companies Act, 2013, proposing to remove/strike off the names of certain specified companies, including 2nd Respondent and 3rd Respondent from the Register of Companies. Accordingly, the 2nd Respondent, JMEPL did not participate in the 9th bidding round and instead filed appeals before this Tribunal bearing Appeal No. 297 of 2018 & 300 of 2018 challenging the decision of the Board in going ahead with the bid process for the geographical areas of Jalandhar and Ludhiana Districts in 9th bidding round. Upon an application filed by the consortium led by Think Gas Investment Pte. Ltd., it was impleaded in these two appeals as Respondent No. 2. Later on, vide judgement dated 20th December, 2019, this Tribunal rejected both the appeals.

14. On 8th August, 2018, ROC issued another notice specifying the names of certain companies including 2nd and 3rd Respondent which had

been removed/struck off from the Register of the Companies and which stood dissolved with effect from the said date in accordance with Section 248(5) of the Companies Act.

15. The consortium led by Think Gas Investment Ptd. Ltd., and Think Gas Distribution Pvt. Ltd. emerged as a successful bidder for the geographical areas of Jalandhar and Ludhiana (except the areas already authorized) and accordingly was issued letter of intent for grant of authorization by the Board on 10th August, 2018. The Board, thereafter, granted authorization to the consortium on 26th October, 2018. It was amended in favour of the Appellant on 16th May, 2019.

16. On the same date i.e. 26th October, 2018 the National Company Law Tribunal (NCLT) passed an order in the appeals filed by the 2nd Respondent against the removal of its name from the Register of its Companies, thereby directing restoration of its name in the said register subject to its filing of all outstanding documents along with proper fees. Similarly, vide order dated 7th December, 2018 passed by NCLT in separate appeal filed by the 3rd Respondent, the name of the 3rd Respondent was also restored in the register of companies.

17. The Appellant approached the Board with a complaint on 16th June, 2019 bearding Case No. Legal/1-BC (2)/ 2019) against the Respondent Nos. 2 to 5 herein under Section 21(3) read with Section 12(1)(b); 25, 13(1)(g), 28 and 48 of PNGRB Act alleging interference and violation of the authorization granted to it by the Respondent-Board. It was alleged in the complaint that JMEPL led consortium, which is an authorized entity for Jalandhar GA and Ludhiana GA, is willfully breaching and infringing the infrastructure and marketing exclusivity of the Appellant. It was further alleged that the Respondents have wrongfully obtained an interim order from this Tribunal by withholding the material information with regard to the action being taken by the ROC which led to delay in grant of authorization to the Appellant by 78 days.

18. Stating briefly the contention of the Appellant before the Board in the complaint was that JMEPL led consortium was violating the marketing exclusivity of the Appellant by webhosting Pre-registration forms for new connections to the customers in its areas falling within confines of geographical areas authorized to the Appellant and is also violating its infrastructure exclusivity by unlawful work of laying of sub transmission

pipelines in its authorized areas and has constructed a City Gate Station (CGS) within the authorized area of the Appellant. On these contentions, following reliefs were claimed by the Appellant :-

(ii) Final Relief: This Hon'ble Board, be pleased to hold and grant the Complainant the following reliefs:

(a) Hold that the Respondents willfully interfered with the rights of the Complainant and caused the Complainant prejudice in obtaining a status quo order by withholding material information from the Hon'ble APTEL and continuing to extend the same and causing a 78 day delay in the award of the authorisations to the Complainant and direct the Respondent 1 and Respondent 2 to pay an amount of Rs. 78,00,00,000/- (Rupees Seventy Eight Crores) to the Complainant as damages in respect thereof.

(b) Hold that the Respondents have violated the marketing exclusivity granted to the Complainant in the geographical areas of (i) Jalandhar (except areas already authorised), Kapurthala & SBS Nagar Districts and (ii) Ludhiana District (except the areas already authorized), Barnala District and Moga District and direct the Respondents No. 1 to 4 to jointly and severally to pay the Complainant an amount of: (i) Rs. 30,00,00,000/- (Rupees Thirty Crores) as damages for violating the marketing exclusivity for Jalandhar (except areas already authorised), Kapurthala & SBS Nagar Districts and (b) Rs. 30,00,00,000/- (Rupees Thirty Crores) as damages for violating the marketing exclusivity for Ludhiana District (except the areas already authorized), Barnala District and Moga District.

(c) Hold that sub-transmission pipelines cannot be unilaterally laid in areas that are part of a Geographical Area for which an entity has been authorised to develop CGD Network without due consultation and agreement on the route that such STP would take with the authorised entity for the relevant geographical area.

(d) Hold that the Respondents have violated the infrastructure exclusivity granted to the Complainant in the geographical area of Ludhiana District (except the areas already authorized), Barnala District and Moga District and direct the Respondents No. 1 and 2 to jointly and severally to pay the Complainant an amount of Rs. 30,00,00,000/-

(Rupees Thirty Crores) as damages for violating the infrastructure exclusivity for Ludhiana District (except the areas already authorized), Barnala District and Moga District.

(e) Hold that Respondent No.1 and Respondent No.2 have acted in fraudulent manner and misrepresented material facts to the Hon'ble Board and consequently the JM Jalandhar Authorisation dated 6th September 2013 and JM Ludhiana Authorization dated 25th June 2015 are void and cease to be valid under law and the performance bonds submitted stand forfeited in their entirety. OR in the alternate

(f) Hold that the consortium of Jay Madhok Energy Pvt. Ltd. and Jay Madhok Holdings Pvt. Ltd. ceased to be an authorised entity upon the dissolution of the said entities on 08.08.2018 and the same is not capable of rectification and the respective JM Jalandhar Authorisation dated 6th September 2013 and JM Ludhiana Authorization dated 25th June 2015 stood surrendered and lapsed. The reinstatement of Respondent No.1 and Respondent No.2, which occurred at different times does not result in the reconstitution of the consortium or the "authorised entity" under the PNGRB Act.

(g) Hold that the title and property in the pipelines laid by the Respondents in the geographical area of Ludhiana District (except the areas already authorized), Barnala District and Moga District stand transferred to the Complainant, without any cost;

(h) Direct the Respondents to pay an amount of Rs. 25,00,00,000/- (Rupees Twenty Five crores) to the Complainant as damages in respect of the tortious interference with and willful actions of the Respondent to negate the value of the Think Gas CGD Authorizations;

(i) Hold that the Respondents have violated the specific directions of limiting its marketing of gas to the geographical area of the JM Ludhiana Authorization and JM Jalandhar Authorization and direct the Respondents to pay a fine, under s.44 PNGRB Act, of Rupees Twenty - 8- Five Crores (Rs. 25,00,00,000/-) with additional fine of Rupees Ten Lacs (Rs. 10,00,000/-) for each day that the contravention continues;

(j) Direct the Respondent to pay a civil penalty under the provisions of s.28 PNGRB Act is an aggregate of: (i) Rs. 1,00,00,000/- (Rupees One Crore) towards violation of Think Gas Jalandhar CGD Authorisation, (ii) Rs. 1,00,00,000/- (Rupees One Crore) towards violation of Think Gas Ludhiana CGD Authorisation, (iii) Rs. 10,00,000/- (Rupees Ten Lacs) for each day that the contravention continues each day thereafter;

(k) Direct the filing of a complaint on behalf of the Hon'ble Board with the Chief Metropolitan Magistrate of Ludhiana or the Chief Judicial Magistrate of Ludhiana, against Respondents for taking cognizance of the offences wilfully commissioned by Respondents and for imposition of penalties under s.46 (Punishment for Unauthorized Activity) r.w. s.50 (Offences by Companies) PNGRB Act;

(l) Direct the Respondents to pay costs of Rs. 20,00,000/- (Rupees twenty Lakhs) to Complainant, as costs for the filing and prosecution of the present complaint;

(m) Other Directions: This Hon'ble Board be pleased to issue such other directions, orders, injunctions, as this Hon'ble Board may determine in light of the facts and circumstances of this case. ”

19. The Board, in its order dated 19th March, 2020 held that no infringement of infrastructure exclusivity of the Appellant had been caused by the Respondent in laying sub-transmission pipeline from the tap-off point to their city gate station. At the same time, it was held that the Respondents indulged in infringement of marketing exclusivity of the Appellant by offering gas distribution in the villages of Bilga, Dharour, Dugri, Majra and Umedpur which fall outside the GA boundary of Jalandhar and Ludhiana Gas. The relevant portion of the Order is quoted hereunder :-

“We hold that there is no infringement of infrastructure exclusivity by the Respondents in laying of STPL from tapoff point at Doraha to their CGS. Normally, CGS should be within the boundary of GA. However, for compelling reasons, it can be outside GA boundary subject to the condition that STPL and CGS will not be used for marketing or selling of gas outside the authorised area of the entity laying such STPL or CGS. -15- We hold the Respondents have indulged in infringement of marketing exclusivity by offering gas distribution in villages of Bilga, Dharour, Dugri, Majra and Umedpur and continuing to do so village Majra, which fall outside the GA

boundary of Jalandhar and Ludhiana GAs. The Respondents are hereby directed to remove the name of "MAJRA" from their website by 31st March, 2020 to avoid any penal action in this regard. In view of the same, the present complaint is dismissed without costs."

20. The Appellant assailed the said order dated 19th March, 2020 of the Board before this Tribunal by way of an Appeal No. 11 of 2022 which was disposed off vide order dated 14th September, 2022 thereby remanding the matter back to the Board for fresh consideration on finding that the impugned order dated 19th March, 2020 had not been signed by Member Legal of the Board. The following observations and directions made by this Tribunal in the order dated 14th September, 2022 while remanding the matter back to the Board are material and are quoted hereunder:-

"During the hearing before this Tribunal on the appeal at hand, an apprehension was expressed on behalf of the second to fifth respondents that the remit may entail misuse of the opportunity for the scope of the complaint to be enlarged. The learned Counsel for the appellant (complainant before the Board) submitted, on the basis of instructions taken, solemn undertaking that the complaint as originally presented before the Board will only be pressed for consideration. We bind the appellant with the said undertaking."

21. Upon remand, the Board heard the parties again and passed a fresh order dated 13th March, 2023 reiterating that the pipeline laid by the Respondent in the GAs of the Appellant is a sub-transmission pipeline which is permissible under the provisions of PNGRB Act as well as extant

Regulations framed thereunder and it no where infringes the infrastructure exclusivity of the Appellant. The observation of the Board in paragraph Nos. 20 to 23 are relevant and are reproduced hereunder :-

“20. On perusal of the applicable provisions of the PNGRB Act, 2006 and extant regulations framed thereunder, it can be seen from the proviso to Regulation 2(g) of the CGD T4S Regulations, that in case City Gas Station is built up outside the GA of the entity, then the pipeline connecting from CGS to CGD network shall be considered as a part of CGD network. However, if such pipeline is used for supplying the natural gas to the customers located outside the GA, then such pipeline would not be considered to be part of CGD Network and such activity for laying the said pipeline is not permissible.

21. It is the case of Complainant that pipeline laid down by the Respondent neither encompasses STPL nor are they the part of any authorised CGD network. However, in rebuttal, the Respondent submits that pipes have been lowered and backfilled in the areas where permission has been granted and the pipes are continued to strung in those areas where permissions have been stalled due to the present complaint. After perusal of the facts on records and evidence, the Board is inclined to say that the CGD Authorization Regulations and CGD T4S Regulations do not restrict any entity to lay down pipelines from the tap off point to their authorised area and permits it to choose any nearest tap-off point for taking the gas from natural gas pipeline. As the pipeline has to be laid by CGD entity thus transfer of gas has to take place upstream of STPL i.e. only at the tap-off /hook up location.

22. It is the case of Complainant that the Authorisation of "Jay Madhok Energy Private Limited Led Consortium" lapsed with the dissolution and strike out of both Jay Madhok Energy Private Limited and Jay Madhok Holdings Private Limited on 08.08.2018, and the "Ishar Gas Jalandhar Pvt. Ltd.", "Ishar Gas Ludhiana Pvt. Ltd." has been struck off and dissolved by ROC vide Notification dated 20.04.2022. The Board is of the view that both the parties may take recourse in appropriate forum to avail the remedial action, available to them if so advised.

23. In view of the aforesaid observations and the facts on records, the Board is of opinion that the pipeline laid down by the Respondent in the GA of the Compliant is the sub transmission pipeline, therefore, the activities carried by the Respondent is permissible and nowhere violated the provisions of the PNGRB Act and extant regulations framed thereunder.

The Board holds that laying of STPL from tap-off point at Daroha to their CGS, nowhere infringed the infrastructure exclusivity of the Complainant. In addition to the above, the Complainant has not been able to substantiate its case by any oral or documentary evidence.”

22. The said order of the Board dated 13th March 2023 has been impugned in this appeal.

23. We have heard Learned Counsel appearing for the parties in detail and also considered the written submissions filed by them.

24. It is argued on behalf of the Appellant that authorization issued to JMEPL led consortium for the specified areas within Jalandhar and Ludhiana lapsed and ceased to be valid under the PNGRB Act upon dissolution of the firm M/s Jay Madhok Holdings which was one of the constituents of the successful consortium. The Learned Counsel argued that in order for a pipeline to be a Sub-Transmission Pipeline (STPL) envisaged under Regulation 2(2) of the CGD T4S Regulations , it should be between the main transmission pipeline and the City Gate Station and should be owned by the CGD entity. According to the Learned Counsel both the tests are not met in the instant case. It is his submission that since the authorization issued to JMEPL led consortium had since lapsed, it

cannot be treated as CGD entity and, therefore, any pipeline sought to be laid by such an entity within the geographical area of the Appellant does not constitute as Sub-Transmission Pipeline.

25. Perusal of the impugned order of the Board reveals that it took note of these submissions on behalf of the Appellant but did not express its views and advised parties to take recourse in this regard before an appropriate forum to avail the remedial action available with them.

26. During the course of arguments, it was submitted on behalf of the Board that it had initiated steps to take action against JMEPL led consortium for these violations by issuing Show Cause Notices which ultimately culminated in order dated 3rd February, 2020 whereby it cancelled the authorization granted to the JMEPL led consortium qua Ludhiana GA and also imposed penalty upon the consortium qua the authorization in Jalandhar GA. It is further stated that the order dated 3rd December, 2020 was assailed before this Tribunal by the consortium by way of Appeal Nos. 160, 161 & 162 of 2020 which were allowed vide judgement dated 28th September, 2022 thereby setting aside the order of

the Board dated 3rd December, 2020. It is further pointed out that Civil Appeals filed by the Board against judgement dated 28th September, 2022 of this Tribunal before the Hon'ble High Court are still pending adjudication.

27. On behalf of the 2nd Respondent, it was argued that the issues have been settled by this Tribunal in the above noted judgement dated 28th September, 2022 are no longer *res integra*.

28. We have gone through the judgement dated 28th September, 2022 of this Tribunal passed in Appeal Nos. 160 of 2022, 161 of 2022 & 162 of 2022 titled M/s Jay Madhok Energy Pvt. Ltd. Led Consortium Vs. PNGRB and find that the issues pertaining to the dissolution of the partnership firm Jay Madhok Holdings, incorporation of Jay Madhok Holdings Private Ltd. (JMHPL) (the third Respondent herein), the consequent change in the constitution of the consortium as well as the validity of the formation of Ishar Gas Jalandhar Pvt. Ltd., Ishar Gas Ludhiana Pvt. Ltd. (Respondent Nos. 4 & 5 herein) as special purpose vehicles (SPV) were raised in these appeals and it has been held as under:-

“89. The incorporation of JMHP and its taking over of the assets and liabilities of JM was clearly a step in the direction of compliance with the

requirement of Regulation 5(6)(f) of the Authorization Regulations. The material on record has demonstrated that the setting up of Special Purpose Vehicle (“SPV”) or Joint Venture (“JV”) for full compliance in letter and spirit Page 64 Appeal Nos. 160, 161 & 162 of 2022 of 100 1579 of Regulation 5(6)(f) would occur later, in 2015, when JMEPL, the leading stakeholder in the consortium, joined hands with JMHPL in the appropriate control of IGJPL that was incorporated on 13.12.2013.

94. There is no doubt that it was part of the conditions attached to the grant of authorization that the authorized entity turned into a company registered under the Company Law so as to fulfil the “minimum eligibility criteria” prescribed in Regulation 5(6)(f). It bears repetition to note that there was no timeline prescribed for such compliance to be made (for the cases at hand). The original consortium partners had included a company and a partnership firm. It was the requirement of the regulations with they turned into a company, a Joint Venture (or SPV). The consortium partners opted for a course wherein the partnership firm (JMH) was first taken over by a company (JMHPL), the shareholding of its capital being identical to that of the partners of erstwhile firm, this having been achieved on 29.03.2013. Parallely, another company IGJPL was incorporated on 13.12.2013 and the stake in the said company was taken over by the consortium partners on 31.03.2015 in the same ratio as in which they had submitted the bid.

95. There is no inhibition in the Authorization Regulations or bid documents or, for the matter, in law that ‘joint venture’ of such nature should have been formed from inception by the consortium partners only and none other. In this view, the fact that JMEPL held only 50% stake in IGJPL on 13.12.2013 or that the remainder stake of IGJPL on that day was held by an individual (Satinder Singh) will not make any difference. The crucial fact is that IGJPL presented a mirror image in shareholding as that of the consortium (authorized entity) by 31.03.2015. It is that shareholding pattern with which IGJPL was introduced to the Board with the request by the consortium for the incorporation and status (as on 31.03.2015) of IGJPL be taken as full compliance with the requirement of Regulation 5(6)(f).

97. In our opinion, the Board has fallen into error by treating the above

noted events concerning the incorporation of JMHPL, its take over by erstwhile partners of JMH on 29.03.2013, and the taking control of IGJPL on 31.03.2015 by the consortium partners in the requisite ratio corresponding to their control of the consortium, as events of renunciation (by sale, assignment, transfer, etc.) within the mischief of Regulation 10(3) & (5) by the authorized entity. The setting up of the SPV (Ishar Gas) and taking over its control by 31.03.2015 by the consortium partners were never meant to be steps taken towards renunciation in favour of a stranger ('any person or entity') within the meaning of Regulation 10. They were instead steps taken to attain Page 71 Appeal Nos. 160, 161 & 162 of 2022 of 100 1586 corporate cloak for the successful bidder in order to meet the minimum eligibility criteria prescribed by Regulation 5(6)(f).

98. The facts noted earlier, show that the change over from JMH to JMHPL does not mean that there was a change of the bidder because JMH and JMHPL are one and the same. JMHPL is the successor of JMH, which was a minor partner of the bidding consortium. In due course JMHPL joined JMEPL as shareholder in IGJPL. Since it is established that (JMEPL + JMH) is equal to (JMEPL + JMHPL), the PNGRB fell in error in examining the financial capacity of JMHPL as on 09.05.2011. The relevant date for checking the financial status of JMHPL should have been 29.03.2013 and not 09.05.2011. By taking a wrong date the Board came to a wrong conclusion. indeed, on 09.05.2011, the net asset of JMEPL was very low but that is because, on that date, the merging of assets of JMH had not happened. At all times, the lead partner JMEPL with 80% share continued to exist. A change in the corporate structure (from partnership to a private limited company) of JMH with everything else being the same, cannot mean that there was a change of the Bidder.”

29. On the basis of these findings, this Tribunal held that Ishar Gas Jalandhar Pvt. Ltd. having been set up lawfully as a Special Purpose Vehicle by the consortium partners, in whose name the authorization were originally granted, in due compliance of Regulation 5(6)(f) of PNGRB

Regulations, 2008 and thus entitled to take over the authorization in respect of geographical areas of Jalandhar and Ludhiana. The order of cancellation of the authorization in respect of Ludhiana and Kutch (East) GAs as well as the order of levy of penalty and encashment of Performance Bank Guarantee of the appellant qua its authorization for three geographical areas were held to be illegal as well as perverse and were consequently set aside.

30. In view of these clearcut findings of this Tribunal in the above noted judgement, which statedly have not been set aside in the civil appeals filed by the Board before the Hon'ble Supreme Court as yet, the contentions raised on behalf of the Appellant that the JMEPL led consortium cannot be said to be a CGD entity, its authorization having lapsed, do not hold any water.

31. The another ground taken by the Appellant in its complaint before the Board to seek punitive action against the Respondent Nos. 2 to 5 was that the consortium has been violating the marketing exclusivity of the Appellant by webhosting pre-registration forms for new connections to the customers

in its areas falling in the villages of Bilga, Dharour, Dugri, Majra and Umedpur which are within the confines of geographical areas authorized to the Appellant. The Board had found substances in these eliminations of the Appellant and vide order dated 19th March, 2022 had directed the Respondents to remove the name of the “Majra” from their website by 31st March, 2022 to avoid the punitive action. This issue does not require any further determination from this Tribunal.

32. This takes us to the last but not the least ground taken by the Appellant in its complaint to the fact that the consortium led by JMEPL is also violating its infrastructure exclusivity by unlawfully laying sub-transmission pipeline and constructing a city gate station within the authorized area of the Appellant. On this use, it is argued on behalf of the Appellant as under:-

- (i) Certain pipes have simply been placed along the right of way (ROW) without being laid into the ground or welded to form a pipeline;
- (ii) The pipes show that the purchase order was issued by “Ishar Gas Ludhiana Pvt. Ltd.” which is not the authorized entity

and therefore the test for an STPL that it has to be owned by the CGD entity is not met;

(iii) There is no CGD network in either Ludhiana City GA or Jalandhar City GA and hence these pipelines could not be claimed to be planned for transportation of gas; and

(iv) No “Hook-Up Facility Agreement” or any type of interconnection agreement has been produced by the Respondents to support their claim that the facility is being developed in the nature of City Gate Station and the pipeline is a “STPL”.

33. On behalf of the Respondents, it is argued that the pipeline led by JMEPL led consortium in the GA of the Appellant is a sub-transmission pipeline which is permissible and it does not violate any of the provisions of the PNGRB Act as well as the Regulations therein.

34. It is further submitted that there is no restriction on an authorized entity laying down pipelines from the tap off point to its authorized area and authorized entity is permitted to choose any nearest tap off point for taking gas from the natural gas pipeline. It is further stated that in case City Gate Station (CGS) is built outside the geographical area of an authorized

entity, then the pipeline connecting the CGS to the CGD network has to be considered as part of CGD network of the GA of the authorized entity as long as such pipeline is not used for supplying natural gas to customers outside the GA of the authorized entity. It is further submitted that by way of these pipelines, JMEPL led consortium intends to connect its CGS to its CGD network and undertakes not to supply natural gas from the same to any customer outside its geographical area and therefore the same is permissible.

35. Regulation 2(1)(g) of PNGRB (Technical Standards and Specification including Safety Standards for City or Local Natural Gas Distribution Networks) Regulations, 2008 (“**CGD T4S Regulations**”) defines “City Gate Station (CGS)” to mean *“the point where custody transfer of natural gas from natural gas pipeline to the CGD network takes place and this may also be referred to as City Gate Measuring and Pressure Regulation Station.”*

36. Regulation 2(1)(q) of these Regulations defines a “sub-transmission pipeline” to mean *“a high pressure pipeline connecting the main transmission pipeline to the city gate station but is owned by the CGD”*

entity.”

37. Proviso attached to Regulation 2(1)(g) reads as under :

“Provided that if CGS is established outside the Authorized Geographical Area then pipeline connecting from CGS to authorized CGD network shall be considered as a part of CGD network, however the authorized entity shall not supply natural gas to any customer from the pipeline outside its geographical area”

38. It is the contention of the Appellant itself that certain pipelines are sought to be laid by M/s Ishar Gas Ludhiana Pvt. Ltd. within the geographical areas authorized to it and it has also constructed a City Gate Station outside the geographical areas authorized to the consortium led by JMEPL. In the judgement dated 28th September, 2022 passed by this Tribunal in Appeal Nos. 160 of 2022 , 161 of 2022 and 162 of 2022, relevant portions of which have already been quoted hereinabove, M/s. Ishar Gas Ludhiana Pvt. Ltd. and M/s. Ishar Gas Jalandhar Pvt. Ltd., the Respondent Nos. 4 & 5 herein have been held to be lawfully constituted Special Purpose Vehicle by the successful consortium led by JMEPL and, therefore, they are the authorized entities to lay the pipeline in question.

39. It is manifest that these pipelines in question are being laid to connect the City Gate Station to the main NGPL pipeline from which gas is to be sourced to be supplied to Jalandhar and Ludhiana GAs authorized to the consortium laid by JMEPL. Therefore, these pipelines qualify as “Sub-transmission Pipeline” and constitute a part of the authorized CGD network of Respondent Nos. 2 to 5 in view of the Regulations 2(1)(g) of the CGD T4S Regulations, 2008 as these are intended to connect the City Gate Station of the Respondents with the main transmission pipeline.

40. The argument raised on behalf of the Appellant that these pipelines are not STPL for the reason that there is no hook up facility agreement executed between the Respondents and a natural gas pipeline, is found merit less. Any such hook up agreement is not necessary for laying of the sub-transmission pipeline. In fact CGD T4S Regulations permits a CGD entity to chose any nearest tap off point for taking gas from natural gas pipeline and an agreement with the owner of the pipeline can be executed subsequently also before actual supply of gas.

41. In view of the foregoing discussion, we concur with the observation of

the Board that pipelines being laid by the Respondents from tap off point at Doraha upto the city gate station is in conformity with the Regulations 2(1)(g) & 2(1)(q) of CGD T4S Regulations and nowhere infringe the infrastructure exclusivity of the Appellant.

42. Hence, we do not find any error or infirmity in the impugned order of the Board. The Appeal is devoid of any merit and hereby dismissed. All pending applications stand disposed of accordingly.

Pronounced in the open court on this 8th day of May, 2024.

(Virender Bhat)
Judicial Member

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

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