IN THE MATTER OF

M/s Great Eastern Energy Corporation Ltd. (GEECL)

FACTS OF THE CASE:

1. M/s Great Eastern Energy Corporation Ltd. (GEECL) is a Company incorporated under the Companies Act, 1956 (hereinafter referred to as ‘the Company’) and is engaged, inter-alia, in the business of exploration, production, sale and distribution of Coal Bed Methane (CBM) which is a ‘natural gas’ as defined in Sec. 2 (za) of the PNGRB Act, 2006. The Company is the Operator of the CBM Block in Raniganj (South), West Bengal, under the Contract for Exploration and Production of CBM executed with the Government of India on 31st May, 2001 (CBM Contract). It is claimed by the company that in pursuance to the CBM Contract, it has the freedom and right to explore, develop, produce and market CBM gas in India and to lay pipelines for evacuation of CBM gas from its well heads and to connect the same and supply CBM gas to its customers at market determined prices.

2. The Company commenced commercial production of CBM gas in July, 2007 and started selling it at market determined price to its last mile customers in the domestic market. As an upstream producer, as stated by the Company, the only way to evacuate CBM gas to its customers is through ‘dedicated’ pipelines. As per information initially furnished by the Company, the ‘dedicated’ pipelines established by it consist of:
(a) 11.80 km. of pipeline connecting the Company’s Group Gathering Station (CGS) to Asansol Central Gathering Station (CGS).

(b) 12.36 km. of pipeline connecting the CGS to Kulti area in West Bengal.

(c) 53.46 km. of pipeline connecting the CGS to Asansol-Durgapur area in West Bengal.

(d) Further, other pipelines for supply of CBM to customer for their use and not for resale.

3. The Parliament has enacted the above-mentioned Petroleum & Natural Gas Regulatory Board Act, 2006 (hereinafter referred to as ‘the Act’) which applies to refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas excluding production of crude oil and natural gas.

4. As per Section 1 Sub-section (3), the Central Government had notified the Act except Section 16 on 1st October, 2007 vide G.S.R. 637 (E) dated 1st October, 2007. In view of the Gazette Notification, the provisions of the Act except section 16 had come into force with immediate effect. Vide notification G.S.R. 638 (E) dated 1.10.2007, the Central Government notified the constitution of the Petroleum & Natural Gas Regulatory Board (hereinafter referred to as ‘the Board’).

5. Section 11 (c), (d) & (e) of the said Act inter-alia provides for functions and powers of the Board and the same reads as under:

Section 11 (c) : Authorize entities to –

(i) Lay, build, operate or expand a common carrier or contract carrier;
(ii) Lay, build, operate or expand city or local natural gas distribution network.

Section 11 (d): Declare pipelines as common carrier or contract carrier;

Section 11 (e): Regulate, by regulations:

(i) Access to common carrier or contract carrier so as to ensure fair trade and competition amongst entities and for that purpose specify pipeline access code;

(ii) Transportation rates for common carrier or contract carrier;

(iii) Access to city or local natural gas distribution network so as to ensure fair trade and competition amongst entities as per pipeline access code.

6. Section 61 of the Act provides for the power of the Board to make regulations and clause (r) of Sub-clause 2 of Section 61 reads as under:

(r) the guiding principles to be followed by the Board and the objectives for declaring, or authorizing to lay, build, operate or expand a common carrier or contract carrier for declaring, or authorizing to lay, build, operate or expand a city or local natural gas distribution network, under sub-section (5) of Section 20.

7. Section 16 of the Act was notified on 12th July, 2010 w.e.f. 15.7.2010 and the same reads as under:

16. Authorization – No entity shall

(a) Lay, build, operate or expand any pipeline as a common carrier or contract carrier.
(b) lay, build, operate or expand any city or local natural gas distribution network, without obtaining authorization under this Act:

Provided that an entity:

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

(iv) laying, building, operating or expanding any city or local natural gas distribution network,

immediately before the appointed day shall be deemed to have such authorization subject to the provisions of this Chapter, but any change in the purpose or usage shall require separate authorization granted by the Board.

8. Consequent to the constitution of the Board on 1.10.2007, a Public Notice was issued on 30th October, 2007 to all entities engaged in laying, building, operating or expanding city or local natural gas distribution network as well as natural gas pipelines inviting their attention to the powers and functions of the Board and the penal provisions of the Act in case any unauthorized activities are carried out. All entities were requested to furnish details of their activities to the Board and seek the requisite clearances.

In response to this Public Notice issued by the Board, the Company, vide letter dated 28th November, 2007 had duly informed Engineers India Ltd. (a public sector undertaking authorized by the Board for assisting it in the processing of applications for various approvals
by the Board) and had filed in the requisite Proforma containing the relevant information on city gas distribution network and supply of CBM in Asansol area.

9. On a review and scrutiny of the requisite information filed by the Company, the Board vide its letter dated 31st March, 2008 advised it to apply immediately for authorization as per provisions of Regulation 18 of the Petroleum & Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008 as it did not possess the requisite authorization from the Central Government prior to the appointed day. These regulations were framed by the Board in exercise of power vested in it vide Section 61 of the Act. The said regulations were duly notified in the Gazette on 19th March, 2008 and had come into force on the same day. However, no application was received by the Board from the Company with respect to its city gas distribution networks. In the meantime, the Board also notified the Petroleum & Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand Natural Gas Pipelines) Regulations, 2008 on 6.5.2008 and those too had come into force on the same day.

On 11th November, 2008, a Public Notice was issued to all the entities engaged in laying, building, operating or expanding natural gas pipelines asking them to apply under relevant provisions of the regulations, but no application was received from the Company.

10. Based upon Press Reports dated 29.1.2009 published in Economic Times and Business Standard indicating the Company’s plans to lay two pipelines to Kulti and Durgapur from Asansol for selling additional CBM gas to consumers, a letter was issued to the Company on 10.2.2009 asking it to submit application under the relevant regulations in
respect of natural gas pipelines. A reminder on 23.9.2009 was also given to it in this regard but that too was not responded.

11. Vide letter dated 16th October, 2009 the Company informed the Board that it has a dedicated pipeline for supply to their customers and it is submitting the requisite information as per regulation 19 (1) of the said Regulations. The said Letter was followed by another Letter dated 22nd October, 2009 wherein the Company provided the requisite information as per regulation 19 (1) of the Regulations to the Board.

12. Vide letter dated 13th January, 2010 the Board informed the Company that the pipeline serving more than one consumer does not fall under the category of dedicated pipelines in terms of the Regulation 2 (f) (i) of the said Regulations and further stated that the Company shall necessarily be treated as a ‘common carrier’ or ‘contract carrier’. The Board further informed the Company that its application cannot be processed under Section 19 (1) of the said Regulations and advised the respondent to submit an application under Regulation 18 (1) of the said Regulation. The provisions of Regulation 2 (f) and regulation 18 are quoted below;

(f) “natural gas pipeline” means any pipeline including spur lines for transport of natural gas and includes all connected equipments and facilities, such as, compressors, storage facilities, metering units etc. but excludes -

(i) dedicated pipeline laid to transport natural gas to a specific customer to meet his requirement and not for resale;
(ii) pipelines in a city or local natural gas distribution network which are regulated by the Petroleum & Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008.

Regulation 18 (1); Entity not authorized by the Central Government for laying, building, operating or expanding natural gas pipeline before the appointed day;

(1) An entity laying, building, operating or expanding natural gas pipeline at any time before the appointed day but not duly authorized to do so by the Central Government shall apply immediately for obtaining an authorization in the form as per Schedule-I.

13. The Company did not pay any heed to the advice and the directions of the Board which led to an assumption that the pipeline used by the company for transportation of the CBM gas produced by it did not fall within the definition of a dedicated pipeline and it has to seek authorization for a common / contract carrier pipeline under Regulation 18 and observed that laying and building the pipeline by the company was in deliberate violation of the provisions of the Act and the applicable regulations notified thereunder.

14. A show cause notice was issued to the Company by the Board on 3.12.2010 requiring it to explain its position and to show cause as to why action under the provisions of Sections 28, 44, 46 & 48 of the Act be not initiated against it. The show cause notice also furnished the details of the correspondence between the Company and the Board made earlier and directed the Company to stop the incremental activity with immediate effect till the matter was decided by the Board. The Company was also required to explain its position
within 7 days of the issue of notice and to attend a formal hearing on 21.12.2010 before the Board in this regard;

15. The Company responded vide its letter dated 10.12.2010 and requested for further time to file its reply and the Board, vide its letter dated 15.12.2010, adjourned the date of formal hearing to 4.1.2011 and directed the Company to provide details of all incremental activities carried out by it within 7 days. **The Company, instead of ensuring compliance of the direction of the Board regarding stoppage of incremental activities and furnishing the details of such activities, informed the Board vide its letter dated 27.12.2010 that they are not covered within the scope of the Act and as such do not require any authorization from the Board.**

16. (i) It is contended on behalf of the Company that it is neither a common carrier nor a contract carrier since its pipelines for transportation of natural gas are not used by more than one entity and are used only by the Company itself. Further, pipelines used to supply natural gas to a specific consumer are not covered within the definition of a common carrier.

(ii) It has also been submitted that the Company lays pipelines to supply petroleum products or natural gas to specific consumer and therefore, it cannot be required to seek authorization for laying, building, operating or expanding any pipeline as a common carrier or contract carrier under Section 16 of the Act.

(iii) **It is further contended that since the Company is neither a ‘common carrier’ nor a ‘contract carrier’, the Board had no jurisdiction to issue Notice dated 3rd December, 2010 as the Company is not covered within the scope of the Act.** Moreover, the Company
is not covered within the definition of a natural gas pipeline as defined in Regulation 2 (f) of the said Regulations and as such Regulation 18 is not applicable at all.

(iv) Further, under Regulation 19 (2) of the Regulations, in respect of the dedicated pipelines that are proposed to be built, operated or expanded after the appointed date, the applicable entity only needs to comply with certain disclosure requirements to the Board (re; pipeline length, route, capacity and details of the customers served along with the Detailed Feasibility Report (DFR) of the project) at least 30 days before the proposed commencement of laying and building of the dedicated pipeline, whereas the pipeline laid by the Company is in pursuance to the terms and conditions as specified in the Production Sharing Contract dated 31st May, 2001 executed between the Government of India and the Company which principally governs its entire project and particularly laying of the pipelines.

(v) It has also been asserted by the Company that Regulation 19 (2) of the Regulations specifically provides for an entity proposing to lay, build, operate or expand a dedicated pipeline to give details of 'all customers' (in contrast to 'specific customer') served by the dedicated pipeline; and that the Regulations recognize the fact that a dedicated pipeline is a pipeline which may serve more than one specific customer and not which serves only one 'specific customer'. It has further submitted that the natural gas supplied by the Company to its customer is only for the purposes of use by the customer and there is no customer of the Company which is using the natural gas supplied by it for any other purpose than its own consumption. It has also been contended that interpreting the Regulations in context of the Board's letter dated 13th January, 2010 will not only defeat the basic intent of the Act but would also lead to practical difficulties, as the Company would then have to construct a separate dedicated pipeline for each of its customer. The construction of individual dedicated
pipeline for each customer for off-take of the CBM gas is not only practically impossible but also economically unviable and against the intent of the Act which provide for protecting the interest of the consumer and the entity.

17. Aggrieved by the notices issued by the Board on 3.12.2010 and 15.12.2010 and fixing a day for hearing in the matter on 4.1.2011 and the direction issued to the Company to stop incremental activity to lay, build, operate or expand natural gas pipelines, the Company preferred to approach the Court and challenged there the jurisdiction of the Board and contended that such a direction of stopping the incremental activity could have not been issued.

18. The Company by filing writ petition (c) 13 / 2011 ‘GEECL vs. Union of India and Another’ challenged the legal propriety of the above described notices dated 3.12.2010 and 15.12.2010 as were issued by the Board and simultaneously challenged the jurisdiction of the Board to issue such notices.

The company likewise, filed another writ petition (Civil) 413 / 2011 ‘GEECL vs. Union of India and Another’ and challenged thereby the legality of the order dated 4.1.2011 passed by the Board.

The said writ petitions were filed before the Hon’ble Delhi High Court and were finally disposed of by the Hon’ble Court vide order dated 21.1.2011 and the Board was required to take decision with regard to the said notices after giving consideration to the reply filed by the Company in respect thereto.
19. The Board, after giving consideration to the reply of the Company and on hearing its representative / counsel, passed order on 18.3.2011 and declared the pipeline being laid by the Company to be unauthorized and illegal and imposed a civil penalty of Rs. 25.00 lakhs with an additional penalty of Rs. 1.00 lakh per day from the date of commencement of laying and building of the pipeline or the date of the decision conveyed to it by the Board that the pipeline proposed by the Company did not fall within the definition of 'dedicated pipeline'.

20. The said order dated 18.3.2011 passed by the Board was challenged by the Company by preferring writ petition (Civil) No. 2040 of 2011 before Hon’ble High Court at Delhi in addition to challenging the vires of the Petroleum & Natural Gas Regulatory Board (Authorizing entities to lay, build, operate or expand Natural Gas Pipelines) Regulations, 2008.

21. During the course of hearing before the Hon’ble Court, Ld. Counsel for the Company submitted on 30.9.2013 that the petitioner would be satisfied if the matter is remanded back to the Board for re-consideration and re-examination of the issue of common carrier / dedicated pipeline and the Hon’ble Court vide order dated 11.11.2013 disposed of the writ petition by setting aside the impugned order dated 18.3.2011 and directed the matter to be remitted to the Board for fresh decision after giving an opportunity of hearing to the Company. The company was also restrained by the Hon’ble Court from carrying out any incremental work as undertaken by them in terms of its affidavit dated 2.4.2011.

22. The matter was taken up before the Board for consideration on 20.11.2013 at 11.30 am. as was directed by the Hon’ble Court and the proceeding were participated by the Ld. Counsel and the representatives of the Company.
During the course of proceedings certain queries were made from the Ld. Counsel of the Company, in order to arrive at some logical conclusion with regard to the nature of the pipeline, but he, instead of responding, sought opportunity to furnish reply and the matter was thus adjourned to 18.12.2013 with this direction that while responding to our queries, the Company shall also clarify / respond to the following :

(a) The status of network etc. as carried out by the Company on the date when the Board’s notice for stopping the incremental activities was served upon it for the first time.
(b) The status of network / infrastructure as on date.
(c) Details of natural gas pipeline infrastructure in the Asansol and Durgapur regions of West Bengal-Length, diameter, system capacity, MAP and operating pressure of each pipeline section, schematic diagram of the network along with physical map of the pipeline infrastructure clearly showing, how consumers are being served using the different sections of the aforementioned pipeline infrastructure.
(d) Details of natural gas source off-take point for the above pipelines, compression facility if any, gas composition.
(e) Details of consumers if any, who are being supplied natural gas from the aforementioned pipeline infrastructure- contractual volume, booked capacity, contractual pressure range at re-delivery points, duration of contracts.
(f) Average utilization of the pipeline infrastructure in terms of volume, transportation tariff being charged from the consumers and the basis thereof.
(g) Shipper-wise booked capacity in the pipeline infrastructure, if any.
(h) Details of CNG stations, if any.

23. On 18.12.2013 most of the above referred queries were not responded and 3 days time, as desired by the Company, was provided to furnish reply in respect of each query / clarification.

24. On 20.12.2013 a letter was furnished by the Company in a tabular manner but the concerned Division of the Board pointed out that the Company in its statement has denied of undertaking any incremental activities on the said pipeline whereas in its report submitted to DGH for Oct., 2013 for Raniganj (South) CBM block had shown new incremental pipelines laid by GEECL post Oct., 2009 comprises of approx. 154.5 km apart from original 77.62 km. as under :-

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Pipeline section</th>
<th>Steel / MDPE</th>
<th>Diameter (Km.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>Pipeline inside IISCO</td>
<td>Steel 12”</td>
<td>0.650</td>
</tr>
<tr>
<td>(ii)</td>
<td>Pipeline from S-13 to GGS</td>
<td>Steel 12”</td>
<td>3.943</td>
</tr>
<tr>
<td>(iii)</td>
<td>Pipeline</td>
<td>Steel 4”</td>
<td>28.519</td>
</tr>
<tr>
<td>(iv)</td>
<td>Pipeline in Jamuria Industrial Area</td>
<td>Steel 6”</td>
<td>1.190</td>
</tr>
<tr>
<td>(v)</td>
<td>MDPE pipeline (North)</td>
<td>MDPE</td>
<td>75.965</td>
</tr>
<tr>
<td>(vi)</td>
<td>MDPE pipeline (South)</td>
<td>MDPE</td>
<td>44.239</td>
</tr>
<tr>
<td></td>
<td><strong>TOTAL</strong></td>
<td><strong>154.5 KM.</strong></td>
<td></td>
</tr>
</tbody>
</table>

Likewise, the Company, in its earlier submission to the Board in Oct., 2009 had stated that their pipeline network was supplying gas to 9 consumers only whereas in its subsequent details the contractual volume and duration of contract was shown for 43 consumers and that, too, is suggestive of the company’s incremental activities.

Moreover, the company suppressed the details of contract / arrangement entered into by it with BPCL and IOCL and stated that it was not operating any CNG station but on the
company's official website, CNG stations were being operated by the company in collaboration with BPCL and IOCL and the Company had disclosed to SEBI as under:

“As of August 31, 2013, we supplied CBM directly to 31 industrial consumers through our network of dedicated pipelines, as well as, through truck mounted cascades, and to automobile customers through seven CNG fueling stations, one owned by us and six by two state-owned petroleum companies.”

25. The company in response to the communication dated 16.1.2014 regarding the discrepancies and suppressions, described in preceding para as was issued under the signatures of OSD (B) in PNGRB responded vide letter dated 17.2.2014 and stated therein that as per the pointer No. (1) in which total six pipelines sections have been mentioned to add upto 154.5 km., it would be important to note that Sl. No. (ii), (v) and (vi) are those pipelines which are connecting the wells to Gas Gathering Stations (GGS) and accordingly, are not covered within the purview of PNGRB Act. Accordingly, after deducting the length of pipeline as mentioned in (ii), (v) and (vi) from 154.5 km., the balance pipeline would be come to 30.353 km. which is as per (i), (iii) and (iv) of pointer No. 1.

As regards (i), the said pipeline is a spur line only to provide gas to a dedicated customer namely ISSCO and was operational as on 5th Feb., 2010.

As regards (ii) i.e. the 28.519 km. pipeline is concerned, it may be noted that out of the same 9.773 km. of pipeline was laid prior to the Board’s notice dated 3.12.2010 and 18.797 km. was laid after the Notice issued by the Board.
26. It reiterated that each of these pipelines are spur lines connected from the main pipeline primarily to the specific customers and hence are not covered within the scope of PNGRB Act and no supply has commenced to any customer from pipeline section (iv) and the same is also a spur line and thus, the development that has taken place in its pipeline network is the development of dedicated spur line to supply gas to particular customer.

27. It further stated that the Company does not have a pipeline network for supplying gas to the CNG stations but the gas is being supplied on truck mounted cascades to BPCL and IOCL.

28. On perusal of the above information / clarification of the company, the matter was heard on 17.2.2014 by the Board and during the course of hearing, it was observed by us that a diagram / sketch, showing the position of existing pipeline and to specifically highlight the pipeline therein by which the gas is being supplied to each of its consumers, would be of great help for arriving at logical conclusion. Likewise, following information was also considered to be material to resolve the issue in proper perspective:

(a) In whose names (customer) invoices are being raised and by whom (seller).

(b) In whose names payments are being received and from whom.

The Company was accordingly directed to furnish concrete and complete information within 10 days along with its written submissions.
29. The Company, on 28.2.2014, furnished a diagram / sketch, showing the position of its existing pipeline and also highlighting the pipeline by which the gas is being supplied to each of its customers whose names have also been annexed therewith.

30. It further informed that the invoices are raised directly in the names of the customers and the payments are received by the Company from them and likewise, the invoices are raised in the names of IOCL and BPCL and the payments are received from them by the company after deduction of the commission payable to them.

31. We have considered the submissions made on behalf of the company by the Ld. Counsel and also perused the information furnished by the company along with other relevant record.

At the very inception, it may be pointed out that the company, by preferring the writ petition (Civil) No. 2040 of 2011 before the Hon’ble High Court of Delhi challenged the order dated 18.3.2011 passed by the Board and also challenged the vires of the Petroleum & Natural Gas Regulatory Board (Authorizing entities to lay, build, operate or expand Natural Gas Pipelines) Regulations, 2008.

32. The significance needs to be attached to the fact that the said order dated 18.3.2011 was an appealable order and the company should have preferred appeal against this order, before APTEL u/s 33 of the Act but the company, instead of preferring appeal chose to challenge the vires of the said Regulations framed by the Board and thus, invoked the jurisdiction of the Hon’ble High Court but later, during the course of hearing before the Hon’ble High Court on 30.9.2013 stated before the Court that it would be satisfied if the
matter is remanded back to the Board for re-consideration and re-examination of the issue of common carrier / dedicated pipeline where upon the Hon’ble Court vide order dated 11.11.2013 disposed off of the writ petition by setting aside the order dated 18.3.2011 and directed the matter to be remitted to the Board for fresh decision after giving an opportunity of hearing to the company and also restrained the company from carrying out any incremental activity in terms of its affidavit dated 2.4.2011.

33. It is, thus, manifest that the company is no longer interested in questioning or challenging the legality / vires of the above described Regulations which relate to the grant of authorization and in pursuant to his request and under the direction of the Hon’ble Court, the claims of the Company are to be considered and examined under the provisions of PNGRB Act, 2006 and the Regulations framed by the Board for the grant of authorization.

34. It has been submitted on behalf of the Company that the provisions of Regulation 19 (2) of the said Regulations, deals with those dedicated pipelines that are proposed to be built, operated or expanded after the appointed date and the applicable entity only needs to comply with certain disclosure requirements to the Board (re: pipeline length, route, capacity and details of the customers served along with the Detailed Feasibility Report (DFR) of the project) atleast 30 days before the proposed commencement of laying and building of the dedicated pipeline, whereas the pipeline laid by the Company is in pursuant to the terms and conditions, as specified in the Production Sharing Contract dated 31st May, 2001 executed between the Government of India and the Company which principally governs its entire project and particularly laying of the pipelines and as such, it is beyond the purview of this provision.
This submission of the Company is devoid of any merit, as the provisions of Section 63 of the Act protects those agreements only which, prior to the commencement of the Act, were entered into between one oil company or the other for the purpose of sharing of petroleum products or sharing of infrastructure facilities amongst them and those agreements too, were required to be approved by the Central Government and moreover, this period of protection was confined to 3 years only from the date of the commencement of this Act. The agreement of the company with the Government does not manifestly fall within the purview of Section 63 of the Act and the provisions of the Act were applicable on the company in view of the provision of Section 1 of the Act from the ‘appointed date’.

If the stand taken by the company is viewed in its entirety, it would indicate that if an entity is involved in extraction of natural gas and has contrived to market it to consumers directly will be outside the purview of the PNGRB Act and the Regulations framed thereunder. Such a stand is not acceptable as it goes against the overall objective of the Act and would also be repugnant to the basic function and powers of the Board as enshrined in Sections 11 (a), 11 (e), 11 (i), 12, 20 & 21.

Moreover, by connecting the source of extraction of natural gas, declared to be a natural resource by the Apex Court, directly to end customers, the Company suggests that it should have immunity from all statutory obligations to the customers, of safety and technical standards, transportation rates and the third party access. Such a submission of the Company apparently leads to perversity and amounts to mis-interpretation of the statutory provisions and as such deserves to be rejected.
35. Now coming to the other aspect of the matter, it may be stated that the company vide letter dated 16th October, 2009 informed the Board that it has a dedicated pipeline for supply to their customers and it is submitting the requisite information as per regulation 19 (1) of the said Regulations. The said Letter was followed by another Letter dated 22nd October, 2009 wherein the Company provided the requisite information as per regulation 19 (1) of the Regulations to the Board. But the Board did not accept the nature of the pipeline of the company as dedicated pipeline and communicated to the company vide letter dated 13.1.2010 that the nature of the pipeline of the company falls with the purview of common carrier / contract carrier.

The Company however, reiterated that it is neither a common carrier nor a contract carrier because the company’s pipelines for transportation of natural gas are not used by more than one entity and are used by the company itself. Besides, the company lays pipeline to supply petroleum products and natural gas to specific consumers and therefore, it cannot be required to seek authorization under the provision of Section 16 of the Act.

36. The provision of Sections 2 (j) and 2 (m) of the Act defines the “common carrier” and the “contract carrier” as under:

(j) “Common carrier” means such pipelines for transportation of petroleum, petroleum products and natural gas by more than one entity as the Board may declare or authorize from time to time on a non-discriminatory open access basis under subsection (3) of Section 20, but does not include pipeline laid to supply:

(i) Petroleum products or natural gas to a specific consumer; or
(ii) Crude oil;

Explanation: For the purposes of this clause, a ‘contract carrier’ shall be treated as a common carrier, if – (i) such contract carrier has surplus capacity over and above the firm contracts entered into; or

(ii) The firm contract period has expired.

Further Sub-clause (m) of Section 2 defines “contract carrier” as under:

(m) “Contract carrier” means such pipelines for transportation of petroleum, petroleum products and natural gas by more than one entity pursuant to firm contracts for at least one year as may be declared or authorized by the Board from time to time under sub-section (3) of Section 20.

Regulation 19 (1) (a) relates to the dedicated pipeline existing before the appointed day and requires from the entity having dedicated pipeline to transport natural gas to a specific customer before the appointed day to submit details of the pipeline, length, capacity and customers served along with the DFR of the project to the Board within 30 days of notification of these Regulations whereas the provision of Regulation 19 (2) relates to the pipeline proposed to be laid, built, operated or expanded after the appointed day and the other provisions of Regulation 19 reveal the procedure to be followed by the Board to proceed further.
37. The above provisions make it clear that the dedicated pipeline means a pipeline for a specific customer for its own use and not for re-sale.

38. The company in its communication dated 17.2.2014 stated that some of its pipeline connect the wells to the Gas Gathering Station and the others are spur line connected from the main pipeline. This statement and the schematic diagram annexed with the communication dated 28.2.2014 clearly shows that the pipeline of the company are not meant to supply CBM to a specific customer, it is rather supplying CBM to different customers by laying spur lines to that main pipeline. It is thus, established that the pipeline network of the company consists of the main pipeline and gas is supplied to various customers by laying spur line in that main line.

It is contended by the company that Regulation 19 (2) of the said Regulations suggests that a dedicated pipeline is a pipeline which may serve more than one specific customer and not which serves only one specific customer and moreover, the natural gas supplied by the company to its customer is only for the purposes of use by the customer and that customer does not use the gas for any other purpose than its own.

39. The argument, as advanced on behalf of the Company, is misconceived because there is no expression as 'dedicated spur line' either in the Act or in any of the Regulations framed thereunder.

The definition of 'natural gas pipeline' and the 'dedicated pipeline' is provided in Regulation 2 (f) (i) of the Regulations relating to the Authorization of the Natural Gas Pipeline as under :-
2 (f)

'natural gas pipeline' means any pipeline including spur lines for transport of natural gas and includes all connected equipments and facilities, such as, compressors, storage facilities, metering units, etc. but excludes:

(i) Dedicated pipeline laid to transport natural gas to a specific customer to meet his requirement and not for resale.

There is thus either 'dedicated pipeline' or the 'natural gas pipeline'. The provisions of Regulation 2 (f) (i) of the Authorizing Regulation unambiguously suggest that the dedicated pipeline is meant for a specific customer and not for re-sale. If it not be so, then it no longer remains a dedicated pipeline. So far as the 'spur line' is concerned that is included in the 'natural gas pipeline' itself as evident from the definition of 'natural gas pipeline'.

We thus conclude that the pipeline network of the company is a natural gas pipeline and stands cover within the definition of common carrier / contract carrier and the claims of the company of treating it as dedicated pipeline are liable to be repelled.

40. On the issue of supplying gas to BPCL and IOCL, it is stated that the gas is not being supplied to them through the pipeline; it is rather being made by truck-mounted cascades.

The agreement between the company and the IOCL / BPCL is to sell CNG on 6 outlets of IOCL / BPCL and the company admits that the payment of gas is made by IOCL / BPCL after deducting their commission.
It means that the gas is supplied by the company to IOCL / BPCL for re-sale on commission basis.

41. Regarding incremental activities, the admissions of the company are very much material.

This fact is admitted by the company that the length of the pipeline was 77.62 km. when the notice was issued to the company by the Board regarding stoppage of the incremental activities and the same length was informed by the company at the initial stage and it is also admitted to it that the pipeline has thereafter been laid and built by the company to the extent of 154.5 km.

It is thus proved that 76.88 km. pipeline has been laid / built by the company after the notice.

Likewise, the number of customers of the company also raised from 9 to 42 which too is indicative of the increase in demand and supply of natural gas and that could have not been possible without making development / incremental activities.

42. The Company, in its communication strived to suggest that out of the extended length of the pipeline, 28.519 km. was meant for connecting the well to the Gas Gathering Station prior to the Board's notice dated 3.12.2010 and 18.797 km. was laid after the notice was issued by the Board.
43. At last, it is pertinent to state that the company was directed vide notices dated 3.12.2010 and 15.12.2010 to proceed for seeking authorization and to stop the incremental activities with immediate effect and a day was also fixed for personal hearing.

The company, instead of responding to these notices, which were issued after the 'appointed day' challenged the jurisdiction of the Board of issuing directions regarding stoppage of incremental activities before the Hon’ble High Court at Delhi by invoking its writ jurisdiction.

44. The Hon’ble Court however, did not provide any relief to the company and remitted the matter back to the Board vide Order dated 21.1.2011 and only thereafter, the above described order dated 18.3.2011 was passed by the Board after giving opportunity to the company.

45. The company, even then, did not prefer appeal under Section 33 of the Act before the APTEL and again invoked writ jurisdiction of the Hon’ble High Court under the pretext of challenging vires of the Petroleum & Natural Gas Regulatory Board (Authorizing entities to lay, build, operate or expand Natural Gas Pipelines) Regulations, 2008 and later on, itself requested the Hon’ble Court that it would be satisfied if the matter is remitted back to the Board for fresh consideration, where upon the Hon’ble Court remitted the matter back for consideration of the Board.

46. We provided adequate opportunity to the company in order to arrive at logical conclusion in respect of the controversial issues and on giving consideration to all the submissions and on the basis of available evidence, we hold that the company has been
continuously operating the natural gas pipeline network as a common carrier / contract carrier without seeking authorization from the Board as required under the Act and also violated the directions of the Board as were issued in this regard.

We also hold that the company after the ‘appointed day’ and after serving upon it the notice regarding stoppage of incremental activities defied the Board’s directions by continuously indulging in incremental activities.

In view of above findings, following Order is passed.

**ORDER**

A civil penalty of Rs. 1.00 crore (Rupees One Crore only) is imposed on the company under Section 28 of the Act with an additional penalty of Rs. 2.00 lakhs (Rupees Two Lakhs only) for every day during which the failure continued / continues after contravention of the first direction.

This penalty is without prejudice to any other penalty to which the company may be liable under this Act.

The entity is hereby directed to deposit the amount of penalty, as above, within a period of 30 days from today with complete calculation, suggesting the correctness of the amount deposited and the matter be put up thereafter to ensure the protection of consumers who were being served by the Company’s unauthorized / illegal pipeline.

(S.Krishnan) (P.K.Bishnoi) (K.K.Jha) (Subhash Chandra) (Dr. B.Mohanty)
Chairperson Member(PKB) Member(KKJ) Member(Legal) Member(BM)
31/3/14 31/3/14 31/3/14 31/3/14