

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI
[APPELLATE JURISDICTION]**

APPEAL NO. 292 OF 2018 & IA NOS. 1382, 1383, 1384 & 1877 OF 2018
APPEAL NO. 323 OF 2018 & IA NOS. 1537 & 1536 OF 2018

Dated: 28th February, 2019

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. B.N. Talukdar, Technical Member (P&NG)**

APPEAL NO. 292 OF 2018 & IA NOS. 1382, 1383, 1384 & 1877 OF 2018

IN THE MATTER OF:

ADANI GAS LIMITED

A Company incorporated under the Companies Act, 1956

Having its Registered Office at:

Adani House, Near Mitha Khali Crossroads,
Navrangpura,
Ahmadabad-380009

Also at:

Institutional Plot No. 18,

Sector-20B,

Faridabad-121001

Haryana, India

Through its Senior Vice President,

Mr. Bhashit Dholakia

...APPELLANT

VERSUS

**1. PETROLEUM & NATURAL GAS
REGULATORY BOARD**

1st Floor, World Trade Center,

Babar Road,

New Delhi-110001

2. **TORRENT GAS PRIVATE LIMITED**
Samanvay, 600, Tapovan,
Ambawadi,
Ahmadabad-380015

3. **CONSORTIUM OF AG&P LNG MARKETING
PTE. LTD. AND ATLANTIC GULF & PACIFIC
COMPANY OF MANILA**
1005, 10th Floor, Ambadeep Building,
14, KG Marg, New Delhi-110001

4. **CONSORTIUM OF SKN HARYANA
CITY GAS DISTRIBUTION PVT. LTD.
AND CHOPRA ELECTRICALS**
A-107, Sushant Lok,
Phase-1, Near M.G. Road Metro Station,
Gurugram, Haryana

...**RESPONDENTS**

- Counsel for the Appellant(s) : Mr. Vikas Singh, Sr. Adv.
Mr. Mukul Rohatgi, Sr. Adv.
Mr. Buddy A. Ranganadhan
Mr. Mahesh Agarwal
Ms. Aanchal Mullick
Mr. Shubham Kulshreshta
Ms. Deepika Kalia
Ms. Prashanti Pasupulleti
- Counsel for the Respondent(s) : Mr. Paras Kuhad, Sr. Adv.
Mr. Prashant Bezboruah
Mr. Jitin Chaturvedi
Mr. Shuaib Hussain
Ms. Vidhi Thakur
Ms. Aditi Tripathi for R-1
- Mr. Ranjit Kumar, Sr. Adv.
Mr. Ramji Srinivasan, Sr. Adv.
Mr. Gaurav Juneja
Mr. Dibyanshu
Mr. Aayush Jain
Ms. Sylona Mohapatra
Mr. Bunmeet Singh Grover for R-2

Mr. Gaurav Mitra
Mr. Rohan Ganpathy
Mr. Adit Singh for R-3

Mr. Gopal Jain Sr. Adv.
Ms. Divya Roy
Mr. Sanjeet Singh for R-4

APPEAL NO. 323 OF 2018 & IA NOS. 1537 & 1536 OF 2018

IN THE MATTER OF:

IMC LIMITED

A Company registered under the Company's Act, 1956
Having its Registered Office at:
232/A Acharjya Jagdish Chandra
Bose Road, Kolkata-700020

And:

Corporate Office at Neeladri,
3rd Floor, No.9, Cenotaph Road,
Alwarpet, Chennai-600018

...APPELLANT

VERSUS

**1. PETROLEUM & NATURAL GAS
REGULATORY BOARD**

1st Floor, World Trade Center,
Babar Road,
New Delhi-110001
(through Secretary)

2. AG&P LNG MARKETING PRIVATE LTD.

1005, 10th Floor, Ambadeep Building,
14, KG Marg, New Delhi-110001
(through Managing Director)

...RESPONDENTS

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr. Adv
Ms. Nafisa Khandepaskar
Ms. Bhargavi Kannan

Ms. Aishwarya Modi
Mr. Meherzaad

Counsel for the Respondent(s) : Mr. Prashant Bezboruah
Ms. Vidhi Thakral for R-1

Mr. Gaurav Mitra
Mr. Rohan Ganpathy
Mr. Adit Singh for R-2

JUDGMENT

PER HON'BLE MR. B.N. TALUKDAR, TECHNICAL MEMBER (P&NG)

1. The present appeal (Appeal No. 292 of 2018) has been filed by the Appellant challenging the result declared vide Press Release dated 14.09.2018 uploaded by the Board in its website giving details of the successful bidders under the 9th Round of bidding for City or Local Natural Gas Distribution Networks (“CGD Networks”). The result was uploaded on 14.09.2018 by the Board in respect of various successful bidders including Respondent Nos. 2, 3 and 4 for GA Nos. 62, 61 and 51 for the grant of Authorization for laying, building, operating or expanding CGD Networks in the GAs of Chennai-Tiruvallur, Kanchipuram District and Puducherry District respectively.
2. In GA No. 61, the winning entity is AG&P LNG Marketing Pvt. Ltd. and IMC Ltd. is the next highest composite scorer who has also challenged the above declaration of the result in respect of GA No. 61 for the

Kanchipuram District under the 9th Round of the CGD network bidding by the Board vide Appeal No. 323 of 2018.

3. Since facts in both the above Appeals are identical and issues are same, the Appeal No. 323 of 2018 was tagged to Appeal No. 292 of 2018 and both were heard in this Tribunal together and accordingly dealt with in this common order. Appeal No. 292 of 2018 will be treated as the lead appeal.
4. The 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”) to regulate “the refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas excluding production of crude oil and natural gas so as to protect the interests of consumers and entities engaged in specified activities relating to petroleum, petroleum products and natural gas and to ensure uninterrupted and adequate supply of petroleum, petroleum products and natural gas in all parts of the country and to promote competitive markets and for matters connected therewith or incidental thereto”.
5. The Adani Gas Ltd., a company incorporated under the provisions of the Companies Act, 1956, is *inter alia* in the business of developing City Gas Distribution (‘CGD’) Networks to supply the Piped Natural Gas to the

Industrial, Commercial, Domestic (residential) and Compressed Natural Gas to the transport sector. The Appellant herein was one of the bidders in the 9th CGD Biding Round for the Project Areas.

6. The IMC Limited, a company incorporated under the provisions of the Companies Act, 1913, is *inter alia* in the business of developing City Gas Distribution ('CGD') Networks to supply the Piped Natural Gas to the Industrial, Commercial, Domestic (residential) and Compressed Natural Gas to the transport sector. The Appellant herein was one of the bidders in the 9th CGD Biding Round for the Project Areas.
7. Torrent Gas Private Limited is a Private Company incorporated on 28 May 2018. It is classified as Non-Govt. Company and is registered at Registrar of Companies, Ahmadabad.
8. Consortium of AG&P LNG Marketing Pte. Ltd. and Atlantic Gulf & Pacific Company of Manila is a Private Company incorporated on 12 February 2018. It is classified as Subsidiary of Foreign Company and is registered at Registrar of Companies, Delhi.
9. SKN- Haryana City Gas Distribution Pvt. Ltd. (HCG) is a company registered under company act 1956. Having considered the popularity of

city gas distribution, SKN- Haryana City Gas Distribution Pvt. Ltd. has visualized and undertaken the project of natural gas supply for Domestic, Commercial, Industrial and transport sector of Haryana State. SKN- Haryana City Gas Distribution Pvt. Ltd. has got the approval from State Government of Haryana to distribute natural gas in Gurgaon & Jhajjar districts of Haryana state and for Neemrana & Bhiwadi area of Rajasthan state from state government of Rajasthan. Presently the company is in a process of creating network for the distribution of natural gas to consumers for domestic, transport, and commercial and industrial sectors in Gurgaon Bhiwadi.

10. Brief facts of the matter, to the extent relevant for the present appeal, are as under:
 - (a) The Government of India in exercise of power conferred by subsection 3 of Section 1 of Petroleum and Natural Gas Regulatory Board Act, 2006 (“Act”), appointed 1st Day of October, 2007 as the date on which the provisions of said Act, except Section 16 thereof came into force. On 12.7.2010, the Central Government notified Section 16 (*Authorisation*) of the Act with effect from 15.7.2010.
 - (b) Section 19 of the Act inter alia relates to Grant of Authorization for a City or local Gas Distribution Network either on the basis of an

application or on suo motu basis. In terms of Section 19 of the Act, the Board may, after giving wide publicity and inviting applications from interested parties, select an entity in an objective and transparent manner as specified by Regulations for such activities.

- (c) The Board issued the PNGRB (Laying, Building, Operating or Expanding City or Local Natural Gas Distribution Networks) Regulations being G.S.R. No. 196(E) on 19.03.2008 (“CGD Authorization Regulations”). Subsequently various amendments were made to the CGD Regulations. The CGD Authorization Regulations were substantially amended by the Board vide GSR No. 145 on 06.04.2018. The Amended Regulations dated 06.04.2018 applicable to the 9th CGD Bidding Round were laid before the Parliament i.e., on 25.07.2018 before Rajya Sabha and 30.07.2018 before Lok Sabha. These amended CGD Authorization Regulations are applicable for the purposes of the present appeal.
- (d) The Board invited bids on 12.04.2018 for the 9th CGD Bidding Round for various Geographical areas, including the Geographical Areas of Chennai- Tiruvallur, Puducherry District and Kanchipuram District (“Project Areas”), which are the subject matters of the

present appeal. The bids were invited by issuing an Application-cum-Bid Document (“ACBD”) for each GA that was being bid out.

- (e) On 10.07.2018, three Bid Evaluation Committees (“BECs”) were nominated by the Board for evaluation of bid documents.
- (f) The Appellant submitted its bid for the Project Areas on 10.07.2018.
- (g) On 12.07.2018, a Press Release was issued by the Respondent Board providing the Technical Bid opening date and time for different Geographical Areas. In respect of GA No. 51 (Puducherry) the date was 16.07.2018 at 16.00 hours. In respect of GA No. 61 (Kanchipuram) the date was 17.07.2018 at 12.30 hours. In respect of GA No. 62 (Chennai-Tiruvallur) the date was 17.07.2018 at 13.30 hours.
- (h) On 16.07.2018, details of bidders with the bid opening date and time including for GA 51 (Puducherry) were uploaded on the website of the Board. Similarly, on 17.07.2018, details of bidders with the bid opening date and time including for GA-62 and GA-61 were uploaded on the website of the Board.

- (i) On 18.07.2018, the technical bids submitted by the respective bidders for the various GA's including the Project Areas were opened by the Board in the presence of bidders' representatives.
- (j) On 23.07.2018, a note with the subject "*Reasonability of Bidding Parameters*" was moved for approval of the members of the Board to encourage serious bidders and to avoid any unrealistic/ unreasonable bidding in terms of Clause 4.4.1 of the ACBD. This note dated 23.07.2018 is at the centre of the issues between the parties and is discussed in further detail below.
- (k) Between 24.07.2018 to 18.08.2018, the financial bids submitted by the respective bidders for various GA's including the Project Areas were opened by the Respondent Board.
- (l) Press Releases dated 03.08.2018 and 10.08.2018 were uploaded by the Respondent Board on its website on the selection of various bidders for different GAs. The Press Release dated 10.08.2018 also inter alia stated that the remaining 7 Geographical Areas were being evaluated and one more was sub-judice and the outcome would be announced in due course.

- (m) The Board also held various Board Meetings on 03.08.2018 (79th), 10.08.2018 (80th), 20.08.2018 (81st) and 29.08.2018 (82nd), in which decisions were taken in respect of the various bids received in the 9th Round of CGD Bidding including in respect of the Project Areas. The relevant Board Meeting Agenda Notes and Board Meeting Minutes would be referred to below in more detail.
- (n) On 30.08.2018, Letters of Intent were issued by the Board to Respondent Nos. 2, 3 and 4 for the Project Areas. Till 14.09.2016, PNGRB processed and issued various LOIs in respect of 78 of the 86 Geographical Areas that were a part of the 9th CGD Bidding Round.
- (o) The Appellant wrote to the Board on 06.09.2018 requesting for a copy of the decision of the Board regarding issuance of LOIs for the Project Areas.
- (p) Subsequently, Press Release with the details of successful bidders including those for the Project Areas for the 9th CGD Bidding Round was uploaded on the website of the Board on 14.09.2018.
- (q) Being aggrieved by the Press Release dated 14.09.2018 and the fact that as per the Press Release, Respondent Nos. 2, 3 and 4 had

emerged as the successful bidders, the Appellant has filed the present appeal on 24.09.2018 challenging the Board's decisions on various grounds. The main ground is that all the winning bidders viz Respondents No.2, 3 & 4 quoted the number of PNG connections more than 100% of household numbers as per 2011 census which should have been the maximum PNG connection numbers that the bidders could have quoted and this criterion of 100% of 2011 census household numbers was evident from the results of the 9th Round of bidding webhosted by the Board on 14.09.2018. The main prayers of the Appellant are as under:

- (i) That this Hon'ble Tribunal be pleased to quash and set aside the Impugned Result uploaded on the website of Respondent No.1 on 14.09.2018 *qua* Bid Nos. GA-62, GA-61 and GA-51 for the grant of authorization for laying, building, operating or expanding City of Local Natural gas Distribution Network in the Geographical Areas of Chennai-Tiruvallur, Kanchipuram and Puducherry;
- (ii) That this Hon'ble Tribunal be pleased to quash the decision for the grant of authorization for laying, building, operating or expanding City of Local Natural gas Distribution Network in

the Geographical Areas of Chennai-Tiruvallur, Kanchipuram and Puducherry, in furtherance to which the Respondent No.1 has published the Impugned Result;

Subsequent to the original appeal dated 24.09.2018, the Appellant amended the prayer clause vide an application dated 30.11.2018 with the two following additional prayers:

- (iii) That this Hon'ble Tribunal be pleased to direct Respondent No.1 to furnish all the papers and proceedings forming the record with respect to the 9th CGD Bidding Round, including of the grant of authorization for laying, building, operating or expanding City of Local Natural gas Distribution Network in the Geographical Areas of Chennai-Tiruvallur, Kanchipuram and Puducherry; and
- (iv) That this Hon'ble Tribunal be pleased to declare the second highest bidder for the Geographical Area of Chennai Tiruvallur i.e. the Appellant herein, to be the successful bidder for the said area and in pursuance thereto to direct the Respondent Board to issue the grant of Authorization and the LoI for the

said Geographical Areas of Chennai-Tiruvallur to the Appellant herein;

11. The matter was fixed before this Tribunal for hearing on the Interim Stay Application filed by the Appellant. However, with the consent of the Counsel for all the parties, the appeal was heard on merits over a number of days.

12. In Appeal No. 323 of 2018, the fact of the case is very much identical to the fact of the case of Appeal No. 292 of 2018. In this case, the Appellant filed an application under RTI Act to the Public Information Officer of the Board seeking filed note sheets, annexures of all documents of the Board including the value of the unreasonable number quoted by the CGD bidders for the 9th round of bidding. This was done keeping in view of the Addendum-I of the ACBD, Clause 14.2 which stated that the level of unreasonably high and unreasonably low quotes will be determined by the Board at the time of the evaluation of the bid. On receipt of the reply from the Board, the Appellant noted that the Board had determined the lower limit of PNG connections to be 2% of the total household (census 2011 data) and the maximum limit to be 100% of the total household (census 2011 data) with clarifications that anything beyond 100% may be treated as an unreasonable quote.

13. Based on the above information and aggrieved by the decision of the Board in regards to GA No. 61, the Appellant has challenged this decision before this Tribunal with identical prayers as in Appeal No. 292 of 2018.
14. I have heard Mr. Mukul Rohtagi and Mr. Vikas Singh, Learned Senior Counsel appearing for the Appellant and perused the submissions made by the Appellant. The gist of the submissions of the Appellant is as under:-
- (a) The principal question that arises in this appeal is whether the bids which were less/more than 2%-100% respectively of the number of households in the 2011 census are to be considered as “unreasonably low” or “unreasonably high” as the case may be, and thus would be disqualified in terms of the bid conditions itself?
- (b) A bare perusal of the Note dated 23.07.2018 clearly bears out the Appellant’s entire case that the criteria adopted by the Respondent Board itself to determine which bids were unreasonably low/high, was clearly ranging between 2% to 100% of the total households as per the 2011 censuses.
- (c) The Note dated 23.07.2018 puts the entire issue beyond the pale of controversy that all bids pertaining to the PNG connections which

were less than 2 and more than 100% of the total households as per the 2011 census were to be considered unreasonably low/high, as the case may be, and were therefore not qualified to be considered at all.

- (d) The Respondent Board has acted in an arbitrary, non-transparent and in a whimsical manner and has acted not only in complete contradiction of the settled law but also in complete contradiction to the decision taken by itself in its meeting held on 23.07.2018, and also in complete violation of the principals of Natural Justice.
- (e) The Board Agenda Notes dated 02.08.2018, 09.08.2018, 18.08.2018 and 28.08.2018 categorically establish that the Respondent Board decided that ranging between 2% to 100% of the total households of 2011 census data was the parameter/criteria to evaluate the bids and select the successful bidder for each respective Geographical Area in the 9th CGD Round.
- (f) By virtue of said criteria adopted in the Note dated 23.07.2018 by the Respondent Board itself, it is submitted that the so-called successful bidders i.e. the Respondents No. 2- 4 herein for the Project Areas i.e. in respect of GAs No. 51, GA 61 and GA 62 are to be disqualified (as

originally decided by the 3 out of the 4 board members including the Chairman as evident from the various Board Notes.

- (g) The Note dated 23.07.2018 (which is actually the decision of the Respondent Board), has been sought to be misinterpreted by the Respondent Board for the first time in its affidavit dated 09.11.2018, wherein it purports to state that the Note was only for administrative evaluation of bids and was not binding on the Respondent Board itself. Such reason came on record for the first time only in the Affidavit dated 09.11.2018 filed by the Respondent Board. Such reason is not contained, much less even hinted at in any of the Board Agenda Notes or the Minutes of the Board Meeting which have been supplied to the Appellant by the Respondent Board.
- (h) It is settled law that a decision of the Respondent Board cannot be added to, supplemented or supplanted by Affidavits filed by the Respondent Board. (**Reference:** *Mohinder Singh Gill & Anr. Vs Chief Election Commissioner, New Delhi & Ors. 1978 (1) SCC (405)* at page 417. As held by the Hon'ble Supreme Court in the said Judgment "*Orders are not like old wine, becoming better as they get older*". The order and decision of the Respondent Board has to stand on its own two feet. Such decision or order cannot be bettered by

recourse to an Affidavit which purports to add reasons to the Note, where there are none.

- (i) The Note dated 23.07.2018 does not provide any caveat, exception or latitude for the Respondent Board to consider afresh as to whether a particular bid, which is ex-facie unreasonably high on the criteria decided on 23.07.2018, can be made “reasonable” after hearing the concerned bidder.

- (j) The Note dated 23.07.2018 was the goal post in accordance with clause 4.4.1 of the Bid Document. Even as per the Addendum - I issued by the Respondent Board, each bid had to be decided on a ‘case-to-case basis’, which is obviously only with reference to the criteria which is uniform for the bid. Surely, it could not be the case of the Respondent Board that deciding on a case-to-case basis would mean that even the criterion would be on ‘case-to-case’ basis. It is only the evaluation of each bid (i.e. case-to-case) which has to be decided against the touchstone of the common criteria, what was decided vide The Note dated 23.07.2018. Therefore, any deviation by which the criteria itself was changed would tantamount to the Respondent Board changing the goal post after the game has begun.

- (k) The bids which were found to be outside the range of the criteria decided upon by the Respondent Board in the Note dated 23.07.2018 were marked as **'Not Qualified' ('NQ')** by the Board in the said Board Agenda Notes.
- (l) The Board Agenda Note dated 09.08.2018 specifically recommended that the highest bidder of GA-51, GA-61 and GA-62 were disqualified (Not qualified) since their bids for the PNG connections were ex-facie unreasonably high being beyond 100% of total households of the 2011 censuses.
- (m) The said Board Agenda Note had, on its terms, been specifically approved by 3 of the 4 Members of the Respondent Board itself. Hence the approval of the Board Agenda Note was itself the decision of 3 of the 4 Members of the Respondent Board. In that circumstance, it is clear that 3 of the 4 of the Respondent Board Members themselves have decided that the highest bidder of GA-51, GA-61 and GA-62 (who had quoted 'unreasonably high' numbers) were "Not Qualified" and 3 of the 4 Respondent Board Members were themselves of the view that the LoI ought to be issued to the H2 bidder in each of the said GA's.

- (n) The reasoning given in the Board Minutes dated 10.8.2018, in fact, renders the decision dated 23.07.2018 virtually redundant and otiose for the simple reason that if on a given criteria a bidder is not qualified, the Respondent Board has no power to relax such condition thereafter and make such unqualified bidder qualify for the bid.
- (o) The Respondent Board has also taken contradictory views on its own decision dated 23.07.2018. Whilst the Respondent Board has correctly applied the unreasonably low criteria to all bidders whose bid was below 2% (of the total households as per the 2011 census) limit, the bids which were higher than the unreasonably high limit of 100% of the 2011 census numbers, the Respondent Board has thought it fit to relax the criteria for reasons best known to itself. [**Refer:** PNGRB Minutes of Meeting dated 10.08.2018- Para 4 @ Pg 52 of the Compilation of Documents submitted by the Respondent Board].
- (p) The decision of the Respondent Board dated 10.08.2018 also smacks of arbitrariness and violation of natural justice for the simple reason that if the Respondent Board thought it fit to hear the highest bidder in order to ascertain the reasonability to its bid, then equally the

Respondent Board should have also heard all the other bidders for the concerned GA.

- (q) The concept of the Respondent Board assessing the reasonability of a bid is very different from the concept of rejecting the bid as ‘Not Qualifying’ for a particular criteria. Whereas assessment of a bid whether qualifying for a particular criteria is an objective assessment, the assessment of the “reasonability” of a bid is a subjective assessment. While making an objective assessment the Respondent Board arguably may or may not need not to hear anybody but while making a subjective assessment, natural justice would require that the Respondent Board not only hear the highest bidder on the reasonability of its bid but also hear all those who are likely to be affected by an adjudication and finding on the reasonability of the highest bidders bid.
- (r) In accordance with the terms of Section 19(2) of the PNGRB Act, it is imperative on the part of the Respondent Board to act in a completely fair, objective and transparent manner while selecting the entity/successful bidder for the 9th CGD Round.

- (s) In view of the terms of the Section 19(2) of the Act, the stance being taken by the Respondent Board in respect of the confidentiality of the process is liable to be rejected at the outset on account of the same being in complete contradiction to the statutory provisions. It was thus obligatory on the part of the Respondent Board to maintain transparency in the bidding processes in accordance with the terms of the said sections of the PNGRB Act.

- (t) The Respondent Board has acted in an arbitrary, non-transparent and capricious manner while issuing the LoAs to the Respondents herein for the GAs of Chennai, Puducherry and Kanchipuram/Project Areas.

- (u) The non-transparent and non-objective acts/process adopted by the Respondent Board can also be ascertained from the fact that the subsequent decision dated 23.07.2018 taken by the Respondent Board thereby deciding upon the criteria/ parameters to evaluate the submitted bids between the range of 2% and 100% of the total number of households on the 2011 census has never been made public.

- (v) The Respondent Board has failed to point out any provision in the Bid document or any of its amendment or even in the 2008

Regulations which provides for and authorizes the Board to call bidders for the purposes of explaining and justifying their respective bids submitted for a particular GA and that too on the basis of materials different from the bidding criteria adopted by the Board itself.

- (w) The Board Agenda Notes also details out the list of the successful bidders for each of the GAs in accordance with the terms of the Regulation 7(3) of the PNGRB Act, 2008, in accordance to which the entity which has the highest composite score is considered as the successful bidder.
- (x) In GAs where only 1 bid was received and the said bid also was 'unreasonably low', in accordance with the terms of the Note, the Respondent Board proceeded with issuing the LoI to the said bidder and did not even ask the said bidder to revise its bid to be equivalent to the minimum 2% of the total households criteria.
- (y) In the GAs where only 2 bids were received and both the said received bids were less than the minimum criteria of 2% of the total households of the 2011 census. In such cases, the Respondent Board, on its own whims and fancies and without there being any authority

or provision entitling the Respondent Board to do so, decided to call upon the H1 of the said 2 bidders i.e. the entity with the highest composite score, to negotiate and improve/revise its quoted bid to the minimum requirement of the 2% of the total households. Upon the said entity confirming the acceptance of the said revised quote, the Respondent Board issued the LoI to such entities (Refer GA 35, GA 46, GA 48 and GA 49 in Board Agenda Note dated 02.03.2018 and Minutes of Meeting dated 03.08.2018).

- (z) In GAs where 2 or 3 bids were received and the highest bidder had submitted a bid which was less than the minimum limit of 2% of the total households as per the 2011 census, the Respondent Board disqualified the said highest/H1 bidder and issued the LoI to the next highest bidder which had quoted more than 2% of the total household number of the PNG connections (refer to GA-37- Satna-Shahdol Districts case).

- (aa) The Bid Document contains a map of the GA which provides the information about the population and number of households based upon the 2011 census and it was the said map which provided the base for the respective bidders to make their estimates and submit their bids. It is nowhere stated in the Bid Document that the bidders

were to submit their bids taking the total households in the 2026 as the base. Further, the Respondent Board itself has taken the base for evaluating the submitted bids as the total household of 2011 census, expect for the Project Areas.

- (bb) The Regulations themselves contemplate that the Bid Bond and the Net-worth criteria were to be decided on the basis of the number of households on the 2011 census. It can hardly be said that the net-worth of the bidders and the bid bonds amounts would be decided on the basis of the 2011 census numbers but the bids would be evaluated on the basis of some imaginary 2026 number.
- (cc) If the bidding criterion was the household numbers of the 2011 census, the bids could not be sought to be justified on the basis of some other studies or census etc.
- (dd) The Respondent Board in its additional Affidavit, filed after the Appellants completed their Rejoinder arguments, takes the stand that the Board had changed the 2011 census number to assess the bids for Chennai-Tirulvavur. This is a clear admission by the Respondent Board that the Respondent No.2 i.e. Torrent Gas Pvt. Ltd.'s bid was considered not on the basis of the 2011 Census number given by the

Respondent Board itself but on the basis of a different number. On this ground alone, the award of the tender in favour of the Respondent No.2 i.e. Torrent Gas Pvt. Ltd. in GA - 62 has to be set aside.

- (ee) This is also a clear admission by the Respondent Board that this special dispensation was given for Respondent No.2's bid and not even for the other two bidders which they called upon to hear explanations from.
- (ff) There was no fixed criteria/ parameter which was relied upon and followed by the Respondent Board while deciding upon the successful bidders and even while rejecting the bids. The Respondent Board has always acted in a discriminatory, and capricious manner, which is in complete contradiction to the statutory provisions, the Bid Document and even the 2008 Regulations, as the process followed is neither objective nor non-transparent.
- (gg) It can be clearly ascertained that the actions of Respondent Board in case of Medchal – Rangareddy & Vikarabad are also completely arbitrary and contradictory to the parameters/ criteria laid down and approved in by the Respondent Board itself in the Note dated

23.072.108. Despite the said quote/bid submitted by the Respondent No.2 for GA-72 being less than the maximum limit i.e. less than 100% of the total households in 2026, yet in complete arbitrariness and contradiction to the decisions of Chennai-Tiruvalur, Puducherry and Kanchipuram, the said bid was rejected by the Respondent Board and accordingly the next highest bidder i.e. H2 was issued the LoI and the grant of authorization for the said GA of Medchal-Rangareddy and Vikarabad.

- (hh) Respondent Board decided the limits of “unreasonableness” using the 2011 Census but it selectively and conveniently ignored the Note and used population of 2026 to evaluate and justify the reasonability of these bids. It is thus clear that the Respondent Board has acted not only in complete defiance of the terms of the Bid Document but also in a completely arbitrary, whimsical and a non-transparent manner and the process adopted by the Respondent Board is discriminatory, capricious, suffers from favoritism/nepotism and is also violative of the mandate of Article 14 of the Constitution of India.
- (ii) In respect of the three GA’s of Chennai-Tiruvallur, Kanchipuram and Puducherry, the Respondent Board has made wrong calculations and has come to wrong conclusions based on the calculated growth rate

and population. The calculations and the basis of the calculations carried out by the Respondent Board are baseless and arbitrary, thereby leading to erroneous results and conclusions.

(jj) The figures and the calculations projected in the Board Agenda Note dated 28.08.2018 are absolutely frivolous, based on surmises and conjectures and have been subsequently approved by the Respondent Board in its 82nd Board Meeting held on 29.08.2018 without any logical reasoning and without any application of mind. The calculations approved by the Respondent Board in respect of the GAs of Chennai, Tiruvallur and Kanchipuram are, on the face of it impossible as the combined population share of the said 3 GAs is only 17.14% in 2011 of the state of Tamil Nadu's population and expected to increase to 19.57% by 2026 and not 26.02% as has been projected and approved by the Respondent Board.

(kk) The stance taken by the Respondent Board in respect of the confidentiality of the process is in complete contradiction of the terms of Section 19(2) read with Section 20(4) of the Act. Though clause 4.3 of the Bid Document provides for the information relating to the examination, evaluation and comparison of the bids and recommendations to be treated confidential, the same does not

preclude the Respondent Board to act in a fair, transparent and non-arbitrary manner. The confidentiality of the process does not entitle the Respondent Board to keep the criteria/ parameter on the basis of which the LoIs have been issued to the successful bidders as confidential. The said clause does not give the right to the Respondent Board to not fix the said criteria/parameter, keep it vague and deviate from the terms of the Bid Document by calling only certain bidders to explain/ justify their respective bids to the prejudice and harm of the other bidders.

- (II) The criterias for the Respondent Board for the selection of entity for expression of interest route as well as the entities not authorized by the Central Government for laying, building, operating or expanding CGD network before the appointed day have been duly laid down under Regulations 5 and 18 of the Regulations and the Respondent Board is obligated to follow the same and cannot go beyond the terms of the terms of the said clauses.

- (mm) The Appellant has also relied on the following Judgments in support of its submissions:

- 1) *Centre for Public Interest Litigation and Ors. Versus Union of India and Ors. – Order dated 02.02.2012 – Paras 75, 85 and 95;*
- 2) *Akhil Bhartiya Upbhogta Congress – (2011) 5 SCC 29 – Para 65;*
- 3) *Reliance Energy Ltd. & Anr. Vs. Maharashtra State Road Development Corporation Ltd. & Ors. – (2007) 8 SCC 1 – Paras 36 to 39;*
- 4) *Monarch Infrastructure (P) Ltd. v. Commissioner, Ulhasnagar Municipal Corpn. - (2000) 5 SCC 287 – Paras 11 and 12;*

15. I have heard Mr. Paras Kuhad, Learned Senior Counsel and Mr. Prashant Bezboruah, Counsel, appearing for the Board and perused the submissions made by the Board. The gist of submissions of the Board is as under:-

- (a) The Preamble and Section 11 (1) (a), 11 (1) (c) (ii), 11 (1) (e) (iii) of the PNGRB Act, 2006 inter alia show that one of the prime obligations of the Board under the PNGRB Act, 2006 is to ensure that uninterrupted and adequate gas supply is made to all parts of the country. The Board is also mandated to protect the interest of consumers/ entities engaged in specified activities relating to petroleum, petroleum products and natural gas as well as promote competitive markets. This mandate has been captured in the various regulations framed by the Board in exercise of its powers under the Act.

- (b) Public interest alone can be the basis of judicial scrutiny. Individual grievances are of no significance. The public interest aspect in the present Appeal is that the more infrastructure that is developed, the more the public would benefit. The Board also has a statutory mandate to ensure the maximum possible development of CGD Networks. Therefore, selecting an entity, which quotes the maximum number of PNG domestic connections only furthers the public interest and cannot be questioned at the instance of an unsuccessful private bidder, which has quoted lesser number of PNG domestic connections.
- (c) The bidding process is conducted by a statutory Regulator, which is a creation of the Act. In the Appeal, there is not a whisper of malafides, which in any case needs to be proved with a much higher standard and based on settled principles of law. Further, the Board does not have any vested interest in the selection of the entity and is in fact working in order to further public interest. There is no personal interest of the Board while deciding the successful bidder.
- (d) It is settled law that Courts should not substitute their own views/ decision in place of the views/ decisions of an expert body. It is also

settled law that Courts do not interfere in contractual matters unless it is shown and proved that the decision was taken with malafides or taken arbitrarily or was so perverse that no reasonable person could have taken such a decision. Assuming but not admitting a mere irregularity in the process, this in itself does not vitiate the decision of an expert body in a contractual selection process.

- (e) Under Article 226 and Article 32 of the Constitution of India, the Courts exercise a superior jurisdiction, which though wide has certain limitations. It is submitted that the limitations imposed on Judicial Review/ scrutiny under Article 226 and 32 of the Constitution would equally apply to this Hon'ble Tribunal too while deciding issues relating to a bidding process, which by its very nature is a contractual selection process.
- (f) While conducting judicial scrutiny, this Tribunal necessarily has to keep in mind the nature of the activity that is being examined. In the present Appeal, the nature of the activity (bidding process) is contractual in nature.
- (g) It is also settled law that public interest would always over-ride private interest. The decisions of the Board therefore have to be seen

in the context of public interest versus private interest. A reading of the scheme of the Act and the Regulations would show that insofar as PNG domestic connections are concerned, the highest number of PNG domestic connections is most desirable to best serve the public interest and ensure the maximum possible development of the CGD Networks.

- (h) The fact that this Hon'ble Tribunal is exercising Appellate jurisdiction cannot expand the scope of Judicial scrutiny/ review of a contractual selection process.
- (i) The challenge made by the Appellant is an adversarial challenge and not a PIL. Therefore, no challenge to other selections in other GA's or to the process followed in those GA's as a whole can be advanced by the Appellant. The Appellant cannot try and make its case better by relying on decisions taken in separate GA's, which are not under challenge.
- (j) It is settled law that natural justice can never be read into a contractual selection process. Therefore, the allegations of violation of principles of natural justice are completely unfounded and should not be entertained by this Hon'ble Tribunal.

- (k) The Prayers sought by the Appellant also have to be seen in the context of the Constitutional rights which Respondent Nos. 2, 3 and 4 have acquired by reason of Article 14 of the Constitution and Regulations 7(1) and 7(3) of the Authorization Regulations. Further, the prayers of the Appellant also have to be seen based on the fact that the Appellant is actually seeking a negation of Regulations 7 (1) and 7 (3) of the Authorization Regulations, which is a statutory right acquired by a bidder, once it has emerged as the highest bidder.
- (l) The Appellant is asking this Hon'ble Tribunal to completely bypass the statutory scheme and instead to decide the Appeal on an executive decision in the Note dated 23.07.2018, which also was not meant for nor was it binding on the Board.
- (m) Section 19 of the Act inter alia relates to Grant of Authorization for a City Gas Distribution (“CGD”) Network either on the basis of an application or on suo motu basis. In terms of Section 19 of the Act, the Board may, after giving wide publicity and inviting applications from interested parties, select an entity in an objective and transparent manner as specified by Regulations for such activities.

Therefore, the selection of entities under Section 19 (2) of the Act is in the manner specified in the Regulations.

- (n) Regulations 4, 5, 6 and 7 of the CGD Authorization Regulations provide for the manner and method of selection of an entity through an expression of interest route or the bidding route.
- (o) Insofar as the preparatory exercise in the bidding process is concerned, this is covered by the ACBD. The preparatory exercise is done at three (3) levels namely the consultant, officers of the Board and a Bid Evaluation Committee (“**BEC**”). The BEC is assisted by the officers and consultant of the Board.
- (p) After the preparatory exercise is done, the recommendations are placed before the Board in the Board Agenda Notes for its final decision in a Board Meeting. The Board Agenda Notes are not binding on the Board and are only meant for the deliberations, consideration, approval and final decision of the Board. The Board in a Board Meeting has the full power to take decisions, which may or may not be as per the Board Agenda Notes.
- (q) During the course of the hearing on 09.01.2019 and in its written submissions, the Appellant has deliberately tried to mislead this

Tribunal by relying on the Board Agenda Notes and giving the wrong impression that since these were approved by 3 Members out of 4 Members of the Board, they were binding on the Board. The Appellant has failed to note that at the last page of each Board Agenda Note it is clearly mentioned that the Board Agenda Note is for deliberations and approval of the Board.

- (r) The competent authority to decide on the successful bidder is the Board and not the BEC/ officers/ consultant or even individual Board Members. This power of the Board of deciding the successful bidders has not been delegated by the Board to the BEC/ officers/ consultant or to any individual Board Member.
- (s) In terms of Regulation 6 read with Regulation 5, the Board is supposed to scrutinize the bids received only in respect of those entities which fulfill the minimum eligibility criteria prescribed under Regulation 5 of the Authorization Regulations.
- (t) The bidding criteria (for financial bids and quoted targets) is prescribed under Regulation 7 (1) (a) of the Authorization Regulations. Under Regulation 7 (1) (a), there are five (5) bidding criteria.

- (u) Regulation 7 (3) of the Authorization Regulations provides that the bidder entity with the highest composite score, considering the criteria under sub-regulation (1) and as illustrated in Schedule C (1) shall be declared as the successful bidder.
- (v) In terms of Regulation 7 (1) (a) of the CGD Authorization Regulations there are no lower or upper limits fixed for infrastructure creation under the 3rd, 4th and 5th criteria. The Note under Regulation 7 (1) (a) is also not applicable for the 3rd, 4th and 5th criteria.
- (w) Once a bidder fulfills the qualifying criteria in terms of Regulation 5 and 7 of the Authorization Regulations and emerges as the highest bidder, it has a statutory right to be selected.
- (x) The Regulations have an inbuilt mechanism for preventing unrealistic bidding. A reading of the Regulations shows that there is a self contained mode in the Regulations itself to safeguard public interest as well as ensure that unrealistic bids are not accepted by the Board. There is an elaborate and exhaustive legislative framework under the Act and the Regulations and the Board is equally bound to follow that as are the entities.

- (y) The Regulations do not speak of a criteria of ‘unreasonably high or low’ in the bid selection, and that cannot be read into or be enforced in derogation of Regulation 7(1) read with 7(3). By virtue of Regulation 7(3), the highest bidder, automatically becomes a successful bidder. There are also adequate safeguards in relation to the issue of unreasonably high or low quoted numbers which is dealt with by the Regulations through Regulations 7, 9, 10, 11 and 16. This scheme cannot be neglected by invoking an executive decision.

- (z) Regulation 7(1) of the Authorization Regulations is exhaustive on the bidding criteria. Regulation 7(1) read with Regulation 7(3) of the Authorization Regulations framed in terms of Section 19(2) read with Section 61 of the Act mandates a selection only in accordance with the bidding criteria laid down therein, the precise manner of computation to be applied being as specified in Schedule C (1).

- (aa) The Regulations are binding on the Board as they are on the entities/bidders. It is settled law that if power has been given under the Act and the Regulations and the mode and manner of exercising that power is also given therein then it can only be exercised in that manner and in no other manner.

- (bb) Clause 4.4.1 of the ACBD provides a reserved power to the Board for rejecting any bid on the ground of unreasonably low or high quotes. Addendum-1 para 14.2 was issued by the Board for clarifying how the reserved power of the Board under Clause 4.4.1 of the ACBD would be used at the time of bid evaluation on a case to case basis and after considering all the relevant factors of a particular bid.
- (cc) Clause 4.4.1 of the ACBD and Addendum-1 do not create any obligation on the Board. Clause 4.4.1 read with addendum 1 only recognizes the inherent existence of a reserved power with the Board, to reject any bid considered by it as unreasonably high or low.
- (dd) The inherent or reserved power under Clause 4.4.1 neither forms a part of the qualifying criteria nor a part of the bidding criteria. Thus, selection of qualifying entities and selection of a successful bidding entity, has to be carried out only with reference to Regulation 7(1). There is no question of exercising the reserved power till the completion of this process.
- (ee) The reserved power does not give any corresponding right to the bidders to insist that it must be mandatorily applied even at the cost

of over-riding the statutory scheme and violating Article 14 of the Constitution. The Appellant certainly cannot insist on invalidation of the successful bids on the ground that the Board should have applied this reserved power mechanically and without any application of mind.

- (ff) The bidders only have a participatory right, which is as per the bid conditions and applicable provisions of the Act and Regulations.
- (gg) It is settled law that inherent/ reserved powers cannot be exercised contrary to the mandate of the statute. In terms of Clause 4.4.1 of the ACBD read with Addendum-1, the inference that can be drawn is that the power under Clause 4.4.1 is to be exercised in an extraordinary situation and not just as a matter of course. Therefore, if such power is not exercised by the Board or exercised on a case to case basis, it cannot be said that the Board has done anything wrong.
- (hh) The mandate of the Board under the Act cannot be defeated by wrongfully elevating Clause 4.4.1 of the ACBD to override the statutory mandate of Regulation 7. It is settled law that all contractual conditions are subservient to the statutory scheme and the provisions of the Act and any Regulations framed thereunder. Therefore, it is

submitted that the provisions of the Act, Authorization Regulations (particularly Regulation 7), ACBD (particularly Clause 4.4.1 and Addendum-1) and the Note dated 23.07.2018 have to be read harmoniously.

- (ii) It is also equally imperative, that the reserved power cannot be exercised with reference to any general pre-defined parameter, and instead, the reserved power has to be exercised only on a case to case basis and that too only with reference to all the relevant factors.

- (jj) For determining whether the reserved power is to be invoked despite the bid being highest and thus, successful, obviously enough, scrutiny has to be limited to the bid offered by the successful entity.

- (kk) It is axiomatic, that a vested right acquired by a party cannot be defeated by applying a mandate of executive instructions. No mandamus/ judicial review/ judicial order can be claimed from a Court claiming that the vested right of successful party acquired in terms of statute be nullified with reference to a norm flowing from a contractual bidding condition.

- (ll) It is settled law that even if a condition is put and a deviation from a condition is made, the bid inviting authority can deviate from such condition but the bidders cannot deviate. Therefore, the Board had the full power and right to deviate from/ modify any condition of the bid document once the selection process was completed in terms of Regulations 7(1).
- (mm) Bids can neither be modified nor can there be a negotiation with any one party till the completion of the bidding process. Equal opportunity is the essence. But once the process is complete and a person has emerged as the highest bidder, (and others stand excluded from the process), the Bid Inviting Entity, can always bilaterally secure an even further improvement of the value being offered.
- (nn) It is also settled law that a deviation by the bid inviting authority is not permissible under Article 14 of the Constitution if it results in violation of a statutory right. Therefore, the Appellant certainly cannot insist that the Board must apply its reserved power and violate Article 14 rights of the successful bidders (Respondent Nos. 2, 3 and 4), who fulfill the statutory criteria under Regulation 7(1) read with Regulation 7(3) of the Authorization Regulations.

- (oo) The bidders were well aware of the Regulations, bidding criteria, Clause 4.4.1 and the Addendum-1 much before they submitted the final bids. The bidders including the Appellant accepted the condition of Clause 4.4.1 and the Addendum-1 while submitting their bids. The bidders including the Appellant submitted their bids knowing fully well that the Board had the full power and right to decide what would constitute unreasonably high or unreasonably low quotes on a case to case basis. These conditions of the ACBD and Addendum-1 were never challenged by any of the bidders including the Appellant.
- (pp) In the bidding process, there are certain activities which are to be undertaken prior to the Board taking a final decision on the successful bidders and issuing the LOI/ Grant of Authorization. These activities/ functions in the bidding process have been delegated by the Board to the Bid Evaluation Committees, individual officers and specific Members of the Board.
- (qq) There is a fundamental difference between Scrutiny of the bids by the Delegates and evaluation/ final decision on the bids by the Board. The final evaluation and decision making on the successful bidders can only be that of the Board (which is an expert body) as per the

statutory scheme of the Act and the Regulations and the provisions of the ACBD.

- (rr) Keeping in mind the provisions of Clause 4.4.1 of the ACBD wherein PNGRB reserved the right to reject any application-cum-bid comprising quoted work program considered by it to be unreasonably high or low, in order to promote serious bidders and to avoid any unrealistic/ unreasonable bidding numbers, a Note with the subject “*Reasonability of Bidding Parameters*” was moved on 23.07.2018, for the consideration and approval of the Board.

- (ss) The Note was meant to provide guidance during Scrutiny so as to highlight any issues to the Board in terms of Clause 4.4.1 of the ACBD at the time of opening of the financial bids. In the Note, there is no automatic/ mandatory rejection of such high/ low bids. The intent of the Note was to guide as to what should be considered as unreasonably low and high quotes in the financial bids so that these kinds of bids could be red flagged to the Board for its final consideration and decision on a case to case basis.

- (tt) A combined reading of the Note, Clause 4.4.1 of the ACBD and Addendum-1 leads to the conclusion that any issues of unreasonably

low or high bids highlighted by the Delegates were to be evaluated by the Board on a case to case basis. Further, what would be considered unreasonably low or high by the Board (*and not the Delegates*) was to be done at the stage of evaluation of such bids by the Board (*and not the Delegates*) after considering all the relevant factors.

- (uu) The Delegates have to provide the complete picture to the Board so that it can apply its mind on the bids and then decide the successful bidder. Any decision taken by the Board has to keep in mind the mandate under the Act and the public interest, while deciding on the successful bidder.
- (vv) In bids, which the Delegates have highlighted to the Board for quoting unreasonably low or high as per the Note, the exercise of evaluating the bid to see whether the numbers quoted are reasonable or not cannot be done mechanically and has to be done after hearing the H1 bidder and ascertaining the basis for those quotes.
- (ww) There is no need to call each and every unsuccessful bidder in a particular GA for a hearing. If at all the next highest bidder is to be

called for a hearing, this requirement would only arise if the highest bidder cannot justify the low or high quotes given by it.

(xx) The disclosure of the Note to entities would have made a mockery of a competitive bidding process as every entity then might have bid keeping in mind the 2% minimum and 100% maximum numbers based on the 2011 Census. This would have resulted in the Board not receiving the best possible numbers for PNG Domestic connections and other bidding parameters. This is more so as the entities were to quote numbers based on their own calculations/ assumptions as to the maximum number of domestic PNG connections that they could achieve till 2026. There is nothing in the Act or the Regulations or even the ACBD, which shows that the bidders had to necessarily quote numbers that were less than or equal to the 2011 Census. In fact, such an assumption goes completely against public interest as in the year 2026 it cannot be expected that the bidders would only fulfill domestic PNG connections at the same/ lower population level as 2011.

(yy) It may be seen from the Note that such quotes that were below 2% and above 100% **may** be considered as unreasonably low and high respectively. In the Note, there was no automatic/ mandatory

rejection of such low/ high bids and rightly so since that power could only be exercised by the Board.

(zz) The Note dated 23.07.2018 was not a bidding criteria. It was also not a selection criteria nor was it an eligibility criteria. The Note was also not a post selection criteria. The bidding criteria and selection criteria were provided in the Regulations and the ACBD. In effect, the Note did not curtail or restrict the exercise of power of the Board on deciding the successful bidders as per the Act, the Authorization Regulations and the ACBD.

(aaa) Insofar as the Note dated 23.07.2018 is concerned, it has to be read keeping in mind the overall scheme of the Act, Regulations, ACBD, Board Meeting deliberations and analysis and the fact that an internal Note meant for the Delegates cannot be used to over-ride a statutory right acquired by a bidder in terms of Regulations 7(1) and 7(3).

(bbb) The entire decision making process in relation to the bids that were either considered unreasonably low or high by the Delegates is contained in the various Board Agenda Notes and the Minutes of the Board Meetings.

- (ccc) The records speak for themselves and clearly show that there was no arbitrariness in the decisions of the Board or favouritism (as wrongly alleged by the Appellant) shown to any entity by the Board while approving this Note or while evaluating the bids for GA Nos. 51, 61 and 62, which are the subject matter of the present Appeal.
- (ddd) A bare perusal of the Note, the Board Agenda Notes, the Minutes of the various Board Meetings and the original files of the Board would clearly show this Tribunal that the allegations of non-transparency, arbitrariness, favouritism, subjectivity and discriminatory approach raised by the Appellant in the Appeal and during the course of the various hearings are completely baseless, without any merit and wrong. Therefore, there is no ground whatsoever to grant any relief to the Appellant.
- (eee) Out of 406 bids received by the Board, it is only in 9 successful H1 bids that low or high bids were received by the Board below the 2% and above the 100% guidance limit for the Delegates. These 9 bids were accordingly highlighted to the Board and final decisions were taken on these 9 bids by the Board after proper application of mind, hearing the parties and taking an objective decision while awarding the bids to these entities.

- (fff) The Board Meeting Minutes would clearly show the detailed deliberations and analysis of the quotes of Respondent Nos. 2, 3 and 4 before declaring them as the successful bidders.
- (ggg) GA-37 (IOCL's case for Satna and Shahdol GA) cannot be compared to the Project Areas, which are the subject matter of the present Appeal. The Appellant certainly cannot rely on IOCL's case since the facts of that bid are different from the facts of GA 51 (Puducherry), 61 (Kanchipuram) and 62 (Chennai-Thiruvallur), which are the subject matter of the present Appeal.
- (hhh) A deliberately misleading, incorrect and erroneous argument was advanced by the Appellant that the Board had based its decision to award the bids to Respondent No. 2 on incorrect/ inflated Census figures and had calculated an incorrect Compound Annual Growth Rate (“**CAGR**”) for the projected number of households in 2026 for Chennai-Thiruvallur;
- (iii) The calculations made by the Appellant of the projected growth rate and the CAGR in its Rejoinder to the Board's Affidavit are based on wrong and irrelevant factors.

(jjj) The Appellant has deliberately calculated the CAGR on the basis of the overall population growth and not on the basis of the CAGR of the number of households. For the purpose of PNG Domestic connections, the overall population growth has no relevance whatsoever since it is the number of occupied households that are relevant. Population growth rate and household growth rate are entirely different. The population growth rate and household growth rate in the same GA/ district will be different depending upon the urbanization and other factors in the particular GA/ district.

(kkk) The relevant documents would clearly show that the decision of the Board was based on actual data available of the number of occupied households for Chennai and Thiruvallur as per the Census of India. The figures considered by the Board were certainly not based on the whims and fancies of the Board but were authentic and actual figures based on official data.

(lll) The Board, in support of its submissions has relied on the following Judgments:

- 1) ***Central Coalfields Limited & Anr. Vs. SLL-SML (Joint Venture Consortium) & Ors. – (2016) 8 SCC 622 – Paras 38, 42, 43, 47 and 48;***

- 2) ***Jagdish Mandal Vs. State of Orissa & Ors. – (2007) 14 SCC 517 - Para 22;***
- 3) ***Air India Ltd. v. Cochin International Airport Ltd. - (2000) 2 SCC 617 - Para 7 at page 623;***
- 4) ***Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd., (2016) 16 SCC 818 – Paras 11 and 13;***
- 5) ***Manohar Lal Sharma v. Narendra Damodardas Modi, (2018) SCC Online SC 2807- Para 11;***

16. I have also heard Mr. Ranjit Kumar, Learned Senior Counsel and Mr. Ramji Srinivasan, Learned Senior Counsel appearing for Respondent No. 2 and perused the submissions made by Respondent No. 2. The gist of submissions of Respondent No. 2 is as under:-

- (a) The challenge by an unsuccessful bidder can be permitted only on limited grounds, *inter alia* as under:
 - (i) That the evaluation and declaration of the Respondent No. 2 as the successful bidder was contrary to:
 - (a) the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008; and

- (b) the terms and conditions of the Application-cum-Bid Document.
- (i) The terms and conditions of the Application-cum-Bid Document were unreasonable and arbitrary.
- (ii) That the entire exercise of evaluation of the bids by the Board across 86 GAs was vitiated by *malafide*.

None of the above three grounds have been satisfied by the Appellant.

- (b) The evaluation and declaration of Respondent No. 2 as the successful bidder cannot, in any manner, be said to be contrary to the Regulations or the terms and conditions of the Bid Document. By contending that the bids were required to be evaluated as per the number of households existing as per the Census of 2011, the Appellant is seeking to read into the Regulations and the Bid Document, a standard which does not exist.
- (c) The Appellant has itself been awarded the bids for more than 20 GAs on the same terms and conditions as prescribed in the Bid Document. In such circumstances, without having challenged or questioned the

validity of any of the said conditions at the relevant time, the Appellant is equally bound by the conditions of the Bid Document.

- (d) The Bid Document categorically provides in Clause 1.1.3 that it shall be the bidder's responsibility to obtain all information related to the present gas supply availability and pipe line connectivity in the specified geographical area. The Appellant is, thus, seeking to rewrite the terms of the Bid Document by suggesting that the bids were required to be evaluated as per the Census of 2011.
- (e) As per Clause 1.2 of the Bid Document, the bidding entities were required to lay, build, operate or expand the CGD networks with the objective of meeting the requirement of natural gas in the said geographical area. The intention of the Board was, thus, clearly to encourage bidders to carry out their own assessment of the geographical area and then submit the bid numbers without any restrictions or upper ceiling.
- (f) It is inconceivable to suggest that the entire exercise of evaluation of bids in as many as 86 GAs was vitiated by *malafide*. Moreover, this is not even the pleaded case of the Appellant in the appeal. Despite the same, the Appellant has attempted to convert the present

proceedings to be in the nature of a Public Interest Litigation (PIL), which is impermissible given the limited jurisdiction of the statutory appeal vested in this Hon'ble Tribunal as opposed to a sweeping public law jurisdiction under Article 226 of the Constitution of India. The case of the Appellant is, therefore, without any substratum and must fail.

- (g) The Board also reserved its overarching discretion to reject bids, which in view of the Board i.e. a regulator and an expert body, were unreasonably high or low. The standard to determine what is “unreasonably” high or low cannot be put in a straitjacket formula and must be left to the expertise of a regulator. Even otherwise, the body issuing the tender always has the right to reject any or all bids without giving any reasons whatsoever.

- (h) Whereas, in previous rounds, the objective of the Board was to evince interest in the bidders, the present bidding round was about leaving the bids to the commercial wisdom of the bidders coupled with a penal provision to safeguard against a situation where a bidder fails to meet its targets.

- (i) The Regulations do not restrict the number of PNG connections to be quoted by a bidder. As a matter of fact, unlike the bidding criteria pertaining to the transportation rate for CGD and CNG, wherein the lowness of the rate is to be considered i.e. a lower ceiling was fixed, the criteria in respect of PNG connections is for the highness of connections to be achieved within 8 contract years from the date of authorisation. The intention of the Board was, therefore, to encourage bidders to quote a higher number of PNG connections to be achieved without any upper ceiling.
- (j) The Appellant placed reliance on the note provided at the bottom of the bidding criteria table provided in Regulation 7, wherein a reference has been made to the year 2011. On the basis of the said note, the Appellant has sought to further its argument that the Census of 2011 was the basis for the quote of PNG connections to be submitted by a bidder. The Appellant's reliance on the note is completely misplaced and incorrect since the note only applies to bidding criteria 1 and 2 i.e. the transportation rate for CGD and CNG respectively.
- (k) The note is completely irrelevant for the issue arising in the present appeal i.e. the bidding criteria for PNG connections. This is evident

from the explanation provided in the table in respect of bidding criteria 1 and 2, wherein it has been stated that the “*rates for the subsequent contract years shall be derived considering the quoted rate and escalation as per Note*”. In contrast, no such explanation has been provided in respect of the bidding criteria for PNG domestic connections. The argument of the Appellant, therefore, is without any merit.

- (l) Significantly, Regulation 7 was amended by the Board on 06.04.2018 i.e. before the Bid Document was issued on 12.04.2018. Vide the said amendment, the Board removed the cap on PNG connections to be achieved within 8 years from the date of authorisation. The Board has deliberately removed the cap on the number of PNG connections to be quoted with a view to encourage bidders to quote a higher number in larger public interest.

- (m) The Census of 2011 was never the basis for the bid to be submitted by an entity. The Appellant has completely failed to demonstrate, from the Regulations or the Bid Document, even a single condition or requirement to suggest that the PNG connections

were required to be determined in accordance with the Census of 2011.

- (n) The reference to Census of 2011 in Regulation 5 was only relevant for the purposes of determining the net-worth of the bidding entity with a view to examine if the said entity had adequate financial strength to execute the project. Similarly, in respect of Regulation 9, the reference to Census of 2011 was only relevant for determining the amount of performance bond to be submitted by a bidding entity. It is, therefore, absurd and contrary to the true purport of the Regulations to suggest that the Census of 2011 was required to be taken as the basis for submission of quotes for PNG connections.

- (o) While there was no restriction on the number of PNG connections to be quoted by a Bidder either in the Bid Document or in the Regulations, the Board did reserve its right, vide Clause 4.4.1 of the Bid Document, to reject any application-cum-bid quoting work programme considered by it to be unreasonably high or low. Based on clarifications sought by the certain bidders, the Board also issued an Addendum.

- (p) The Addendum was available to all bidders, including the Appellant in spite of which the Appellant participated in the bidding process. Moreover, the Appellant has also won about 22 bids on the same terms and conditions. In such circumstances and in the absence of any objection by the Appellant at the relevant time, the contention that any bid above 100% of the number of households as per the Census of 2011 was liable to be rejected, is contrary to the Regulations as also the Bid Document.
- (q) It is noteworthy that the Board was established *inter alia* with the objective of ensuring uninterrupted and adequate supply of petroleum, petroleum products and natural gas in all parts of the country. The interpretation sought to be given by the Appellant would deprive several parts of the country of natural gas. Naturally, the successful bidders would then restrict themselves and provide natural gas only the number of households existing in 2011 even though the network is required to be setup by 2026.
- (r) The number of households existing in 2026 in Chennai-Tiruvallur Districts, Tamil Nadu i.e. GA. No. 62 is expected to be far higher than the number of households in 2011. With the increase in population across the GA in question due to urbanization and other

factors, the number of households and PNG connections will also inevitably increase. In the present case, the Appellant has quoted a meager number of 15,00,068 PNG connections to be achieved by 2026 as opposed to the number of 33,00,000 quoted by Respondent No. 2.

- (s) The provisions of Regulations 13(3) and 16 have adequate safeguards to address a situation wherein an entity quotes an unrealistic figure of PNG connections. If the cumulative achievement falls short of 30% of the weighted average at the end of three contract years, or if in the opinion of the Board the entity makes a serious default, then it may result in termination of authorization and encashment of 100% of performance bond.
- (t) The Respondent No. 2 submitted a bid to achieve about 33,00,000 PNG connections by calendar year 2026 in Chennai -Tiruvallur Districts i.e. GA No. 62 after having analyzed the relevant data for the year 2018 and also the growth potential for the next eight years.
- (u) Respondent No. 2 submitted various data/ documents and also made a presentation before the Board regarding the reasonability of its bid.

The decision of the Board to declare Respondent No. 2 as the successful bidder in respect of GA No. 62 was taken after due application of mind and having considered the reasonability of its quote.

- (v) So long as the Board, which is an expert body, was satisfied with the justification offered by the Respondents, including Respondent No. 2, the question of second-guessing the analysis with mathematical precision does not arise. The Appellant has failed to make out a case of any *malafide* on the part of the Board in awarding the bids to the Respondents.
- (w) It is also noteworthy that the estimates based on the existing connections and projections for 8 years i.e. until 2026 were only estimates depending on the market study and assessment of uptake and potential growth and is not meant to be arrived at by any mathematical precision. So long as it is reasonable, the regulator will not interfere with the market assessment and potential envisaged by a competitive bidder.
- (x) The power to weed out unreasonably high or low is only an enabling power and not a yardstick or parameter for evaluation. That is the

singular distinction missed by the Appellant. If there is a danger of overestimation, then there are penalties and therefore, checks and balances have already been in-built in the Bid Document which was known to all. The present Appeal is, therefore, merely an attempt on the part of the Appellant to scuttle a competitive bid.

- (y) The Appellant has introduced new calculations and figures in its Rejoinder, which are without any basis, with a view to contest the explanation offered by Respondent No. 2 to the Board. The said rejoinder ought not be taken on record. In any event, it is submitted that this Hon'ble Tribunal is not even required to get into such calculations in the absence of any criteria in the first place providing for the bids to be based on the Census of 2011.

- (z) The foundation of the Appellant's argument is the note dated 23.07.2018 filed by the Board along with affidavit dated 09.11.2018. Placing heavy reliance on the Note, the Appellant has contended that the Board's own criteria to determine the reasonability of the bids was ranging between 2% - 100% of the total households as per the Census of 2011. The Appellant has also contended that the said Note was a 'decision' of the Board. The Appellant has, thus, contended that the decision of the Board to award the

abovementioned GAs to Respondent Nos. 2-4 is completely non-transparent, subjective and arbitrary in as much as the bids submitted by the said Respondents were more than 100% of the number of households as per the Census of 2011.

- (aa) The Note was approved only on 23.07.2018 i.e. much after the bids were submitted by the bidders. Therefore, at the time of bid submission, none of the bidders including the Appellant were aware of any such criteria/benchmark fixed by the Board. The only criteria known to the bidders at that stage was the standard provided in Regulation 7 and also in the Bid Document, which did not prescribe any upper ceiling on the number of PNG connections to be quoted by a bidder.

- (bb) If the Note were to be treated as a binding direction, it would take away the power of the regulator Board to take a decision after evaluating the potential of each GA instead of fixing a 'one-size fits all' standard.

- (cc) In its affidavit dated 09.11.2018, the Board has itself submitted that the Note of 23.07.2018 was neither a bidding criteria nor a selection or eligibility criteria. The Board has also stated that the

said Note did not curtail or restrict the exercise of power by the Board on deciding the successful bidder in accordance with the Regulations and the Bid Document.

- (dd) The Note could not in any manner be construed as a bidding or selection or eligibility or rejection criteria. The Note, as per the Board, was only meant to provide guidance during scrutiny of the bids so as to highlight any issues to the Board in terms of Clause 4.4.1 of the Bid Document.
- (ee) The note uses the expression “may” and not “shall”. The Note was merely meant to be an internal guidance document and not a mandatory direction, especially since the Board was itself aware that the Regulations did not provide for an upper ceiling on the number of PNG connections to be quoted by a bidder.
- (ff) In any event, any such Note prepared by the Board cannot supersede the Regulations and the Bid Document, which do not restrict in any manner the number of PNG connections to be quoted by a bidder. The question, therefore, of rejecting the bid submitted by Respondent No. 2 merely on the basis of an internal guidance document would not only run contrary to the

Regulations but also defeat the very objective of conducting this bidding round.

- (gg) The case of IOCL is completely irrelevant to the case at hand and the Appellant is merely attempting to confuse and obfuscate the issues. Firstly, the issue in the present case pertains to the highness of bids submitted by a bidder and not lowness and therefore, the jurisdiction of this Hon'ble Tribunal is limited to examining whether the Regulations placed a cap on the highness of PNG connections to be quoted by a bidder. Secondly, as on date, there is no challenge by IOCL and the Hon'ble Tribunal will examine the issue as and when any such case, on its peculiar facts and circumstances comes up for consideration.
- (hh) A perusal of the Agenda Note dated 09.08.2018 would clearly demonstrate that it was prepared by the Authorization Division, concurred by Member (I&T) and Member (C&M) and approved by Chairperson for the “deliberations and approval of the Board”. Therefore, contrary to the suggestion of the Appellant that 3 out of 4 Members had approved the Agenda Note, it is evident that the Agenda Note was required to be placed before the Board in order to take a final decision on the issue after requisite

deliberations. Had the Agenda Note been a decision of the Board, then there was no occasion for it be placed before the Board for deliberations.

- (ii) The Board also decided to call the bidding entities for GA No. 61, 62 and 72 for discussions on 14.08.2018 to present their case as to “*why the bids submitted by them for PNG domestic connections be not considered unreasonably high*”. The Board also decided that it would not be “*legally correct to reject their bids without providing them a chance to present their case*”.
- (jj) It is settled law that a noting recorded in the file is merely a noting simpliciter and nothing more. The Hon’ble Supreme Court has, in the case of *Shanti Sports Club v. Union of India & Ors.* [2009 (15) SCC 705], held that by no stretch of imagination, a noting can be treated as a decision. Similarly, in *Sethi Auto Service Station v. DDA* [2009 (1) SCC 180], it has been held that a noting by an officer is no more than an opinion by an officer for internal use and consideration of other officials of the department and for the benefit of the final decision-making authority.

- (kk) The short question that arises for the consideration of this Hon'ble Tribunal is whether the satisfaction of the Board with the justification/explanation offered by Respondent No. 2 is to be interfered or not. In this respect, it is settled law that the Court does not have the expertise to correct the administrative actions and merely reviews the manner in which the decision was made.
- (ll) The terms of the Bid Document cannot be open to judicial scrutiny as they are in the realm of contract and more often than not, such decisions are made qualitatively by experts. Quashing decisions may impose heavy administrative burden on the administration. In the present case, quashing the decision of the Board would have severe ramifications on the entire 9th CGD Bidding Round, which would ultimately impact the setting up of the gas distribution network in the country.
- (mm) The Board, in support of its submissions has relied on the following Judgments:
- 1) *Shanti Sports Club v. Union of India & Ors. - [2009 (15) SCC 705];*
 - 2) *Sethi Auto Service Station v. DDA - [2009 (1) SCC 180];*

3) *Tata Cellular v. Union of India - (AIR 1996 SC 11);*

4) *Jagdish Mandal v. State of Orissa and Ors. - (2007) 14 SC 517]*

17. I have also heard Mr. Gaurav Mitra, Counsel appearing for Respondent No. 3 and perused the submissions made by Respondent No. 3. The gist of submissions of Respondent No. 3 is as under:-

- (a) The Appellant is not even the second highest bidder (H2) but has still challenged the grant of authorization in favor of the Respondent No.3/AG&P.
- (b) The Appellant has not been unable to show its locus as to why it is aggrieved by the result in GA-61 (Kanchipuram District) of the 9th Bidding Round as it has been ranked at number 3 (Adani) in the bids received for GA-61 (Kanchipuram District). Therefore, there is no case of *mala fide* and favoritism made out. The Appellant is not the aggrieved party in respect of award of authorization to the Respondent No.3/AG&P and has no locus to challenge award of Authorization to RespondentNo.3/AG&P.
- (c) The Internal Decision dated 23.07.2018 which stated that 2% of total households (Census 2011) may be considered as unreasonably low,

and beyond 100% of total households may be treated as an unreasonably high quote was put to the members of the Respondent No.1/Board, and the members of the Respondent No.1/Board approved it through a file note.

- (d) This decision of the members of the Respondent No.1/Board has to be read with the Bid Document which required the Respondent No.1/Board to consider any such bid on a case-to-case basis.
- (e) The Appellant by contending that the said Internal Decision dated 23.07.2018 should be made applicable mechanically is wanting the Respondent No.1/Board to derogate from the Act, Regulations, the Bid Document, and the Respondent No.1/Board's own decision dated 10.08.2018, taken in accordance with such Act, Regulations, and Bid Document.
- (f) The Act does not prescribe any such limits of 2% to 100% for determining reasonableness.
- (g) The Regulations *inter-alia* provide for only five minimum (5) eligibility criteria. Admittedly, there is no parameter prescribed in the Regulations determining the highness for domestic PNG connections, which is the subject matter of the present Appeal. It is noteworthy

that while there are minimum thresholds prescribed for criteria no. 1 & 2, in respect of criteria no. 3, 4 & 5, there is no such minimum or maximum threshold prescribed in the Regulations.

- (h) The Respondent No.1/Board has “reserve” power as per Clause 4.1.1 of the Application-cum-Bid Document, exercisable by the Respondent No.1/Board in terms of Clause 14.2 of the Addendum, i.e., by examining “unreasonably high” or “unreasonably low” bids on a case-to-case basis after considering relevant factors.
- (i) The process followed by the Respondent No.1/Board is completely fair, reasonable, and transparent in providing level playing field to all bidders. There has been no deviation in application of the standard practice/procedure of considering reasonableness of the bid on a case-to-case basis after considering the relevant factors by exercise of the Respondent No.1/Board’s reserve powers in awarding authorizations for the GAs.
- (j) Respondent No.3/AG&P presented its justification for its bid to the Respondent No.1/Board through a presentation on 14.08.2018, and also sent a letter to the Respondent No.1/Board dated 14.08.2018 with such justification.

- (k) The Board considered the justification of Respondent No.3/AG&P, which was recorded and outlined for consideration for the Respondent No.1/Board in agenda note dated 28.08.2018. The Respondent No.1/Board, being an expert body, also undertook its own evaluation as to the reasonableness of the quotation.
- (l) The Respondent No.1/Board followed the process laid down in the Regulations and the Bid Document at all times and in a consistent manner. Therefore, there is no lack of transparency as is alleged by the Appellant. The decision-making process of Respondent No.1/Board was fair, transparent and reasonable and hence does not warrant any interference.
- (m) The contention of the Appellants that 2% to 100% of the household data as per 2011 census is the touchstone for evaluation of number of households for quoting number of domestic PNG connections is unsubstantiated and made with a view of misleading the Hon'ble Tribunal.
- (n) Census 2011 is not the basis for determining the reasonableness with respect to number of domestic PNG connections and can never be so.

The Respondent No.1/Board was aware of this and hence rightly in its meeting of 10.08.2018 decided to not apply the threshold of 2% to 100% mechanically and give an opportunity to H1 bidders to provide justification for reasonableness with respect to the quoted domestic PNG household numbers.

- (o) The Appellant has attempted to mislead the Hon'ble Tribunal by quoting Regulations 5 and 9 of the Regulations, in as much as reference to 2011 census data for population in: (1) Regulation 5(6)(e) of the Regulations is with reference to determining the minimum net worth of the bidding entity; and (2) Regulation 9 is with reference to determining the value of the Performance Bid Bond to be given by the successful bidder to the Respondent No.1/Board. The Regulations expressly mention the population data from the 2011 census data only for the specific purposes stated above and not for any other purposes.
- (p) The Regulations, being subordinate legislation, expressly leave open the question of how to determine the number of domestic PNG connections. And, in fact, the Bid Document, in Clause 1.1.3, clearly states: *"It is the bidder's responsibility to obtain all information related to the present gas supply availability and pipeline*

connectivity and also existing customers, if any, in the specified geographical area.” [Emphasis supplied]

- (q) It is clear from the above clause of the Bid Document that each bidder was required to obtain information about the existing customers (i.e., as of 2018), and that the 2011 census household data was not relevant for determining the number of domestic PNG connections to be achieved by 2026.
- (r) The Respondent No.3/AG&P also further substantiated its determination of number of existing households through the Tamil Nadu Generation and Distribution Corporation Limited (a Government of Tamil Nadu undertaking), which in its letter dated 04.10.2018, states that the total number of households having electricity connections in the district of Kanchipuram is 15,91,486 (fifteen lakhs ninety one thousand four hundred and eighty six) as of the date of the letter. The bid quoted by Respondent No.3/AG&P is only 72% of the number of households stated in the above letter of Tamil Nadu Generation and Distribution Corporation Limited.
- (s) The contents of the Agenda Note are merely recommendatory in nature and are not binding on the Respondent No.1/Board. It must be

emphasized that the decision of the BEC is not binding on the Respondent No.1/Board in any way and the Respondent No.1/Board is the final authority in deciding the successful bidder. The said Agenda Note has no force in law.

- (t) The Appellant has come to this Hon'ble Tribunal with unclean hands as it is aware that a situation may arise where the number of domestic piped natural gas connections can be reasonably quoted to be over 100% of the relevant census data and has also won a GA (Chandigarh in 2013) on the strength of such a quote of over 100% of the census in the past.
- (u) Even if the Respondent No.3/AG&P would have quoted domestic PNG connections based on 100% of households as per the 2011 Census data for Kanchipuram District, the Respondent No.3/AG&P would have still had the highest composite score, and thus emerged as H1 and the successful bidder for GA-61.
- (v) The power of judicial review in respect of tenders is to be exercised with extreme caution and only in cases of proven *mala fide* and bias and where there is public interest involved. The Respondent No.1/Board being an expert body, and the bids being highly technical

in nature, the court cannot sit in judgment over the decision of the Respondent No.1/Board.

- (w) In the present case admittedly, there is no submission on the *mala fide*, bias or arbitrariness to the extent of perversity. The only submissions regarding *mala fide* etc. are in the rejoinder which is clearly an afterthought.
- (x) No public interest stands served by quashing the tender for GA-61 (Kanchipuram District) and/or grant it to the H2 i.e. IMC. The public interest is squarely against cancellation of the award in favor of the Respondent No.3/AG&P. Once it has been concluded by Respondent No.1/Board that the bid of Respondent No.3/AG&P was not unreasonably high, cancelling the grant in favour of Respondent No.3/AG&P would be against public interest.
- (y) Public interest is best served in reaching a larger number of households and maximizing connectivity for piped natural gas, as opposed to awarding the bid to a bidder who has quoted a lesser number of domestic PNG connections to be achieved by the end of the contract period.

(z) It is trite law that sanctity of Bid/Contract should be respected. Otherwise there will never be any finality/certainty to the Bid/Contract. Uncertainty is antithetical to the Rule of Law.

(aa) Respondent No. 3, in support of its submissions has relied on the following Judgments:

- 1) *Tata Cellular Vs. Union of India - (1994) 6 SCC 651;*
- 2) *Air India Limited Vs. Cochin International Airport Limited - (2000) 2 SCC 617;*
- 3) *Jagdish Mandal Vs. State of Orissa - (2007) 14 SCC 517;*

18. I have also heard Mr. Gopal Jain, Learned Senior Counsel appearing for Respondent No. 4 and perused the submissions made by Respondent No. 4. The gist of submissions of Respondent No. 4 is as under:-

(a) The Respondent No. 1 in the present Appeal has issued authorization in favour of the Respondents herein for their respective Geographical Areas (GAs) fully in compliance with the mandate of the Act and with the provisions of the PNGRB Regulations and in the interest of the consumer and entity both.

(b) The criteria adopted by the Respondent No. 1 for qualification in the 9th round of the Bids for the CGD Network in various GAs is not only designed to ensure a fair and competitive market amongst the

entities benefitting the consumers but also to ensure that infrastructure for the transportation and distribution of natural gas is developed as expeditiously as possible to reach this clean, efficient and environment friendly fuel to all consumers in the most efficient and least cost manner which is in conformity with the directives issued by the Hon'ble Supreme Court in the matter of M.C. Mehta vs. Union of India. (Writ Petition Civil No. 13029 of 1985).

- (c) The present Appeal seeks to cap the growth of domestic PNG connections in a Geographical Area, which is against the spirit of the PNGRB Act, the PNGRB Regulations and even the directions of the Hon'ble Supreme Court for maximum growth of a clean and natural fuel for the country.
- (d) The City Gas Development (CGD) projects are infrastructural projects and granting any relief to the Appellant would only stall the development of infrastructure and also harm the environment as these are projects for providing clean fuel.
- (e) The bidding process as given in the Application-cum-Bid document emanates from the guiding principles given in the Regulations and elaborates all aspects of bidding thereby avoiding any subjectivity in the process.
- (f) Regulation 7 (relevant Regulation for the present purpose) was amended by the Respondent No. 1 on 06.04.2018. Subsequent to the

amendment, the cap on PNG connections to be achieved within 8 years from the date of authorization was removed and “highness of number of domestic piped natural gas connections to be achieved within 8 contract years from the date of authorization” became the qualifying criteria for the CGD Bids.

- (g) The Appellant herein participated in the Bid process and did not challenge the said Amendment which had removed any cap on the PNG connections. Therefore, the Appellant having participated in the Bid process, accepting its terms and conditions which were in line with the above said Amendment now cannot challenge the acceptance of the Bid of the answering Respondent for Puducherry on the ground of the commitment for PNG connections being unreasonable. During the entire process the Appellant at no point raised any objections to the relevant Regulations.
- (h) The basic test in a judicial review in contractual matters is to see whether there is an infirmity in the decision making process and not in the decision itself. It is most respectfully submitted that in the present case there has been no infirmity in the decision making process.
- (i) When tenders are invited, the terms and conditions must indicate with legal certainty, norms and benchmarks. This “legal certainty” is an important aspect of the rule of law. If there is any vagueness or

subjectivity in the said norms it may result in unequal and discriminatory treatment it may then violate the doctrine of “level playing field”. In the present Bid there has been no vagueness or subjectivity. All the clauses are unambiguous and applicable to all the bidders alike. Therefore, the allegation of the Appellant of being subjective and favoring some Bidders with unreasonable Bids is totally wrong and not sustainable.

- (j) The answering Respondent No. 4 quoted a figure of 275000 connections of domestic piped natural gas. This figure was arrived at after due diligence and a detailed feasibility report which took into account several factors of growth including the rate of population growth, literacy rate, financial status of the people living in the area etc. The Board also sought clarifications from the answering Respondent with respect to the viability of the figure quoted by it to which the answering Respondent submitted its response/explanations satisfactorily.
- (k) The Appellant has based its contentions assuming that the Board had based its 9th round of Bidding taking into account 2011 Census to calculate population. There is a basic fallacy in this argument as the Regulation 5 and Regulation 9 of the Authorizing Regulations considers 2011 Census for a different purpose and that is for calculating the net worth and for submission of Performance Bond. It

cannot be construed by any means that the population from Census 2011 can be taken into account after almost eight years as that would mean stunted growth of the piped natural gas of households. At best the Census of 2011 can be taken as an index to see the growth rate of population in a particular GA and using that index the figure quoted by the answering Respondent is by no means unreasonable.

- (l) No entity including the answering Respondent would quote an unreasonable figure just to get authorization as the PNGRB Regulations provide enough safeguards against defaults. The City Gas Distribution (CGD) network is a very capital intensive project with long gestation period. The investments are high in initial years when the entity is required to invest and lay pipeline and CNG infrastructure in various parts of the city to reach all charge areas and therefore cash inflows in the project are high whereas cash outflows shall be quite low.
- (m) The PNGRB Regulations 2008 provide for penalty in the event of default on the commitments in the Bid and heavy penalty can be imposed on the entity in case of default. It is therefore submitted that an entity does not tend to gain anything for short term gains like qualifying in the Bid based on false projections and then run the risk of heavy penalties later on.

- (n) The authorization granted by the Respondent No. 1 for any GA for CGD Network comes with certain pre-conditions. As per Regulation GSR 196 (E) an entity which has been granted authorization has to do financial closure within 270 days of authorization and gas tie up within 180 days. It goes without saying that no financial institution would invest in a project which is not viable.
- (o) The Board has granted authorization to the answering Respondent for the GA of Puducherry after detailed scrutiny of its Bid and it cannot be done away with because of a frivolous Appeal like the present one.
- (p) Respondent No. 4, in support of its submissions has relied on the following Judgments:
- 1) *Reliance Energy Ltd. vs. Maharashtra State Road Development Corporation Ltd. & Ors. - (2007) 8 SCC 1;*
 - 2) *Reliance Airport Developers (P) Ltd. Vs. Airports Authority of India & Ors. - (2006) 10 SCC 1;*

OBSERVATIONS AND DISCUSSIONS:

19. The Board vide its Public Notice dated 12.04.2018, launched 9th CGD Bidding Round by inviting bids from interested parties for development of City Gas Distribution (CGD) networks for the 86 Geographical Areas (GAs) which includes 174 districts (156 complete and 18 part), spread over

- 22 States and Union Territories (UTs) in India. Further, Board issued Corrigendum and Addendum dated 31.05.2018, 04.06.2018, 21.06.2018 and 26.06.2018 based on the clarifications sought and pre-bid meeting held on 14.05.2018 and subsequent queries raised by prospective bidders.
20. The last date of bid submission was 10th July, 2018 by providing bidders 90 days time for bid submission against the tender. The technical bids were opened by the Board between 12th July, 2018 and 18th July, 2018 and total 406 bids were received in all the 86 GAs offered in the 9th CGD bidding round.
21. As per the Board, the preparatory exercise for evaluation of bids was done at three levels viz the consultant, officers of the Board and a Bid Evaluation Committee (BEC). The BEC was assisted by the officers and consultant of the Board. The bids were evaluated based on the requirement of the PNGRB (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, its amendments on 19.03.2018 and Application-Cum Bid Document (ACBD). Accordingly, a summary sheet of technical bid evaluation was prepared and checked by BEC. BEC also reviewed the queries proposed by the consultant and recommended the same for seeking clarifications to the queries. Replies of the entities were accordingly received by the consultant and BEC.

22. As per the Board, the recommendations of the BEC on various GAs were placed before the Board vide the Board Agenda Notes for its final decision in respective Board Meetings. As per the Board the Board Agenda Notes were not binding on the Board and were only meant for deliberations, consideration, approval and final decision of the Board. The Board in Board meetings had the full power to take decisions which may or may not be as per the Board Agenda Notes.
23. Before going into merits of the case, at this stage, it is necessary to examine first the bidding criteria as per the Regulation/Notification being G.S.R. No. 196 (E) of 19.03.2008 relevant to the Geographical Areas under appeal. Bidding criteria are spelt out in Regulation 7 (1) (a) which is very much relevant to the present case.

“7. *Bidding criteria.*

1 (a) The Board, while considering the proposal for authorization, shall tabulate and compare all financial bids meeting the minimum eligibility criteria, as per the bidding criteria specified below, namely:-

<i>Sr. No.</i>	<i>Bidding Criteria</i>	<i>Weightage (%)</i>	<i>Explanation</i>
<i>1.</i>	<i>Lowness of transportation rate for CGD – in rupees per million British Thermal Unit</i>	<i>10</i>	<i>Bidder is required to quote transportation rate for CGD only for the first contract year which shall</i>

	(Rs./MMBTU)		<i>not be less than Rs. 30/MMBTU. Rates for the subsequent contract years shall be derived considering the quoted rate and escalation as per Note.</i>
2.	<i>Lowness of transportation rate for CNG – in rupees per kilo gram (Rs./kg)</i>	10	<i>Bidder is required to quote transportation rate for CNG only for the first contract year which shall not be less than Rs. 2/kg. Rates for the subsequent contract years shall be derived considering the quoted rate and escalation as per Note.</i>
3.	<i>Highness of number of CNG stations (online and daughter booster stations) to be installed within 8 contract years from the date of authorization</i>	20	-
4.	<i>Highness of number of domestic pipes natural gas connections to be achieved within 8 contract years from the date of</i>	50	-

	<i>authorization</i>		
5.	<i>Highness of inch-kilometer of steel pipeline (including sub-transmission steel pipelines) to be laid within 8 contract years from the date of authorization</i>	10	-
<p><i>Note – Annual escalation shall be considered from the second contract year and onwards based on the “Wholesale Price Index (WPI) Data (2011-12=100)” for “All Group/Commodity”, as normally available on the website of the Office of the Economic Adviser, Government of India, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion (DIPP) on the link http://eaindustry.nic.in/home.asp</i></p>			

24. The successful bidder will be determined by Regulation 7 (3) which is also reproduced below:

“7. (3) Bidder entity with the highest composite score, considering the criteria under sub-regulation (1) and as illustrated in Schedule C (1), shall be declared as successful bidder.

*Provided that in case of tie in the evaluated composite score, the successful bidder shall be decided based on the highness of numbers of PNG connections among the tied bidding entities. In case there is tie on number of PNG connections also, highness of inch-kilometer steel pipeline shall be considered and thereafter in case of tie in inch-kilometer as well, highness of numbers of **CNG stations** shall be considered;”*

25. Schedule C (1) illustrates the basis of determining the highest composite score for ascertaining the successful bid for grant of authorization for CGD network.
26. From 7 (1) (a) above, it is noted that 5 criteria were specified as items of bidding out of which 2 were concerning lowness level (transportation rate for CGD and transportation rate for CNG) and remaining 3 were concerning highness levels (number of CNG stations, number of domestic piped natural gas connections and amount of inch-kilometer of steel pipelines) having separate weightage factors in percentage. In the instant case, the highness of number of domestic piped (PNG) gas connections with weightage of 50% (highest in individual items) which is under controversy in the relevant bids submitted by the respective bidders.
27. The highness criteria are left open for the bidders to bid without linking to any escalation factor etc. with respect to any particular year whereas, the lowness criteria are subject to escalation factors as per the wholesale price index data (2011-12 = 100) normally available on a Government of India's website as mentioned. The regulation does not restrict the number of PNG connections to be quoted by a bidder. The importance given on PNG connections can also be seen from the second para of Regulation 7 (3) above.
28. The Schedule-C (1) has been examined in details and observed that the calculation on score is completely formula based and no scope has been

kept in the formula on subjectivity. The value of different parameters as have been quoted by the bidders are put and calculated the scores obtained by various bidders.

29. It is necessary now to examine the application-cum-bid document (ACBD) for the lead GA in the instant case i.e. the GA No. 62 – Chennai and Tiruvallur districts of Tamil Nadu. Scope of work in the ACBD is reproduced as below:

“1.2 The entities bidding for this work shall be required to lay, build, operate or expand the CGD networks to meet requirement of natural gas in domestic, commercial and industrial segments including Natural Gas in the vehicular segment in the said geographical area to be authorized and also comply with the relevant regulations notified from time to time.

The entities shall be required to carry out the development of CGD project in line with the regulations laid down by the PNGRB.”

30. Clause 1.1 of the ACBD describes the geographical area and provides the relevant information. Relevant portion of the Clause 1.1.3 as reproduced below was important for the bidders to follow while bidding which I have referred in my subsequent discussion on the subject. Relevant portion of the clause is as under:

“1.1.3 It is the bidder’s responsibility to obtain all information related to the present gas supply availability and pipeline connectivity and also existing customers, if any, in the specified geographical area. The bidder can also refer to list of NOCs/Permissons granted by PNGRB to various entities under the provisions of the Internal Guidelines for grant of NOC/Permission for (i) supply/distribution of CBM/natural gas through cascades; and (ii) setting up of CNG/LNG Daughter Booster Stations (DBS), in the

areas where Bard has not yet authorized any entity for developing or operating CGD networks at <http://www.pngrb.gov.in/CGD-NOCs.html>.”

31. Below is the clause 4.4 which has been referred in the subsequent discussion on the matter.

“4.4 PNGRB’S RIGHT TO ACCEPT OR REJECT ANY OR ALL APPLICATION-CUM-BIDS

4.4.1 PNGRB reserves the right to reject any Application-cum-Bid comprising quoted work programme considered by it to be unreasonably high or low.

4.4.2 Notwithstanding anything to the contrary contained herein, PNGRB reserves the right to accept or reject any Application-cum-Bid and/or to annul the bidding process and/or reject all Application-cum-Bids, at any time prior to grant of authorization.”

32. In respect of the Board’s right to accept or reject any or all Application-cum-Bids, clause 14.0 of the addendum (Addendum-1) issued on 31.05.2018 by the Board is noted which reads as under:-

“14.0 Single Bids and Unreasonable Quotes:

14.1 PNGRB shall process the cases of these GAs also where a single bid has been received.

14.2 What should be considered to be the level of ‘unreasonably high’ or ‘unreasonably low’ quotes shall be decided by Board at the time of bid evaluation on case to case basis after considering the relevant factors.”

Clauses 4.4.1 and 14.2 quoted above are interrelated and I have read together.

33. Now, coming to the lead appeal, the Appellant has challenged the decision of the Board in declaring the successful bidders in respect of GA 61: Kanchipuram District of Tamil Nadu, GA-62: Chennai and Tiruvallur District of Tamil Nadu and GA No. 51: Puducherry district of Puducherry Union Territory. In GA No. 61, there was a total of 8 bids received where the successful entity is Consortium of AG&P LNG Marketing Pvt. Ltd. and Atlantic Gulf and Pacific Company of Manila and the Appellant is the third highest bidder who has challenged this decision. IMC Ltd. is the second highest bidder who has separately challenged this decision in Appeal No. 323 of 2018. In GA No. 62, there was a total of 10 bids received and the successful entity is Torrent Gas Pvt. Ltd. with the Appellant as the second highest bidder. In GA No. 51, the successful entity is the consortium of SKN Haryana City Gas Distribution Pvt. Ltd. and Chopra Electricals with the Appellant as the sixth highest bidder. The second highest bidder Torrent Gas Ltd. has not challenged this decision of the Board in GA-51.
34. On due perusal of the pleadings/submissions and arguments made by the learned counsel appearing for the Appellant, I have noted that the Appellant's main contentions are two. I therefore, will now consider these two contentions only and all the discussions would be focused on the two contentions. I have also noted that the learned counsel appearing for the Board initially stressed upon the maintainability of the appeal, but later, the

learned counsel Mr. P. Kuhad appearing for the Board did not insist on this issue and hence, I will also not be dealing with the issue of maintainability in the subsequent discussions.

35. The Appellant also submits that the Board rejected 37 of the various bids on the ground of unreasonably low or unreasonably high as per the Board's Press Release dated 10.08.2018. Since the appeal pertains to 'highness' factor only in regards to PNG domestic connections in the three GAs- GA-61, 62 and 51, I will also not deal with 'lowness' factor in domestic connections in other alleged GAs in my subsequent discussions except noting the responses of the Board on this issue. On this issue, it is also important to note that no bidders who lost their bids in those GAs have challenged those decisions of the Board.
36. The prime contention which was the only contention in the original Appeal No. 292 of 2018 dated 24.09.2018 is that on a statistical analysis of the impugned results declared by the Board, it is evident that the Board has declared the successful bidders who were not the highest scorers among the bidders who bid the number of PNG connections ranging between 2% - 100% of the total households as per 2011 census. The Appellant believes that this range of 2%-100% is a reasonable range for determining the successful bidder and anything beyond this range seems to be unreasonably low or unreasonably high which does not qualify for consideration. In respect of the GAs under appeal, the Appellant contends that the Board

wrongfully issued LoI to Respondent No.2 in case of GA 62 who submitted a bid for the PNG connections as 157% of the number of households as per 2011 census which is far beyond 100% of households as per 2011 census. Similarly, the successful entity in GA 61 quoted the number of PNG connections as 114.4% and the successful entity in GA-51 quoted the PNG connections as 118.78% of the number of households as per 2011 census respectively which also should not have been considered for evaluation.

37. Let me now try to understand the process as to how the Board decided the successful bidders in the relevant GAs. In order to promote serious bidders and to avoid unrealistic/unreasonable work programme quoted by any entity, relying on Clause 4.4.1 of ACBD, a proposal was initiated through an internal note dated 23.07.2018 for taking approval of the members of the Board where the members may fix the lower and upper limits of PNG domestic connections, CNG stations and inch-km lines, as 2% of total households and 100% of total households as per 2011 census respectively. This note was approved through circulation. I note here that this note was not in the form of a Board Agenda Note but an internal note. As I have understood from my overall observations, this note was intended to obtain a guideline by the BEC which the Board may agree to carry forward the bid evaluation process till final decision is taken by the Board. Subsequently accordingly, different Board Agenda Notes were submitted for final approval of the Board in batches for different GAs on different dates. The

Board meeting dated 10.08.2018 while discussing the bids in GA-61, 62, 51 and 72 during deliberations, the Board decided to call the highest scorers whose quotes for PNG connections were higher than the upper limit i.e. 100% of total households as per 2011 census to explain the reasonableness of their quotes to the Board. The Board accordingly called the following bidders for these 4 GAs on the specified dates as mentioned.

GA No.	Name of GA	Name of bidding entities	Quote for PNG	Date of Board Meeting
GA No.61	Kanchipuram District	Consortium of AG&P LNG Marketing Pvt. Ltd. & Atlantic Gulf & Pacific Company of Manila Inc.	114% of total HH	14.08.2018
GA No. 62	Chennai & Tiruvallur	Torrent Gas Private Limited	157% of total HH	14.08.2018
GA No. 72	Medchal Rangareddy & Vikarabad Districts	Torrent Gas Private Limited	220% of total HH	14.08.2018
GA No. 51	Puducherry	Consortium of	119% of total	23.08.2018

	District	SKN Haryana City Gas Distribution Pvt. Ltd.	HH	
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The entities accordingly, made their presentations on their respective dates to the Board.

38. After the presentations made by the respective bidders, the 82nd Board Agenda Note was prepared which summarized the statistical submissions made by the entities during their presentations to the Board and finally made the following tabulation and put up to the Board for final decision in the Board meeting to be held on 29.08.2018.

Sr. No.	GA ID	GA	PNG connections quoted by the bidder	HH as per 2011 Census i.e. Upper Limit of PNG Connections fixed by PNGRB	Projected HH in 2026*	PNG penetration in 2026 as per PNGRB upper limit	PNG penetration in 2026 as per H1 bidder
A	B	C	D	E	F	$G=(E/F) \times 100$	$H=(D/F) \times 100$
1.	51	Puducherry	2,75,000	2,31,513	3,91,852	59%	70%
2.	61	Kanchipuram	11,51,111	10,06,245	20,89,765	48%	55%
3.	62	Chennai		12,70,391	20,87,729		
		Tiruvallur		10,63,109	21,34,971		

		TOTAL (Chennai & Tiruvallur)	33,00,000	23,33,500	41,87,734	56%	79%
4.	72	Ranga Reddy (except authorized area) Presently, Medhchal, Rangareddy & Vikarabad Districts	10,05,300	4,56,557	10,17,097	45%	99%
* Households calculated as per 2011 census and the actual growth rate from 2001 to 2011 by using CAGR formula. The CAGR works out as 3.57%, 4.99%, 3.98% and 5.49% respectively.							

39. From the minutes of the 82nd Board Meeting held on 29.08.2018, I note the following under item No.4: Grant of authorization for development of CGD network for 4 GAs (GA-51, 61, 62 and 72). The relevant portion thereof is reproduced as below:

“2. *The Board further deliberated as under:-*

(a)

(b) *The Board referred to table in Para 15 of the agenda note where quoted PNG domestic connections for the above four GAs were compared with the upper limit fixed vide note dated 23.07.2018 and projected households in 2026 (considering the number of households as per 2011 Census and the historical growth rate during 2001 to 2011 as per census data of 2001 to 2011). It was observed that penetration of PNG domestic connections based upon upper limit fixed by PNGRB with*

reference to projected number of households in 2026 varied from 45% to 59%. However, penetration of PNG domestic connections based upon quoted PNG connections with reference to projected number of households in 2026 varied from 55% to 99%. The variation between two sets of numbers is 7% to 54%.

- (c) *The Board observed that the highest variation of 54% is in GA-72, which is based on untenable assumptions made by the bidder as described in Para 14.3 of the agenda note. Due to this, 10,05,300 PNG domestic connections quoted by the bidder are 99% of the projected households by PNGRB in 2026, which is unreasonably high. It was also observed that for the remaining 3 GAs, the variation between two sets of numbers given in para 15 of the Agenda note is 7% to 23% of projected number of households in 2026 and PNG penetration would be in the range of 55% to 79%.*
- (d) *The Board also referred to regulation 16(2) of CGD Authorization Regulations, which provides for rates of pre-determined penalty for shortfall in achieving cumulative work program targets for each contract year. The entities bidding aggressive number of PNG domestic connections would be liable to pay pre-determined penalties under afore-mentioned regulation 16(2).*
- (e) *In view of the above, it was decided to accept the quoted PNG domestic connections and award the Chennai & Tiruvallur District GA (GA-62) to Torrent Gas Private Limited, Kanchipuram District GA (GA-61) to Consortium of AG&P LNG Marketing PTE. Ltd. & Atlantic Gulf & Pacific Co. of Manila Inc. and Puducherry District GA (GA-51) to Consortium of SKN Haryana City Gas Distribution Pvt. Ltd. and Chopra Electricals to the bidders with highest composite scores for respective GAs, where the variation in two sets of numbers is in the range of 7 to 23%. Regarding Medchal, Rangareddy (except area already authorized) & Vikarabad District GA (GA-72), where the variation is around 54% and the bid by Torrent Gas Pvt. Ltd. is based on untenable assumptions and incorrect map, the bid of the entity with*

highest composite score may be considered as unreasonably high and rejected in terms of Clause 4.4.1 of ACBD. Accordingly, the GA may be awarded to the bidder with second highest composite score and LOI may be issued to Megha Engineering & Infrastructure Pvt. Ltd. Subsequently, on receipt of PBG, authorization letter (Scheduled D) may be issued to the above entities.”

40. While discussing the process, let me also examine the following allegation of the Appellant. The Appellant claims that they also should have been called by the Board to explain their bid as they were affected by the decision of the Board on 10.08.2018. The Board explains that the Board only called the H-1 bidders of all the 3 GAs i.e. GA-51, GA-61 & GA-62 who were affected by the highness factor of 100% of 2011 census for explaining the reasonableness of their bids which they submitted. Firstly, the Appellant was not the highest bidder and the Appellant was not affected by this factor of 100% since the number of PNG connections the Appellant bid was within 100% of household number as per 2011 census. The Board further states that if any of the H-1 bidders would have failed in justifying their bid, the Board would have called the next highest bidder whose quote was more than 100% household numbers as per 2011 census for explanation and the Board did the same in GA No. 72. The Board was not satisfied with the reasonableness explained by the H-1 bidder and awarded the GA to the next highest bidder after hearing them. On this issue, it has

been found that the process followed by the Board is very much reasonable and correct.

41. After going through the process of evaluation of the bids for GA-61, 62 and 51 followed by the Board as above, it has been found that the Board has duly considered the relevant regulations and ACBD criteria and terms of conditions and also the internal checks and balances prior to arriving at the final decisions on successful bidders. While on the subject, let me also see the process/procedure, the Respondent No.2, Respondent No.3 and Respondent No.4 followed in quoting the PNG connection figures in their bids. In GA-62, Respondent No.2 did not consider the household numbers as in census 2011, but relied on the actual status of LPG connections existing in the GA as in 2017 and extrapolated the figure till 2026 considering an expected growth percentage alongwith expected population growth in the GA. The approach and the quoted number of PNG connections of 33,00,000 were accepted by the Board after hearing the party and due analysis at the Board's end. The process followed for bidding and arriving at the numbers quoted by Respondent No.2 have been well substantiated and accordingly, the Board's decision is found to be judicious.
42. Respondent No.3 in GA 61 (Kanchipuram) has explained that though 2011 census household figure is not required to be considered legally, it has considered this number as reference and compared the growth rate with the number in 2001. As such the growth rate has been very high. As per

Respondent No.3, Kanchipuram is growing exponentially, inter alia, due to presence of several automobile manufacturers such as BMW, Hyundai, Nissan, Daimler, Yamaha etc. and also the presence of manufacturing units of Nokia, Mitsubishi, Samsung, Dell etc. The Board was satisfied with the explanations put forward by Respondent No.3 and issued the LOI for GA 61 in its favour. The process followed for bidding and arriving at the numbers quoted by Respondent No.3 have been very well substantiated and accordingly, the Board's decision is found to have been judicious.

43. In regards to GA 51 (Puducherry), Respondent No.4 who is the successful entity declared by the Board, considered several factors to arrive at the projected PNG connections by 2026 including population diversity, percentage of urban population in the total population, road availability, literacy rate, per capita net state domestic product at factor cost, and also Central Government's policy of "Housing for all" by 2022 etc. Additionally, they compared the household availability as per census 1991, 2001 and 2011 and determined a growth rate and extrapolated till 2026. Moreover, the entity also considered the recent support of the Government to provide 100% APM gas to PNG (household) customers. The Board was convinced with the explanations put forward by the entity and issued the LOI in their favour for GA 51. The process followed for bidding and arriving at the numbers quoted by Respondent No.4 have been very well

substantiated and accordingly, the Board's decision is found to have been judicious.

44. In my opinion, if the first contention of the Appellant is defeated, then the second contention does not have much merit. The second contention of the Appellant is that the Respondent Board while determining the reasonableness of the high number of PNG connections which was higher by 57% of the households as per 2011 census, wrongly estimated the CAGR of households as 3.98% for projecting the number of households by 2026 to safeguard the quotes of Respondent No.2.
45. As per the Appellant, the CAGR considered by the Board was higher than the actual annual growth rate of 1.46% between 2001 and 2011 as calculated by the Appellant. This higher rate of CAGR led to a higher number of households projected for 2026 as 42,22,700 whereas it should have been 23,76,000 only. This wrong estimation of households by 2026 justified the level of PNG connections quoted by Respondent No.2. Additionally, the Board while calculating the above growth rate considered a wrong and higher number of households in 2011 as 23,33,500 against actual household number of 21,01,931 as per 2011 census. This led to higher growth percentage between 2001 and 2011.
46. On above, the Board's contention is that the Appellant deliberately calculated the CAGR on the basis of the overall population growth and not on the basis of households growth. For the purpose of PNG domestic

connections, the population growth has no relevance whatsoever since it is the number of households which is relevant. The population growth rate and household growth rate in the same GA/District will be different depending upon the urbanization and other factors in the particular GA/District.

47. On the issue of considering a different household figure for 2011 vis-à-vis the figure mentioned in the ACBD, the Board clarified that while the ACBD was being prepared, the house hold data for all GAs were taken from Census India website, wherein household and population data were available for 2011. While searching for the household and population data on Census India website, it had been observed that different values were available for the same districts at many places. In order to maintain consistency, population and household data were taken from one place only. Accordingly, household data for Tiruvallur and Chennai districts were taken from Census India website at links, (<http://censusindia.gov.in/pca/SearchDetails.aspx?ID=718713>) for Thiruvallur and (<http://censusindia.gov.in/pca/SearchDetails.aspx?ID=72012>) for Chennai. The sum of both Chennai and Tiruvallur for the year 2011 as per the data obtained from the above websites comes out to 21,01,931.

48. After opening up of the financial bids, to determine the reasonableness of the number of PNG connections quoted by R-2, it became necessary to consider the number of households in 2011 and also 2001 to project the household numbers by 2026. But it was found that similar sheet as was available for 2011 was not available for 2001. Hence, for calculating the projected household numbers in 2026 for Chennai-Thiruvallur GA, the number of households in the year 2001 and 2011 were taken from the Census India website (<http://www.censusindia.gov.in/DigitalLibrary/MFTableSeries.aspx>) for Tamil Nadu. The household details were provided under various categories in the Census India website. However, the household numbers were taken from the relevant header i.e. total number of occupied census houses.
49. As per the data uploaded on the Census India website, the total occupied household numbers in 2001 for Chennai and Tiruvallur were 9,12,248 and 6,67,885 respectively. The total combined number of occupied households for Chennai-Thiruvallur GA in 2001 was therefore 15,80,133 (9,12,248 + 6,67,885). The corresponding numbers for the year 2011 for Chennai and Thiruvallur as per the Census India website was 12,70,391 and 10,63,109 respectively. The total number of occupied households in 2011 was therefore taken as 23,33,500 (12,70,391 + 10,63,109).

50. In the above context, I also note from the written submissions made by the Board on 21.01.2019 that considering the number of households as 23,33,500 as per 2011 census, the penetration level difference for PNG domestic connections (reference para 39 (2) (e) above) becomes 32% only against 23% considering the 2011 census households number of 21,01,931.
51. Notwithstanding all above, I am not going into the details of calculations to offer my comment in absence of any criteria saying that the bids should be based on 2011 census figures which I have discussed below. Moreover, the calculations have been done by an expert body (the Bard) which has been constituted as per Statutory Act. In addition, the estimates on future PNG domestic connections made by the 3 bidders based on various parameters are only estimates. These are not meant to be arrived at by any specified formula or any direct mathematical precision. The power to weed out unreasonably high or low quote is only an enabling power and not a yardstick or parameter for evaluation.
52. Let me now discuss in details the principal question that arises in the appeal whether the bids which were less than 2% and more than 100% of the number of households in the 2011 census are to be considered as unreasonably low or unreasonably high respectively and these be disqualified in terms of bid conditions. In this regard, I note the following sequence of events that happened till opening of technical and financial bids from the date of issuance of the ACBD.

53. The technical bids were opened by the Board on 18.07.2018 in presence of bidders' representatives and the financial bids between 24.07.2018 and 18.08.2018. The Board issued corrigendum and addendum on 31.05.2018, 04.06.2018, 21.06.2018 and 26.06.2018⁵ prior to opening up of the technical bids. A pre-bid meeting was also held on 14.05.2018 which the potential bidders attended to. The internal note from where the Appellant picked up the issue of 2% - 100% of households as per 2011 census is dated 23.07.2018 which is after the technical bid opening dates and before the financial bid opening dates. This itself demonstrates that the 2% & 100% criteria were not in picture at all till opening of the technical bids and obviously, the bidders could not have known this criteria while bidding. This is a clear evidence that this criteria of 2% & 100% were not the bidding criteria by law. Any criteria for bidding including any rejection criteria would necessarily have to be declared before the bid closing dates. Only criterion available during bidding stage is in Regulation 7 (1) (a) – Sl. No. 4 by which the bidders are required to quote the PNG connection numbers to be achieved within 8 contract years from the date of authorization as mentioned in para 23 above. Another relevant instruction that was given to the bidders for the purpose of bidding was to obtain information on present gas supply availability, pipeline connectivity and existing customers of gas as spelt out in clause 1.1.3 as mentioned in para 30 above. The 2%-100% criteria were not mentioned in the ACBD nor in subsequent addenda issued

by the Board. The Appellant relies on the criteria of 2% and 100%, and on the other hand its allegation is that 2% and 100% criteria were not made public by the Board. This argument of the Appellant seems to be self defeating.

54. The Appellant contends that as per the Board Agenda Note dated 09.08.2018, the bids of the H-1 bidders in respect of GAs 51,61, & 62 were rejected, but still the Board went ahead to hear them again on reasonableness of the bids. As per the Board, the Agenda Note did not carry the final decision and it was put up to the Board for discussion and final decision on the matter and the Board accordingly discussed on 10.08.2018. After deliberations, the Board did not agree to cancel the bids of the H-1 bidders but decided to hear them on the reasonableness of their bids. My view is this is very much allowable and this power is given to the Board as per Clause 14.2 of the Addendum (Addendum-1) issued by the Board before the closing date of bids. The Board on 10.08.2018 accordingly, took the following decision:-

“During deliberations in the Board, the Board referred to clause 4.4.1 of ACBD which reads, “PNGRB reserves the right to reject any application cum bid comprising quoted work program considered by it to be unreasonably high or low”. In terms of this clause vide note dated 23.07.2018 (i) lower and upper limits were decided for PNG domestic connections (ii) lower limits was decided for CNG stations and (iii) no limit (higher or lower) was decided for Inch-KM of Steel pipeline. The Board deliberated that though lower and upper thresholds were decided, the same need not be a mechanical exercise

and an opportunity to be given to affected entities to explain reasonableness of their quotes.”

55. While on the subject, let me also now discuss the issue of 2011 census which the Applicant has claimed to have been the reference census from where the household numbers should have been picked up for rejecting the bids quoting the PNG domestic connections more than this household number. In the ACBD, under instructions to bidders in clause 1.1.3, it clearly mentions that it is the bidder's responsibility to obtain all information related to the present gas supply availability and pipeline connectivity and also existing customers, if any in the specified geographical area. The bid was announced in 2018 and hence the situation pertains to 2018 and not 2011. Moreover, in respect of number of PNG connections to be quoted by the bidders, the bid document categorically mentioned about the highness of number of domestic piped natural gas connections to be achieved within 8 contract years from the date of authorization. Respondent No.2 also has clearly argued that neither the regulations nor the ACBD has restricted the number of PNG connections to be quoted by the bidder. It clearly indicates that present status and future prospects would have to be considered by the bidders for bidding the number of PNG connections. In case of the parameters like transportation rate for CGD and CNG, in lowness criteria, the lower ceiling was fixed, but

in case of highness criteria like for PNG connections, the highness ceiling was not fixed and left to the bidders to estimate.

56. It is further noted from the note given at the bottom of Regulation 7 (1) (a) that annual escalation shall be considered for the second contract year and onwards based on WPI data (2011-12=100) as normally available on a specified website, but it is also clearly mentioned that this is applicable only for lowness of CGD and CNG transportation parameters. Second place where there is a mention of 2011 census is that for net worth qualification of the bidders where again the population as per 2011 census is mentioned and not the households.
57. The third place where census 2011 population and household numbers are mentioned, is the geographical map of the particular GA. Here again, it could be only for giving an idea about population and household numbers to the bidders with respect to the map. Nowhere in the map, it is mentioned that these number would be considered by the bidders for bidding for the PNG connections. It appears it is only a wild assumption by the Appellant to consider it for bidding.
58. It is clearly observed that nowhere in the ACBD or Regulation, it is mentioned that number of PNG connections to be quoted will be restricted to 2011 census household/population figures.

59. It is also very much pertinent to note from the amended regulation dated 07.04.2018 vis-à-vis the regulations that existed before this amendment that the Board deliberately removed the cap on the number of PNG connections to be quoted by bidders with a view to encourage bidders to quote keeping in view a larger public interest.
60. Though the appeal pertains to only GAs, 51,61 & 62, the Appellant also submits that the Board rejected 37 numbers of bids which were not qualified because their bids were below 2% and higher than 100% of 2011 census figures as per the Board's Press Release dated 10.08.2018 uploaded in its website. Though, the instant appeal also strictly pertains to only highness of PNG domestic connections, still for the sake of completeness, let me understand the status of these bids. On clarification, the Board has stated that there were only 9 bids with H-1 bidders quoting below 2% and above 100% limits of 2011 census. These 9 bids were accordingly highlighted to the Board, and final decisions were taken on these 9 bids by the Board after proper application of mind, hearing the parties and taking an objective decision. Out of 9 bids, 4 bids having lower than 2% connections were accepted after raising their bids through discussions with the bidders, otherwise, these GAs would have gone dry. In GA-37, IOC's bid was rejected because of lower than 2% quote, but this decision of the Board has not been challenged by IOC. Out of the remaining 4 GAs where H-1 bidders quoted more than 100% of PNG connections of 2011 census

household numbers for 3 GAs (51, 61 & 62), H-1 bidders were declared successful bidders after hearing them on their reasonableness of quotes. For the 4th GA (GA No. 72), the bid of the H-1 bidder who is the R-2 in the instant case was rejected having found its bid unreasonable and the GA was awarded to the next highest bidder and the H-1 bidder has not challenged this decision.

61. As regards the internal note dated 23.07.2018, for the sake of completeness, let me examine this issue from the legal point of view also. In this regard, it is relied on the Supreme Court's order dated 25.08.2009 in the case of ***Shanti Sports Club & Anr. Vs. Union of India & Ors. (2009 (15) SCC 705)***

“43. A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government.....”

Similarly, it is also relied on a similar judgment by the Supreme Court dated 17.10.2008 in ***Sethi Auto Service Station Vs. Delhi Development Authority (2009 (1) SCC 180)***.

“14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it

reaches the final decision-making authority in the department; gets his approval and the final order is communicated to the person concerned.”

62. The Appellant claims that as per the Board Agenda Note dated 09.08.2018, the bids of the highest bidders in GA-61, 62 & 51 were already rejected, but still the bidders were considered later as the successful bidders. It is to be noted that the Agenda Note was put up for “deliberation and approval of the Board”_ meaning it was not a final decision. Final decision was taken in the Board meeting held on 29.08.2018 after hearing the bidders on the reasonableness of their bids on PNG domestic connections. Firstly, the decision under reference was not a final decision and the same was not communicated to the parties concerned. The Supreme Court judgment cited above can hence directly relied upon in the instant case. In this context, I have also examined if the Supreme Court judgment in Mahinder Singh Gill & Anr. Vs. Chief Election Commissioner, New Delhi & Ors. 1978 (1) SCC (405) cited by the Appellant can be relied on – “orders are not like old wine, becoming better as they get older.” Based on this judgment, the Appellant has claimed that the Board’s decision or order cannot be bettered by recourse to an affidavit which purports to add reasons to the Note, where there are none. On this issue again, there was no final decision on rejection of the highest bidders in GA-61, 62 & 51 and the interim decision was also not communicated to the parties. It was not a public order nor was it made public. The final decision was taken much later in the Board meeting on

29.08.2018 and accordingly, the same was communicated by issuing LOIs to the parties. Under the circumstances, the judgment cited by the Appellant above does not demonstrate any relevance to the present case.

63. It is also observed that the ACBD is in the nature of a contractual document and a contract is a commercial transaction. If the decision relating to award of contract is in public interest, courts will not interfere. In this regard, it is relied upon the Supreme Court's judgment in *Central Coalfields Limited & Anr. Vs. SLL-SML (Joint Venture Consortium) & Ors. – (2016) 8 SCC 622*;

“38.

42.

43. *Continuing in the vein of accepting the inherent authority of an employer to deviate from the terms and conditions of an NIT, and reintroducing the privilege-of-participation principle and the level playing field concept, this Court laid emphasis on the decision-making process, particularly in respect of a commercial contract. One of the more significant cases on the subject is the three-Judge decision in Tata Cellular v. Union of India [Tata Cellular v. Union of India, (1994) 6 SCC 651] which gave importance to the lawfulness of a decision and not its soundness. If an administrative decision, such as a deviation in the terms of NIT is not arbitrary, irrational, unreasonable, mala fide or biased, the courts will not judicially review the decision taken. Similarly, the courts will not countenance interference with the decision at the behest of an unsuccessful bidder in respect of a technical or procedural violation. This was quite clearly stated by this Court (following Tata Cellular[Tata Cellular v. Union of India, (1994) 6 SCC 651]) in Jagdish Mandal v. State of Orissa [Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517] in the following words: (SCC p. 531, para 22)*

“22. *Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made “lawfully”*

and not to check whether choice or decision is “sound”. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold.”

This Court then laid down the questions that ought to be asked in such a situation. It was said: (Jagdish Mandal case [Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517] , SCC p. 531, para 22)

“22. ... Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

or

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”;

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226.”

64. While taking decision, I have also taken note of the clause 4.4 of the ACBD which reads as under:-

“4.4 PNGRB’S RIGHT TO ACCEPT OR REJECT ANY OR ALL APPLICATION-CUM-BIDS

4.4.1 PNGRB reserves the right to reject any Application-cum-Bid comprising quoted work programme considered by it to be unreasonably high or low.

4.4.2 Notwithstanding anything to the contrary contained herein, PNGRB reserves the right to accept or reject any Application-cum-Bid and/or to annul the bidding process and/or reject all Application-cum-Bids, at any time prior to grant of authorization.”

65. It is clear from above that the Board has the right to reject or accept any bids without assigning any reasons, and accordingly, the Board has also the right to reject or accept any bid with unreasonably low or high quotes. Moreover, the Annexure-6 of the ACBD which the Appellant as bidder has also signed and submitted to the Board is also very much relevant to look at. The relevant para of the Annexure-6 of the ACBD which has been duly signed by the Appellant reads as under:

“4.

We understand that PNGRB reserves the right to accept or reject any Application-cum-Bid, and to annul the bidding process and reject all Application-cum-Bids.”

66. In addition, I have also taken note of the confidentiality clause of the ACBD which reads as under:-

“4.3 PROCESS TO BE CONFIDENTIAL

Information relating to the examination, evaluation and comparison of bids and recommendations shall be treated confidential and shall not be disclosed to entities or any other person.

Any effort by an entity to influence PNGRB in any manner in respect of bid evaluation or grant of authorization will result in the rejection of its Application-cum-Bid.”

67. The Appellant has not challenged the terms and conditions and criteria for bidding. Even if it had any reservations, the Appellant could have questioned the validity of these terms and conditions or criteria for bidding before submitting its bid. Moreover, the Appellant has itself been awarded more than 20 GAs on the same terms and conditions as prescribed in the bid document. Hence, question of arbitrariness on the part of the Board while awarding the contracts does not arise. In this context, clause 2.1.1 of the ACBD can be quoted which reads as under:-

“2.1.1: The bidder is expected to examine all the contents of the ‘Application-cum-Bid document’, including all instructions, forms, terms and conditions and all the regulations of PNGRB. The ‘Application-cum-Bid document’ together with all its annexures thereto shall be considered to be read, understood and accepted by the bidder. Failure to furnish any information required as per the ‘Application-cum-Bid document’ or submission or Application-cum-Bid not complete in every respect will be at bidder’s risk and may result in the rejection of the Application-cum-bid.”

68. The procedure that the Board has followed to take a final decision on selecting the successful bidder in GA – 62, 61 & 51 has been thoroughly examined and no malafide and unjust issues have been observed. The Board

also confirmed that the Board has followed the full procedure as per the relevant regulations of the Authorization Regulation and sections of the PNGRB Act. Regulation 7 (1) read with Regulation 7(3) of the Authorization Regulations framed in terms of Section 19 (2) read with Section 61 of the Act mandates a selection only in accordance with the bidding criteria laid down therein, and the precise manner of computation to be applied as specified in Schedule C (1) of ACBD. As regards the statistical numbers that the Board has considered in finding out the reasonableness of the bid submitted by R-2, I have not attempted to authenticate the numbers, since these numbers can vary depending on the nature of sources and assumptions. Moreover, the figures are estimated figures only which the bidders are expected to do at their end while bidding. Since the Board has the expertise to find out the reasonableness of bids based on its wisdom and knowledge, I have not tried to find out the authenticity of the figures whether estimated or calculated. The procedure that the Board has followed to find the reasonableness has been found to be in order. However, a quick cross-check has been done in regards to a comparative status of the successful bidder with respect to the Appellant in GA-62. In a situation where the number of PNG connections i.e. 33,00,000 quoted by R-2 is replaced with the number quoted by Appellant i.e. 15,00,068, R-2 would still emerge as the highest composite scorer for the purpose of bid evaluation. Similarly, when R-2's quoted number is reduced

to the number of households as per census 2011 i.e. 21,01,93 as the upper limit of PNG connections instead of 23,33,500, R-2 would obviously still emerge as the highest composite scorer.

69. Covering maximum number of households with supply of PNG connections is always a welcome step to raise the quality of people who will be using a cleaner fuel for day-to-day life cooking. It is also Government of India's policy to provide piped gas connections to maximum consumers possible so that the LPG connections are diverted to remote and rural areas where piped gas connectivity may not be feasible at present. In this regard, the objective of formulating the Petroleum and Natural Gas Regulatory Board Act, 2006 can be directly referred to where natural gas is intended to be supplied to all parts of the country which reads as under:-

“An Act to provide for the establishment of Petroleum and Natural Gas Regulatory Board to regulate the refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas excluding production of crude oil and natural gas so as to protect the interests of consumers and entities engaged in specified activities relating to petroleum, petroleum products and natural gas and to ensure uninterrupted and adequate supply of petroleum, petroleum products and natural gas in all parts of the country and to promote competitive markets and for matters connected therewith or incidental thereto.”

70. The Regulations also provide for adequate safeguards in the event a situation arises where the successful bidder fails to meet the target of PNG connections to be achieved. In this respect, it is relevant to consider Regulation 13(3), which provides that 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 actions to the entity.

71. Further, Regulation 16 provides for the consequences of default, pre-determined penalties and termination of authorization procedure for any shortfall in achieving the cumulative work programme targets for each contract year. In particular, it is provided that for shortfall in achieving the target for each PNG connection, a sum of INR 750/- would be charged per PNG connection.
72. Additionally, if the cumulative achievement falls short of 30% of the weighted average at the end of three contract years, or if in the opinion of the Board the entity makes a serious default, then it may result in termination of authorization and encashment of 100% of performance bond. Thus, the Regulations have adequate safeguards to address a situation wherein an entity quotes an unrealistic figure of PNG connections.

IN CONCLUSION:

73. Appeal No. 292 of 2018 pertains to GA-61, 62 and 51 on the issue of LOI issued by the Board to the highest bidders considering the highest scores secured by them whose bids in the parameter of PNG domestic connections were more than the household numbers as per 2011 census which as per the

Appellant should have been the maximum number of PNG connections (100%) that the bidders could have quoted. This situation of PNG domestic connection quotes arose in a total number of 4 GAs including GA No. 72 in addition to the above 3.

74. The Board has treated all the above bids of the highest bidders on equal footings for evaluation and final declaration of the successful bidders in their respective GAs. The Board has evaluated the bids strictly as per the relevant Authorization Regulations and subsequent Addendum issued thereon and the Application-cum-Bid document. The composite scorers for all the bidders in GA-61, 62 and 51 were calculated by the Board strictly as per the specified formula prescribed in the Application-cum-Bid document without any deviation whatsoever, in determining the highest composite scorers in all the three GAs. The procedure that the Board has followed to check the reasonableness of the bids has been found to be in perfect order. I have not noticed any malafide intention on the part of the Board in awarding the LOIs to the highest bidders. In the appeal also, there has not been any whisper of malafides except a mention of favoritism in regard to GA No.62. I have carefully noticed that the Board also has taken into account a broad public interest while taking the decision so that maximum households in the country are privileged to have piped gas connections as a cleaner fuel for a better quality of life.

75. After detailed analysis, I have come to the conclusion that the 2011 census figure of households does not have anything to do with the evaluation of the bids and hence, further allegation on considering different statistical figures etc. in finding out the reasonableness of the bids etc. does not have any merit to be considered.
76. Based on my discussions, observations and reasonings above, the Appeal being Appeal No. 292 of 2018 deserves to be dismissed on merits. Consequently, the Appeal being Appeal No. 323 of 2018 also deserves to be dismissed on merit.

ORDER

77. Both the Appeal i.e. Appeal No. 292 of 2018 and Appeal No. 323 of 2018 are dismissed. Needless to say that IA Nos. 1382, 1383, 1384 & 1877 of 2018 of Appeal No. 292 of 2018 and IA Nos. 1536 & 1537 of 2018 of Appeal No. 323 of 2018 do not survive and are disposed of as such.
78. No order as to costs.
79. Pronounced in the Open Court on this **28th** day of **February, 2019**.

B.N. Talukdar
[Technical Member (P&NG)]

√ **REPORTABLE/~~NON-REPORTABLE~~**

OPINION OF HON'BLE MRS. JUSTICE MANJULA CHELLUR,
CHAIRPERSON

80. Since I am not agreeing with the opinion expressed by Hon'ble Technical Member, by this separate Judgment my opinion is expressed. The relevant facts which are necessary are referred to.
81. Apparently, the dispute seems to be in respect of three Geographical Areas (GAs), viz. GA Nos. 61, 62 and 51 for grant of the authorization for laying, building, operating or expanding City Gas Distribution Networks in the GAs of Districts of Kanchipuram, Chennai-Tiruvallur and Puducherry, respectively.
82. Appeal No. 292 of 2018 is filed by the Appellant challenging the results published in the press release dated 14-9-2018. Appeal No. 323 of 2018 is filed by the Appellant more or less on similar grounds challenging the result declared vide the above press release dated 14-9-2018. Issues are identical and similar as that of Appeal No. 292 of 2018. Therefore, both the appeals were heard together and are disposed of by this common order pertaining to GAs 61, 62 and 51 as stated above.
83. On 19-3-2008 the Respondent No.1/Board issued and initiated bidding process for authorising entities in 86 Geographical Areas to build, operate and expand City or Local Natural Gas Distribution

(CGD) Networks by virtue of Regulation / notification bearing No. G.S.R. 196(E) (2008 Regulations). By virtue of 9th CGD Bidding Round for various GAs including the three districts in issue, as stated above, bids were invited on 12-4-2018. It is not in dispute that in terms of Clause 5 pertaining to criteria for selection of entity for expression of interest route and Clause 9 which relates to Performance Bond of 2008 Regulations, the Respondent Board has used 2011 census for the purpose of calculation of the net worth of bidding entities and for the Performance Bond to be taken from the successful bidder. In other words, according to Appellant, 2011 census was taken as parameter for the bidding process. They further contend that the basis of number of household population in the GAs was also as per 2011 census of India and the relevant clause 4.4.1 of the bid document provided, inter alia, as under:

“PNGRB reserves the right to reject any Application-cum-Bid comprising quoted work programme considered by it to be unreasonably high or low.

...”

84. Admittedly, Appellants had submitted their Applications-Cum-Bid Documents for the project areas referred to the above GAs in issue. By 18-7-2018, the technical bids submitted by the respective bidders were opened by the Respondent Board.

Similarly, by 6-8-2018, the financial bids submitted by the respective bidders for various GAs of different districts, including the districts in issue, were opened. On 10-8-2018, a press release was uploaded by the Respondent Board on its website declaring selection of various bidders. The said press release also reported that *“37 bids were not considered on various grounds including being unreasonably low or high.”*

85. According to Appellants, the Board though seems to have issued a Letter of Intent (LOI) to Respondent Nos. 2 to 4, if any in respect of GAs in issue, the said decision was kept as secret and was not published either on the Respondent Board's website or no press release with regard to the same came to be published for the reasons best known to the Respondent Board.
86. On 6-9-2018, a letter was addressed to the Respondent Board requesting for copy of the decision taken by the Board on 30-8-2018 with reference to LOI for GA of Chennai-Tiruvallur. But no reply came to be received till the date of filing of the appeal. However, Appellant learnt that the LOI for grant of authorization for GA of Chennai-Tiruvallur was issued to the 2nd Respondent Torrent Gas Private Limited when 2nd Respondent served Caveat filed before this Tribunal upon the Appellant. Only on 14-9-2018,

Respondent Board uploaded the chart depicting details of the successful bidders for GAs in issue. No base or parameters were indicated by the Respondent Board on what basis impugned results have been reached pertaining to GAs in issue.

87. Contending that the Respondent Board has adopted a non-transparent, subjective and arbitrary process in making its decision to issue LOI to Respondents 2 to 4, Appellants approached this Tribunal. Based on various judgments of the Hon'ble Apex Court, the Appellants contend that the process followed by the Respondent Board is vitiated for the following reasons:

- a. The selection of the aforesaid three successful bidders is violative of the Board's own criterion of "unreasonably high" bids;*
- b. The procedure adopted is secretive and non-transparent and /or not been uniformly applied;*
- c. The objective criteria for evaluation of the bids has not been disclosed;*
- d. The grant of the Lol to the Respondents No.2 -4 for the Project Areas by the Respondent Board is arbitrary, capricious and de hors the merits of the bids.*
- e. The vague and uncertain criteria has been followed by following different yardsticks in different cases;*
- f. The rules of the game have been changed after the game has begun in as much as there have been*

changes in interpretation of the criteria and parameters of evaluation;

- g. The process adopted alters the level playing field which leads to unfair and discriminatory treatment to the bidders such as the Appellant.*
- h. The Respondent Board has uploaded the Impugned Result on its website on 14.09.2018 without detailing out/disclosing any basis/ criteria/parameter for taking such a decision to randomly issue the Lols to the Respondent Nos. 2 and to Respondent Nos. 3 and 4, if any, for the Project Areas.”*

88. They further contend that Regulatory Board has been established to protect the interest of the consumers and the entities engaged in the specified activities pertaining to petroleum, petroleum products and natural gas apart from requiring it to promote competitive markets for the ultimate consumers and for any other matter connected therewith and incidental thereto. The Respondent Board is to protect the interest of the consumers by adopting fair trade and to regulate the same by Regulations. They also contend that though Clause 4.4.1 of invitation for bid provided right to Respondent Board to reject any bid submitted by the respective bidder on the ground of same being considered by the Respondent Board as a non-reasonably high or low, the criteria / parameters / definitions of the work programme quoted by ‘unreasonably high’ or ‘unreasonably low’ was nowhere provided for in any document.

89. According to Appellants, the statistical analysis of the impugned result makes it clear that all the successful bidders have submitted their bids ranging between 2% and 100% of the total households as per 2011 census, that is, set parameter or criteria be the touchstone for all the bids evaluated till date under the 9th CGD bidding round. Further analysis of the Impugned Result shows out of total 86 successful bidders, the Respondent Nos. 2 to 4 (successful bidders of disputed GAs) have submitted bids which exceeded 100% of the total households as per 2011 census. They further contend that all other successful bidders have submitted their bids ranging between 2% and 100% of the total households as per 2011 census. Therefore, the grant of LOIs to three Respondents (Respondents 2 to 4) is arbitrary, whimsical and without any defined criteria. The process of invitation for bid for the areas in issue was in the larger interest and to set up pipeline distribution network for developing environment friendly process / supply of gas to domestic establishments.
90. They further contend that whenever a norm / benchmark is prescribed in the tender process, in order to have certainty, said norm / standard must be clear. The way in which the Respondent Board has acted in issuing the LOI in respect of the project areas in issue to the Respondent 2 to 4 clearly indicates that there is no application of

uniform basis / criteria / parameter and it has acted in a discriminatory, arbitrary and non-transparent manner.

91. So far as figures of these three districts in issue in terms of 2011 census are concerned, the households is 22 Lakhs and the 2nd Respondent has submitted a bid for 157% of the number of households in the area in issue (Chennai-Tiruvallur) as per 2011 census, i.e. 33 Lakhs. So far as Kanchipuram is concerned, it is 10,06,245 Lakhs as per 2011 census and 2nd Respondent has submitted a bid for 11,51,111 number of households for the Kanchipuram area which is 114.40% of the estimated number of households as per 2011 census. So far as Puducherry is concerned, it was 2,31,513 households as per 2011 census and the successful bidder has submitted bid for 2,75,000 number of households for the project area Puducherry which is 118.75% of the estimated households as per 2011 census. According to appellants, pertaining to the above three areas, the so-called successful Respondent bidders have crossed the threshold of 100% of 2011 census and are unreasonably high.

92. Following questions of law are raised:

- A. Whether the Respondent Board was obligated to communicate the decision taken by it to arrive at the Impugned Result?

- B. Whether it is incumbent upon the Respondent Board to furnish a copy of the decision taken by it with respect to laying down criteria of the number of households being “unreasonably low or high”, if any?
- C. Whether the Respondent Board can arbitrarily, whimsically and while applying different modalities, determine as to what is ‘unreasonably low’ and ‘unreasonably high’ in respect of the number of household/population?
- D. Whether the LOI issued to Respondent No.2 and to the Respondent Nos. 3 and 4, if any, in respect of the Project Areas pursuant to the Impugned Result that is bad in law, is/are *ipso facto* perverse, illegal and invalid?
- D. Whether the Respondent Board dealing with grant of largesse in the form of licences/contracts for natural resources required to follow the law laid down by the Hon’ble Supreme Court *inter alia* in the cases of 2G Spectrum cancellation and Coal Block Cancellation?

93. Contentions of Respondent Board are as under:

After referring to several paras of invitation to bid and the Application-Cum-Bid Documents (ACBD), the 1st Respondent PNGRB referred to ACBD, i.e. Para 5, Para 6, Para 10, Clause 1.4.7, Clause 2.1.1, Clause 2.1.2, Annexure 3, Annexure 6, Clause 4.3, Clause 4.4 in

particular 4.4.1 and 4.4.2, Clause 4.7, Clause 9, Addendum-1 pertaining to single bids and unreasonable quotes at clauses 14.1 and 14.2, contended that the analysis of the above relevant provisions would indicate as follows:

“6.13.1 The bidder is supposed to have read the terms and conditions and applicable Regulations while submitting its bid. Once the bid is submitted, the bidder is considered to have read, understood and accepted the terms and conditions of the ACBD and the Regulations.

6.13.2 The bid is a zero deviation bid.

6.13.3 The PNGRB has the right to reject any bids without assigning any reasons. The bidder also submits a specific Undertaking to this effect as per Annexure 6 of the ACBD.

6.13.4 The successful entity is the entity which is granted the authorization in terms of the Regulations. Therefore, till the grant of authorization, no entity gets any right let alone the legal right to be awarded the bid.

6.13.5 The entire process of examination, evaluation and comparison of bids and recommendations is

confidential and shall not be disclosed to any bidder. The bidders have also agreed and accepted the condition by submitting their bids.

6.13.6 *The Board has the right to reject any bid with unreasonably low or high quotes.*

6.13.7 *The Board's decision is final in relation to any dispute that arises regarding the interpretation of the contents of the ACBD.*

6.13.8 *The level of "unreasonably high" or "unreasonably low" quotes shall be decided by the Board at the time of bid evaluation on a case to case basis after considering the relevant factors."*

94. They contend that since Board has full right and power to accept or reject any bid and even to cancel the entire bidding process, the Appellants have no right to question the decision of the Board to award bids to Respondent Nos. 2, 3 and 4 and question the decision of rejecting the bid of the Appellants. They further contend that the decision making process had not reached any finality in terms of bid documents and the applicable Regulations in so far as the Appellants is concerned. Therefore, Appellants have no right (much less enforceable legal right) since there is no acceptance of the bid of the Appellants by the Board. They further contend that

any matter relating to tenders/bids by an authority (like PNGRB), the authority is not bound to award the bid to the highest or lowest bidder as applicable. All the parties, i.e. bidders and the Board are equally bound by the terms and conditions of bid documents. Having regard to the terms and conditions of the bid documents, Appellants cannot raise issues regarding the rejection of its bid.

95. ACBD is in the nature of contractual document, therefore, the principles of natural justice and equity, stay at a distance. The decision to award the bid to the successful bidders and to reject the bid of the Appellants are taken keeping well in mind the terms and conditions of the bid documents, mandate of the PNGRB under the Act, the larger public interest and in compliance with the provisions of the Act and Regulations framed there-under.

96. They further narrate sequence of list of dates and events how right from 19-3-2008 when the authorisation Regulations were notified till grant of last authorisation of 28-9-2018 came to be issued. The relevant dates are as under:

<i>“Serial Number</i>	<i>Date</i>	<i>Particulars</i>
<i>1.</i>	<i>19.03.2008</i>	<i>•Petroleum and Natural Gas Regulatory Board (Authorising Entities to Lay, Build, Operate or Expand City or Local Natural</i>

		<i>Gas Distribution Networks) Regulations, 2008 (hereinafter “Authorization Regulations”) were notified by the Board.</i>
2.	06.04.2018	<ul style="list-style-type: none"> • <i>The Authorization Regulations were amended by the Board vide GSR No. 145.</i>
3.	12.04.2018	<ul style="list-style-type: none"> • <i>The Board invited bids for the 9th City Gas Distribution Bidding Round including the Geographical Areas of Chennai-Tiruvallur, Puducherry and Kanchipuram Districts (hereinafter collectively referred to as “Project Areas”)</i>
4.	08.05.2018	<ul style="list-style-type: none"> • <i>Presentation by PNGRB for 9th City Gas Distribution Bidding Round Launched on 08th May 2018 at The Hotel Ashok, New Delhi.</i> • <i>Presentation by E&Y for 9th City Gas Distribution Bidding Round Launched on 08th May 2018 at The Hotel Ashok, New Delhi.</i>
5.	10.07.2018	<ul style="list-style-type: none"> • <i>Last date for submission of the bids by prospective bidders</i>
6.	10.07.2018	<ul style="list-style-type: none"> • <i>Press release issued by the Board inter alia stating that the technical bids would be opened between 12.07.2018 and 18.07.2018.</i>
7.	10.07.2018	<ul style="list-style-type: none"> • <i>The Appellant submitted its Application-cum-Bid for the Project Areas.</i> •
8.	12.07.2018	<ul style="list-style-type: none"> • <i>Press release issued by PNGRB providing the Technical Bid opening date and time for different Geographical Areas.</i> • <i>In respect of GA No. 51 (Puducherry) the date was 16.07.2018 at 16.00 hours.</i> • <i>In respect of GA No. 61 (Kanchipuram) the</i>

		<p>date was 17.07.2018 at 12.30 hours</p> <ul style="list-style-type: none"> • In respect of GA No. 62 (Chennai-Tiruvallur) the date was 17.07.2018 at 13.30 hours.
9.	16.07.2018	<ul style="list-style-type: none"> • Details of bidders with the bid opening date and time including for GA 51 (Puducherry) were uploaded on the website of the Board
10.	17.07.2018	<ul style="list-style-type: none"> • Details of bidders with the bid opening date and time including for GA 61 (Kanchipuram) and GA 62 (Chennai-Tiruvallur) were uploaded on the website of the Board.
11.	18.07.2018	<ul style="list-style-type: none"> • The technical bids submitted by the respective bidders for the GA's were opened by the Board in the presence of bidders' representatives. The Appellant's representatives did not attend the technical bid opening in the office of PNGRB.
12.	03.08.2018	<ul style="list-style-type: none"> • Press release issued by the Board inter alia stating that the Board in its 79th Board Meeting had approved issuance of Letters of Intent ("LOI's") to 18 successful bidders for 49 Geographical Areas. • This Press release also stated that remaining areas were being evaluated and outcome of those would be announced shortly.
13.	06.08.2018	<ul style="list-style-type: none"> • The financial bids submitted by the respective bidders for the GA's were opened by the Board in the presence of the bidders' representatives.
14.	10.08.2018	<ul style="list-style-type: none"> • 80th Meeting of the Board held on 10.08.2018. • In this meeting, it was inter alia decided to

		<i>call Second Respondent and 3 the for the Project Areas of Chennai-Tiruvallur and Kanchipuram to explain the reasonableness of their bids.</i>
15.	10.08.2018	<ul style="list-style-type: none"> • <i>Press release issued by the Board on its website inter alia stating that the Board in its 80th Board Meeting had approved issuance of LOI's to 10 successful bidders for 30 Geographical Areas.</i> • <i>This Press release also stated that 37 bids were not considered including being unreasonably high or low.</i> • <i>The Press release also stated that the remaining 7 Geographical Areas were being evaluated and 1 was sub-judice and the outcome would be announced in due course.</i>
16.	10.08.2018	<ul style="list-style-type: none"> • <i>In terms of the 80th meeting of the Board held on 10.08.2018, Respondent Nos. 2 and 3 were sent a letter calling them for a discussion on 14.08.2018 to present their case as to why the bids submitted by them for PNG domestic connections should not be considered unreasonably high.</i>
17.	14.08.2018	<ul style="list-style-type: none"> • <i>Hearing held with Respondent Nos. 2 and 3 by the Board in pursuance of the letter dated 10.08.2018.</i>
18.	20.08.2018	<ul style="list-style-type: none"> • <i>81st Meeting of the Board held on 20.08.2018 at 15.00 hours.</i> • <i>In this Meeting, it was decided that Fourth Respondent would be called for discussion on 23.08.2018 as to why its quote should not be considered as unreasonably high.</i> • <i>In this Board Meeting issuance of LOI's for 2 GA's namely 17 (Hissar) and 28 (Dakshina Kannada) was also approved.</i>

19.	21.08.2018	<ul style="list-style-type: none"> • Letter issued by the Board to Fourth Respondent asking it to provide reasonability of its domestic connections quote at the PNGRB office on 23.08.2018 at 15.00 hours.
20.	23.08.2018	<ul style="list-style-type: none"> • Hearing held with Fourth Respondent by the Board in pursuance of the letter dated 21.08.2018.
21.	29.08.2018	<ul style="list-style-type: none"> • 82nd Meeting of the Board held on 29.08.2018 at 10.00 a.m. • This Board Meeting inter alia considered the Grant of Authorization for the Project Areas too. • The Board approved the submissions of the bidders related to reasonableness of their quotes and approved award of the GA's for the Project Areas. • The Board also rejected the submissions of Second Respondent for GA-72 i.e. Medchal, Rangareddy and Vikarabd Districts in respect of the reasonableness of its quote.
22.	30.08.2018	<ul style="list-style-type: none"> • Letters of Intent issued by the Board to Respondent Nos. 2, 3 and 4 for the Project Areas.
23.	31.08.2018 to 14.09.2018	<ul style="list-style-type: none"> • PNGRB processed and issued various LOI's, Performance Bank Guarantees and Grant of Authorization in respect of various Geographical Areas that were a part of the 9th CGD Bidding Round. • This entire process took substantial time to complete.
24.	06.09.2018	<ul style="list-style-type: none"> • The Appellant wrote to the Board requesting for a copy of the decision of the Board regarding issuance of LOI's for the Project Areas. • This letter was sent despite the Appellant

		<i>having agreed while submitting its bid that the entire process of examination, evaluation and comparison of bids and recommendations was confidential and shall not be disclosed to any bidder.</i>
25.	07.09.2018	<ul style="list-style-type: none"> • <i>Grant of Authorization issued by the Board to Second Respondent for the Project Area of Chennai-Tiruvallur (GA-62).</i>
26.	11.09.2018	<ul style="list-style-type: none"> • <i>Appellant claims to have gained knowledge of the LOI issued to Second Respondent for the GA of Chennai-Tiruvallur when the Caveat filed before this Hon'ble Tribunal by Second Respondent was served on it.</i> • <i>This is contrary to its own letter dated 06.09.2018.</i>
27.	14.09.2018	<ul style="list-style-type: none"> • <i>Consolidated details of successful bidders including those for the Project Areas for the 9th CGD Bidding Round were uploaded on the website of the Board.</i>
28.	24.09.2018	<ul style="list-style-type: none"> • <i>Present Appeal filed only on 24.09.2018 despite the Appellant being aware about the LOI's on 06.09.2018 itself (as admitted by it in its letter dated 06.09.2018 to the Board).</i>
29.	26.09.2018	<ul style="list-style-type: none"> • <i>Grant of Authorization issued by the Board to Third Respondent for the Project Area of Kanchipuram (GA-61).</i>
30.	28.09.2018	<ul style="list-style-type: none"> • <i>Grant of Authorization issued by the Board to Third Respondent for the Project Area of Kanchipuram (GA-61)."</i>

97. According to them, the list of dates and events clearly indicate that when the technical and financial bids were opened in the presence of qualified bidders, they were fully aware of their position vis-à-vis the other bidders since the entire process was transparent and open for every qualified bidder. Even the original files of the Board would clearly show that the allegations made by the Appellant are false so far as allegations of non-transparency, arbitrariness, subjective and discriminatory approach said to have been adopted by the Respondent Board so far as awarding LOI in favour of Respondents 2 to 4.
98. So far as not uploading the details of GAs in issue and four others on the website of the Board till 14-9-2018, the Board contended that such allegations are baseless. Such trivial deficit of not upholding cannot be a ground of challenging the entire bidding process for the GAs in issue.
99. They further narrate what happened in the 79th Board meeting held on 3-8-2018, 80th meeting on 10-8-2018, 81st meeting on 20-8-2018, 82nd meeting on 29-8-2018. They also contend that between 30-8-2018 and 14-9-2018, workload of the officers of the Board increased considerably due to issuing / processing large number of LOIs, Performance Bank Guarantees, terms and

conditions for 86 GAs. The entire process being time consuming in respect of 86 GAs and, therefore, some delay on the part of the Board in uploading the information for GAs in issue might have happened and it was not deliberate and it cannot be termed as non-transparent or *mala fide*. They contend that the Board has adopted transparent and objective process in deciding the selection of successful bidders and so far as deciding whether a bid was unreasonably higher or lower, the Board has full power to decide the said issue after considering of the relevant factors.

100. They deny allegations of arbitrary and whimsical application of modalities to different bidders to determine what is unreasonably low or unreasonably high and contend that the Board has to see whether figures quoted are reasonable or not on case to case basis since each GA has different household figures. Similar yardstick was applied even in the case of GAs in issue. They further contend that there is no change in the rules of the game since all bidders knew that question of unreasonably low or high would be rejected, much before they submitted their bids. The Board being an expert body is well within its power to decide the basis and criteria for determining unreasonably low or high bids. The criteria, i.e. what would constitute, could not be disclosed to the prospective bidders in advance since such criteria would vitiate the very nature

of competitive bidding process as in each case every bidder would provide the minimum and maximum numbers disclosed to it in an attempt to win the bid. This would have an impact on the public interest since Board is the repository of public interest. With these submissions, the 1st Respondent sought for dismissal of the appeal.

101. 2nd Respondent contended that they are the successful bidder so far as GA of Chennai-Tiruvallur. According to them, the 2nd Respondent participated in the technical and financial bidding process in response to the invitation of bid by the Respondent Board. In terms of Regulation – 7, the Board is required, for the purpose of considering the proposal for authorization, to tabulate and compare all financial bids meeting the minimum eligibility criteria as per bidding criteria specified therein. In terms of Regulation 7, the maximum weightage of 50% has been assigned to the *“highness of number of domestic piped natural gas connections to be achieved within 8 contract years from the date of authorisation”*. This Regulation came to be amended on 06-04-2018 and the cap on PNG connection to be achieved within eight years was removed. Therefore, according to 2nd Respondent, the intention of the amendment to Regulation 7 was to remove any cap on the number of PNG connections to be

quoted so as to encourage bidders to quote a higher number in the larger public interest.

102. The 2nd Respondent after securing data analysis for the year 2018 and the growth potential for next eight years till 2026 in respect of GA 62, submitted bid to achieve about 33 Lakhs PNG connections by calendar year 2026. After opening technical and financial bids on 10-8-2018, the Board invited 2nd Respondent for a meeting at its office to provide opportunity to explain the reasonability of the domestic connections quoted by the 2nd Respondent which reads as under:

“This has reference to the bid submitted by you for the subject Geographical Areas (GAs) for development of the CGD network.

2. In this regard, you are advised to provide reasonability of your domestic connection quotes for the subject GAs at PNGRB office on 14.08.2018 (Tuesday) at 11:00 Hrs.”

2nd Respondent attended the meeting and explained in detail the methodology for arriving at the quote of PNG connections for the GAs in issue which is as under:

“(i) The GA in question i.e. GA No. 62 included certain rapidly growing districts (i.e. Chennai and Tiruvallur) with a huge population.

- (ii) *The data pertaining to Census 2011 was dated and could not have been used as the basis for submission of bid for the year 2018 or the next eight years i.e. till 2026, especially with the rapid increase in population. The Answering Respondent arrived at the bid number after having undertaken the required analysis in this respect.*
- (iii) *It is noteworthy that in respect of GA No. 62, as per the Census data for year 2011, the number of LPG connections was 15,32,169.*
- (iv) *Thereafter, in the year 2017, as per the District Statistical Hand Book (Chennai District) released by the Department of Economics and Statistics, Government of Tamil Nadu, the number of domestic LPG connections in Chennai District alone, as on 31.03.2017, was about 31,38,518. In so far as Tiruvallur was concerned, the number of LPG connections was estimated to be 10,34,555 in 2018 as per the market analysis and research undertaken by the Answering Respondent.*
- (v) *In view of the above, the Answering Respondent estimated the total number of domestic LPG gas connections in GA No. 62 (including Chennai and Tiruvallur) to be about 41,73,073 (31,38,518 + 10,34,555) in 2018 even assuming that the number of LPG connections in Chennai for the year 2017 does not change and remains the same in 2018.*
- (vi) *Using the figures mentioned above and applying a conservative compounded annual growth rate (CAGR) of 5%, the number of domestic LPG gas connections for the year 2026 was expected to increase to about 61,65,529. In such a scenario, it is clear that the bid number of about 33,00,000 submitted by the Answering Respondent is realistically achievable and not unreasonable.*
- (vii) *In response to the Board's claim that the number of domestic LPG connections for GA No. 62 in the year 2018 was about 28,00,000, the Answering Respondent submitted that even if the number as claimed by the Board was correct – still the projected LPG connections for the year 2026 would be about 55,80,000. Even in this scenario, the bid*

number of about 33,00,000 submitted by the Answering Respondent would be realistically achievable.

(viii) The Answering Respondent also quoted a quantum of steel inch-km (i.e. 6,666), which would assist the Answering Respondent to penetrate/spread across the entire GA. Additionally, this quantum of steel inch-km of pipeline laying was also required to connect the 33,00,000 number of households, which also further reinforced the seriousness of the Answering Respondent to deliver the committed PNG numbers and also to meet the objective of ensuring adequate supply of PNG even in the remotest parts of the GA.

(ix) The Answering Respondent, accordingly, requested the Board to consider the above submissions and also assured the Board that it was fully committed for the development of the CGD project.”

103. Having satisfied with the stated explanation about the reasonability of the quote, Respondent Board issued LOI for grant of authorisation. Thereafter, other formalities were submitted with regard to Performance Bank Guarantee etc. 2nd Respondent contends that after due application of mind only, the Respondent Board declared 2nd Respondent as the successful bidder in respect of GA 62. Clause 14.2 of Addendum-1 to the ACBD provides decision as to the reasonability of the quote shall be decided by the Board at the time of bid evaluation on case to case basis after considering the relevant factors.

104. They further contend that the argument of the Appellant pertaining to Performance Bond with reference to Regulation 5 taking 2011 census is only for the purpose of calculating the net worth of the bidding entities and for the Performance Bond to be submitted to the successful bidder. Therefore, it cannot be construed to mean that the quotes for PNG connections were required to be submitted keeping in view the data of census 2011. Therefore, Appellants have completely failed to demonstrate any conditions specifically mentioned by Board requiring bidders to rely upon numbers of Census 2011 for the purpose of submitting PNG connections.
105. According to 2nd Respondent, Census 2011 data cannot be used today as the basis for submission of quotes pertaining to 2018 situation which is remarkably different wherein, especially in the light of cap in respect of PNG connections having been removed. The realistic bid of 2nd Respondent at 33,00,000 is more than 18,00,000 compared to the bid of Appellants which is at 15,00,068 and therefore, quote submitted by 2nd Respondent specifically serves public interest. Even if the quote of 33,00,000 submitted by answering respondent is replaced with the number quoted by Appellants itself, i.e. 15,00,068, the answering respondent would still emerge as the highest composite scorer for the purpose of bid evaluation.

106. In rejoinder submissions of Appellants, they contend that the reply is devoid of merits. It reiterates its contention that Respondent Board having laid down criteria for un-reasonableness wherein any bid quoting number of households less than 2% or higher than 100% of the total number of households as per 2011 census shall be considered as unreasonably high / low as the case may be and disqualified, therefore, bid of 2nd Respondent should have been rejected on that count alone.

107. They further place reliance on Percentage of Decadal Variation in Population to contend that bid submitted by 2nd Respondent is unreasonable on account of the following reasons:

“a. *Percentage Decadal Variation in Population*

<i>Percentage Decadal Variation in Population</i>		
	<i>Tamil Nadu</i>	<i>India</i>
<i>Period</i>	<i>% Variation</i>	<i>% Variation</i>
<i>1961-71</i>	<i>22.3</i>	<i>24.8</i>
<i>1971-81</i>	<i>17.5</i>	<i>24.66</i>
<i>1981-91</i>	<i>15.39</i>	<i>23.87</i>
<i>1991-01</i>	<i>11.7</i>	<i>21.54</i>
<i>2001-11</i>	<i>15.6</i>	<i>17.64</i>
<i>Source: http://censusindia.gov.in</i>		

Observation: Above table suggests that over the decades, population growth percentage generally decreases mainly because of high population base, education & government’s awareness programs.

Conclusion: It is therefore expected that population growth will further see some positive decline over next decades.

“b. General Information’s about the State of Tamil Nadu

	Area (sq.km.)	Population 2011	Population Density (person / sq. km.) 2011	Decadal Population Growth Rate (2001- 2011)	Yearly Population Growth Rate
Chennai	175	46,46,732	26,553	6.98%	0.698%
Thiruvallur	3394	37,28,104	1,098	35.30%	3.530%
Chennai + Thiruvallur	3569	83,74,836	2,347		
Tamil Nadu	130060	7,21,47,030	555	15.61%	1.561%

Sources: District Census Handbook Chennai & District Census Handbook Thiruvallur

Observations:

- (i) Chennai district has the highest population in the State.*
- (ii) The decadal population growth during 2001-2011 is 6.98%, - 2nd least decadal change among the districts of Tamil Nadu.*
- (iii) Chennai is 2nd most densely populated Indian city after Mumbai having population density 26553 person / sq. km. and 10th among the world’s most densely populated cities.*
- (iv) Thiruvallur district is ranked at the 3rd highest population size in Tamil Nadu.*

Conclusion: As per Respondent No.2’s submission (84,58,282 households till 2026 for Chennai + Thiruvallur), Chennai would soon be the world’s highest densely populated city with population density of 1,44,000 person/sq. km.

“c. Population Projection till 2026

	<i>Population 2011</i>	<i>Population till 2026</i>	<i>Population Growth in 15 Years (2026-2011)</i>	<i>Population as per Torrent's data till 2026</i>	<i>Population Growth in 15 Years as per Torrent's data (2026-2011)</i>
<i>Chennai</i>	<i>4,646,732</i>	<i>5,157,750</i>	<i>511,018</i>		
<i>Thiruvallur</i>	<i>3,728,104</i>	<i>6,273,086</i>	<i>2,544,982</i>		
<i>Chennai + Thiruvallur</i>	<i>8,374,836</i>	<i>11,430,836</i>	<i>3,056,000</i>	<i>33,833,128</i>	<i>22,402,292</i>
<i>Tamil Nadu</i>	<i>72,147,030</i>	<i>91,017,098</i>	<i>18,870,068</i>		

Sources: District Census Handbook Chennai & District Census Handbook Thiruvallur

Observation: Based on the decadal growth rate as mentioned in census 2011, Tamil Nadu's population projection till the year 2026 suggests that Tamil Nadu would approximately add 1.89 Crore persons into its population, whereas Torrent's data suggests that approximately 2.24 Crore persons would add in Chennai and Thiruvallur alone.

Conclusion: It is very much logical that Population growth numbers for Chennai & Thiruvallur cannot be greater than the population growth numbers for the state of Tamil Nadu.

“d. Household projection till 2026

	<i>Households 2011</i>	<i>Households till 2026</i>	<i>Household Growth in 15 Years (2026-2011)</i>	<i>Households as per Torrent's data till 2026</i>	<i>Household Growth in 15 Years as per Torrent data (2026-2011)</i>
<i>Chennai</i>	<i>1,154,982</i>	<i>1,282,000</i>	<i>127,018</i>		
<i>Thiruvallur</i>	<i>946,949</i>	<i>1,593,382</i>	<i>646,433</i>		

Chennai + Thiruvallur	2,101,931	2,875,381	773,450	8,458,282	5,582,901
Tamil Nadu	18,524,982	23,370,194	4,845,212		
Sources: District Census Handbook Chennai & District Census Handbook Thiruvallur					

Observations:

(i) Household numbers of any area is a mere reflection of its population hence household growth can only be less than or equal to the population growth of the same area.

(ii) Tamil Nadu household projection till the year 2026 (based on decadal growth rate mentioned in Census 2011) suggests that Tamil Nadu would approximately add 48 lakhs households, whereas Torrent's data suggests that approximately 56 lakhs households would add in Chennai and Thiruvallur alone.

Conclusion: It is very much logical that household growth numbers for Chennai & Thiruvallur cannot be greater than the household growth numbers for the state of Tamil Nadu.

"e. LPG projection till 2026

	LPG Connections 2011	LPG Connections till 2026
Chennai	1,791,176	1,893,673
Thiruvallur	998,352	1,317,690
Chennai + Thiruvallur	2,789,528	3,211,364
Source: IOCL & PNGRB Submission		

Observations:

(i) As on May 2018, Chennai and Thiruvallur together have approximately 27.8 lakhs of LPG connections with more than 100% LPG penetration.

(ii) LPG connections are directly related to the number of households, hence LPG growth can only be less than or equal to the households growth of the same area.

(iii) Torrent has projected LPG Connections of 62 Lacs by 2026 which means 62 Lac House Holds and approx. 2.48 Cr Population.

Conclusion: After considering households growth, it is expected that total number of LPG connections till 2026 would be around 32 lakhs in contrast to Torrent's submission of 62 lakhs.

108. They further contend that LPG connection is directly proportional to the growth in number of households in the District. LPG penetration quoted by Respondent is more than 100% in the districts of Chennai and Tiruvallur. Since LPG penetration is already in excess of 100% in these districts, growth in LPG connections shall only follow the growth in the number of households. They counter the arguments of 2nd Respondent as under:

<i>"Torrent's Submission</i>	<i>Counter / Facts</i>
<i>LPG Connections in Chennai Districts / Thiruvallur is 31,38,518 and 10,34,555</i>	<i>LPG penetration is more than 100% in these districts as per IOC Data.</i>
<i>LPG Growth taken at conservative rate of 5%</i>	<i>LPG Connection is directly proportional to the growth in number of Households in the District. LPG penetration is already in excess of 100% in these districts. Therefore, growth in LPG connections shall only follow the growth in the no. of households. 5% growth rate Year-on-year means a decadal growth of approximately 63% means population doubling every 15 years. Population of entire Tamil Nadu grew only by less than 7% in last decade.</i>
<i>Household nos. are kept considering LPG penetration of 73%.</i>	<i>LPG penetration in 2018 is 100% and not 73%.</i>

<i>Population of Chennai & Thiruvallur has been increasing rapidly.</i>	<i>Chennai has registered the second slowest decadal growth rate in the state.</i>
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Counter Calculations

	As per Torrent Submission			Counter Calculations	
	2011 Census	2018 (as per Torrent)	2026 Projections as per Torrent	As per Census 2011	Projections 2026 using Decadal Growth Rate as per Census 2011
<i>GAs Universe</i>	15,32,169	41,73,073	61,65,530	15,32,169	28,75,381
<i>Chennai</i>	9,10,262	31,38,518	46,37,021	11,54,982	12,82,000
<i>Thiruvallur</i>	6,21,907	10,34,555	15,28,509	9,46,949	15,93,382
<i>Households</i>	21,01,931	57,24,898	84,58,283	21,01,931	28,75,381
<i>% Gas penetration</i>	73%	73%	73%		100%
<i>PNG Connections</i>	0	0	33,00,000		3300000
<i>% PNG Penetration</i>	0	0	39%		115%

Using LPG penetration of 73% for projection of no. of Household is erroneous. LPG penetration is already 100%. Projected Household population in these districts is about 28.75 Lacs. PNG connection as quoted by Torrent therefore are 115% of total households in 2016.”

109. Alternatively, they contend that

“Using LPG penetration of 73% for projection of no. of household is erroneous. LPG penetration is already 100%. Projected Household population in these districts is about 28.75 Lacs. PNG connection as quoted by Torrent therefore are 115% of total households in 2016.”

110. When criteria of unreasonableness was decided by the Respondent Board, wherein any bid quoting number of households lower than 2% or higher than 100% of the total number of households as per 2011 Census was to be disqualified, the 2nd Respondent's bid ought to have been declared as unreasonable. They further contend that arbitrary and non-transparent acts between 2nd Respondent and the Respondent Board is, in fact, substantiated as there were continuous interactions which were ongoing in an opaque manner between 2nd Respondent and the Board to the exclusion of other participants so far as the GA in issue. Therefore, they contend that process adopted by 2nd Respondent is manifestly arbitrary and non-transparent and is now trying to justify with explanations. Appellants and other participants were never given any opportunity to have any meeting with the Respondent Board to justify the number of households quoted by them. Such privilege was conferred only upon 2nd Respondent. This is in violation of statutory mandate under Section 19 (2) of the Act.
111. The Appellant further contends that the statistical analysis of other bids quoted by the bidders in the same bidding round, other than three areas in issue clearly evidences that the population as per 2011 Census has been taken as the parameter to hold and declare a bid unreasonable or reasonable. This has reference to the

numbers in terms of the range of the number of households that can be covered by 2026. Said process has been laid down by the Respondent Board after keeping the relevant factors in mind including but not limited to the projected growth of every area, especially with reference to larger interest of the public. If 83 area bids were considered as per 2011 census, why there has to be different yardstick for three areas in issue?

112. According to Appellants, the bid of the Respondent had to be rejected as having unreasonably high quote. Therefore, question of considering the case of 2nd Respondent with the quote given by the Appellant would not arise. The highest number of PNG domestic connections bid has to be on a pro-rata basis, more particularly as described in the 2008 Regulations. They further contend that in this scenario, assuming but not admitting that if there was no criterion / definition / decision of unreasonableness, any party would have then been able to control / influence the evaluation of other bids by quoting a huge number of households to be covered. Therefore, Respondent Board had fixed the upper limit of total number of households to be quoted to 100%, beyond which a party could not have quoted. Therefore, process adopted by Respondent Board lacks any transparency and reasonableness since equal opportunity was not given to other bidders.

113. The successful bidder of (Kanchipuram), the 3rd Respondent, apart from re-iterating the objections/stand taken by other Respondents and also referring to facts pertaining to the 9th round bidding of 86 GAs, contends that the issuance of LOI in its favour for GA 61 (Kanchipuram) is inconsonance with the procedure contemplated and indicated in the regulations applicable. According to it, nowhere in ACBD it is stated that the quotes in the bid should be with reference to data provided in 2011 census. Reference to 2011 census is only in respect of Regulation 5(6)(e) and 9(1) of the Authorisation Regulations. Further, these regulations refer to population and not the number of households of the relevant GA. Even otherwise, learned counsel for the 3rd Respondent contends that on examination of 2011 census figures, as a benchmark, the process for selection of the 3rd Respondent does not establish any un-reasonability in the process. As per 2011 census, Kanchipuram had 10.06 lakhs households. Between 2001 census and 2011 census, number of households in Kanchipuram grew at a rate of 60.8%. Extrapolation of this data will show that the number of households as of 2018 would be approximately 15.02 lakhs. Further, extrapolation of 2018 data will show that the number of households in 2026 (at the 8th year of the contract) will be

approximately 25.8 lakhs, thus the 3rd Respondent quoting that it will provide domestic piped natural gas connection to 11.51 lakhs households is a reasonable estimate being 44.6% of the total number of estimated households in 2026. Furthermore, the 3rd Respondent has substantiated the same with proper data. As a matter of fact, Regulation 7 of the concerned regulations refer to the criteria “highness of number of piped natural gas connections to be achieved within either (8) contract years from the date of authorisation” i.e., from 2018 up to 2026. The facts and figures have to be decided on case to case basis after considering relevant factors in terms of clause 14.2 of the Addendum of the ACDB. Due to presence of several factors like number of automobile manufacturers such as BMW, Hundai, Nissan, Daimler, Yamaha etc., and furthermore the manufacturing units of Nokia, Mitsubishi, Samsung, Dell are all located in the district of Kanchipuram, therefore, reality growth involving planned residential township and commercial establishments whereby number of households would be increased in the district of Kanchipuram has to be estimated, such rationale has been adopted for quoting the domestic piped natural gas connection by the 3rd Respondent in its presentation and letter dated 14.08.2018. Sister concern of the 3rd Respondent has made available the information from Tamilnadu Generation and

Distribution Corporation Limited wherein total number of households having electricity connections in the district of Kanchipuram is 15,91,486. This substantiates the quote pertaining to domestic piped natural gas connections made by the 3rd Respondent. Even if the 3rd Respondent has quoted number of households as according to the 2011 censuses, i.e. 10.06 lakhs, the 3rd Respondent would still have been the successful bidder by taking composite score. Now the process of incorporating a special purpose vehicle for carrying on and undertaking the performance of the terms of the grant of authorisation dated 26.09.2018 has begun and performance guarantee for Rs.33 Crores has been issued by the 3rd Respondent. Performance bank guarantee has been submitted at a significant amount of Rs.8,56,00,000/-. Detailed Feasibility Report is entrusted to a consultant by paying Rs.15,00,000/- to employees who are already employed. If the bids are cancelled it would impact the rights of the employees apart from causing financial loss to the 3rd Respondent. According to the 3rd Respondent, the Appellant has not come to this Tribunal with clean hands. Learned counsel refers to the quote made by the consortium of the Appellant and Indian Oil Company Limited pertaining to 2nd round bidding in 2013 in respect of GA of Chandigarh. In this bid also 2001 censuses were referred to for the

purpose of net worth of bidders. Domestic connections also had significant weightage of 30%. The total quote pertaining to domestic piped natural gas connections by the consortium of the Appellant was 7,00,000 (seven lakh), which was 116% of 2001 census, therefore it is not open to the Appellant to contend that if the quote is 100% of the relevant census, it is unreasonable. The award of bid is in strict compliance of regulations, ACBD after following the principles of transparency and natural justice. The bid of the 3rd Respondent being 114% of 2011 census data is not unreasonable since 2011 census cannot be the basis. So far as other contentions raised by the Appellant, they have reiterated stand taken by the Respondent-Board and the 2nd Respondent.

114. According to the 4th Respondent the criteria adopted by the 1st Respondent-Board for qualification of the bids for the 9th round CGD network is not only designed to ensure a fair and competitive market but also to ensure that infrastructure for the transportation and distribution of natural gas is developed as expeditiously as possible to supply environment friendly fuel to all consumers in a more efficient and least cost manner which is in conformity with the directives issued by the Apex Court in ***M.C. Mehta v. Union of India*** (Writ Petition Civil No. 13029 of 1985). The bid for

Puducherry was selected completely in line with amendment made to authorisation regulations on 06.04.2018. According to 4th Respondent in terms of the Hon'ble Supreme Court Judgment in the case of **Reliance Energy Ltd. vs. Maharashtra State Road Development corporation Ltd. & Ors.** [(2007 (8) SCC 1)] the terms must indicate legal certainty norms and benchmarks and if there is any vagueness or subjectivity in the said norms, it may result in unequal and discriminatory treatment resulting in violating the doctrine of "level playing field." They also contend that the basic test in a judicial review process especially in contractual matters as held in **Reliance Airport Developers (P) Ltd. Vs. Airports Authority of India & Ors.** is that one has to see whether there is an infirmity in the decision making process and not in the decision itself. Since there is no infirmity in the decision making process as the Appellants itself participated through bidding process without questioning the same, now the decision of the Court cannot be questioned. The 4th Respondent quoted figures pertaining to number of domestic piped natural gas connections to be achieved in eight contract years and the same was arrived at after due diligence and detailed feasibility report taking into consideration several factors of growth including the rate of population growth, literacy, financial status etc., Puducherry has highest population

density of more than six times of over all country average; urban population is about 69%; road availability is more than three times of national average. 1st Respondent sought clarification from the 4th Respondent by letter dated 21.08.2018 about the feasibility of the figure of PNG connections and the same was submitted clarifying vide communication dated 23.08.2018. The detailed presentation was also submitted. He further contends that the Appellants have based its contention assuming that the Board has based its 9th round bidding taking into account the 2011 census to calculate population. Thus, there is a basic fallacy in the stand of the Appellants. The relief sought by the Appellants goes against the recent amendment to the relevant regulations which did away with any cap on the PNG connections and made the quotation of highest number for it as the qualifying criteria for the bid. With these contentions he sought for dismissal of the appeals.

115. Appellants contend that the bid criteria as per Bid Evaluation Committee decided on 23.07.2018 by three members out of four members of the Board was, in fact, valid. The Appellant in Appeal No. 292 of 2018 relies upon the following judgments on following grounds:

116. The unreasonable, collusive and unfair process followed by the Respondent Board is contrary to the law laid down by the Hon'ble Supreme Court in the case of ***Manohar Lal Sharma Vs. The Principal Secretary & Ors.***, vide judgment dated 25.08.2014, wherein it has been held as under, the relevant portions of which are thus:-

“ ...

75. *Obviously, allocation of a coal block amounts to grant of largesse.*

...

110. *However, if the allocation of subject coal blocks is inconsistent with Article 14 of the Constitution and the procedure that has been followed in such allocation is found to be unfair, unreasonable, discriminatory, non-transparent, capricious or suffers from favoritism or nepotism and violative of the mandate of Article 14 of the Constitution, the consequences of such unconstitutional or illegal allocation must follow.*

...

137 *The guidelines also do not contain any objective criterion for determining the merits of applicants and lack in healthy competition and equitable treatment.*

...

138. *As a matter of fact, the guidelines applied by the Screening Committee are totally cryptic and hardly meet the requirement of constitutional norms to ensure fairness, transparency and nondiscrimination.*

...

159(2). The guidelines do not contain any objective criterion for determining the merits of the applicants. The guidelines do not provide for measures to prevent any unfair distribution of coal in the hands of few private companies. As a matter of fact, no consistent or uniform norms were applied by the Screening Committee to ensure that there was no unfair distribution of coal in the hands of the applicants.

.....

159. 4. The Screening Committee kept on varying the guidelines from meeting to meeting. It failed to adhere to any transparent system.

163. To sum up, the entire allocation of coal block as per recommendations made by the Screening Committee from 14.07.1993 in 36 meetings and the allocation through the Government dispensation route suffers from the vice of arbitrariness and legal flaws. The Screening Committee has never been consistent, it has not been transparent, there is no proper application of mind, it has acted on no material in many cases, relevant factors have seldom been its guiding factors, there was no transparency and guidelines have seldom guided it. On many occasions, guidelines have been honoured more in their breach. There was no objective criteria, nay, no There was no objective criteria, nay, no criteria for evaluation of comparative merits. The approach had been at-hoc and casual. There was no fair and transparent procedure, all resulting in unfair distribution of the national wealth. Common good and public interest have, thus, suffered heavily. Hence, the allocation of coal blocks based on the recommendations made in all the 36 meetings of the Screening Committee is illegal.

.....”

117. Appellants contend that the procedure adopted by the Respondent Board to select the successful bidders and issue the LOIs for the Project Areas is contrary to the law laid down by the Hon'ble Supreme Court in the case of the 2G spectrum cancellation i.e. "**Centre for Public Interest Litigation and Ors. Versus Union of India and Ors.**", vide order dated 02.02.2012, wherein it has been held as under, the relevant portions of which read thus:-

“...
75. *However, as they constitute public property/national asset, while distributing natural resources, the State is bound to act in consonance with the principles of equality and public trust and ensure that no action is taken which may be detrimental to public interest.*

....
85. *In this regard, the doctrine of equality has two aspects: first, it regulates the rights and obligations of the State vis-`-vis its people and demands that the people be granted equitable access to natural resources and/or its products and that they are adequately compensated for the transfer of the resource to the private domain; and second, it regulates the rights and obligations of the State vis-`-vis private parties seeking to acquire/use the resource and demands that the **procedure adopted for distribution is just, non-arbitrary and transparent and that it does not discriminate between similarly placed private parties.***

....
95. *This Court has repeatedly held that wherever a contract is to be awarded or a licence is to be given, the public authority must adopt a*

transparent and fair method for making selections so that all eligible persons get a fair opportunity of competition. To put it differently, the State and its agencies/instrumentalities must always adopt a **rational method** for disposal of public property and no attempt should be made to scuttle the claim of worthy.

....”

118. Appellants further contend that there is no definition/criteria/parameter provided in the Application-cum-Bid document pertaining to the number of households being “unreasonably high” or “unreasonably low” and the Respondent Board has been using the vague language for the reasons best known to it while disposing of the State largesse at its discretion. They rely upon the decision of Hon’ble Supreme Court in the case of the **Akhil Bhartiya Upbhokta Congress** [2011 (5) SCC 29] has been pleased to hold as follows:

“ ...

65. *What needs to be emphasised is that the State and/or its agencies/ instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. **Every action/decision of the State and/ or its agencies/ instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well-defined policy, which shall be made known to the public by publication in the Official Gazette and other recognized modes of publicity and***

*such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. **The distribution of largesse like allotment of land, grant of quota, permit licence etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.***"

119. They also place reliance on the decision of Hon'ble Apex Court in the matter of *Reliance Energy Ltd. & Anr. Vs Maharashtra State Road Development Corp. Ltd. & Ors. [(2007) 8 SCC 1]*, has been pleased to observe as follows, the relevant portions of which read as thus:

"...

36. *We find merit in this civil appeal. Standards applied by courts in judicial review must be justified by constitutional principles which govern the proper exercise of public power in a democracy. Article 14 of the Constitution embodies the principle of "non-discrimination". However, it is not a free-standing provision. It has to be read in conjunction with rights conferred by other articles like Article 21 of the Constitution. The said Article 21 refers to "right to life". It includes "opportunity". In our view, as held in the latest judgment of the Constitution Bench of nine Judges in I.R. Coelho v. State of T.N.3, Articles 21/14 are the heart of the chapter on fundamental rights.*

They cover various aspects of life. “Level playing field” is an important concept while construing Article 19(1)(g) of the Constitution. It is this doctrine which is invoked by REL/HDEC in the present case. When Article 19(1)(g) confers fundamental right to carry on business to a company, it is entitled to invoke the said doctrine of “level playing field”. We may clarify that this doctrine is, however, subject to public interest. In the world of globalisation, competition is an important factor to be kept in mind. The doctrine of “level playing field” is an important doctrine which is embodied in Article 19(1)(g) of the Constitution. This is because the said doctrine provides space within which equally placed competitors are allowed to bid so as to subserve the larger public interest. “Globalisation”, in essence, is liberalisation of trade. Today India has dismantled licence raj. The economic reforms introduced after 1992 have brought in the concept of “globalisation”. Decisions or acts which result in unequal and discriminatory treatment, would violate the doctrine of “level playing field” embodied in Article 19(1)(g). Time has come, therefore, to say that Article 14 which refers to the principle of “equality” should not be read as a stand alone item but it should be read in conjunction with Article 21 which embodies several aspects of life. There is one more aspect which needs to be mentioned in the matter of implementation of the aforesaid doctrine of “level playing field”. According to Lord Goldsmith, commitment to the “rule of law” is the heart of parliamentary democracy. One of the important elements of the “rule of law” is legal certainty. Article 14 applies to government policies and if the policy or act of the Government, even in contractual matters, fails to satisfy the test of “reasonableness”, then such an act or decision would be unconstitutional.

37. *In Union of India v. International Trading Co.4 the Division Bench of this Court speaking through Pasayat, J. had held: (SCC p. 445, paras 14-15)*

“14. It is trite law that Article 14 of the Constitution applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional.

15. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualised than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness.”

38. *When tenders are invited, the terms and conditions must indicate with legal certainty, norms and benchmarks. This “legal certainty” is an important aspect of the rule of law. If there is vagueness or subjectivity in the said norms it may result in unequal and discriminatory treatment. It may violate doctrine of “level playing field”.*

39. *In Reliance Airport Developers (P) Ltd. v. Airports Authority of India*⁵ the Division Bench of this Court has held that in matters of judicial review the basic test is to see whether there is any infirmity in the decision-making process and not in the decision itself. This means that the decision-maker must understand correctly the law that regulates his decision-making power and he must give effect to it otherwise it may result in illegality. The principle of “judicial review” cannot be denied even in contractual matters or matters in which the Government exercises its contractual powers, but judicial review is intended to prevent arbitrariness and it must be exercised in larger public interest. Expression of different views and opinions in exercise of contractual powers may be there, however, such difference of opinion must be based on specified norms. Those norms may be legal norms or accounting norms. As long as the norms are clear and properly understood by the decision-maker and the bidders and other stakeholders, uncertainty and thereby breach of the rule of law will not arise. The grounds upon which administrative action is subjected to control by judicial review are classifiable broadly under three heads, namely, illegality, irrationality and procedural impropriety. In the said judgment it has been held that all errors of law are jurisdictional errors. One of the important principles laid down in the aforesaid judgment is that whenever a norm/benchmark is prescribed in the tender process in order to provide certainty that norm/standard should be clear. As stated above “certainty” is an important aspect of the rule of law. In *Reliance Airport Developers* the scoring system formed part of the evaluation process. The object of that system was to provide identification of factors, allocation of marks of each of the said factors and giving of marks at different stages. Objectivity was thus provided.

“ ...

120. According to the Appellants, the act of the Respondent Board subsequently changing the parameters/criteria for deciding upon the successful bidders and issuing the LOIs to them is in complete contradiction to the law settled by the Hon'ble Apex Court in the case of **Monarch Infrastructure (P) Ltd. v. Commissioner, Ulhasnagar Municipal Corpn.** [(2000) 5 SCC 287], has been pleased to reiterate the said proposition. The relevant portions of the said judgment are as follows:-

“ ...

11. *Broadly stated, the courts would not interfere with the matter of administrative action or changes made therein, unless the Government's action is arbitrary or discriminatory or the policy adopted has no nexus with the object it seeks to achieve or is mala fide.*
12. *If we bear these principles in mind, the High Court is justified in setting aside the award of contract in favour of Monarch Infrastructure (P) Ltd. because it had not fulfilled the conditions relating to clause 6(a) of the Tender Notice but the same was deleted subsequent to the last date of acceptance of the tenders. If that is so, the arguments advanced on behalf of Konark Infrastructure (P) Ltd. in regard to the allegation of mala fides of the Commissioner of the Municipal Corporation in showing special favour to Monarch Infrastructure (P) Ltd. or the other contentions raised in the High Court and reiterated before us are insignificant because the High Court had set aside the award made in favour of Monarch Infrastructure (P) Ltd. The only question therefore, remaining is whether any contract should have been awarded in favour of Konark Infrastructure (P) Ltd. The High Court*

had taken the view that if a term of the tender having been deleted after the players entered into the arena it is like changing the rules of the game after it had begun and, therefore, if the Government or the Municipal Corporation was free to alter the conditions fresh process of tender was the only alternative permissible. Therefore, we find that the course adopted by the High Court in the circumstances is justified because by reason of deletion of a particular condition a wider net will be permissible and a larger participation or more attractive bids could be offered.”

121. The Appellant in Appeal No. 323 of 2018 relies upon the following decisions:

Decisions List:

<i>“Sl. No.</i>	<i>Judgement</i>
1.	<i>Grid Corporation of Orissa Limited v Gajendra Haldea & Ors. (2008) 13 SCC 414</i>
2.	<i>Monarch Infrastructure (P) Ltd. v. Commissioner, Ulhasnagar Municipal Corpn. (2000) 5 SCC 287</i>
3.	<i>Union of India (UOI) and Ors. v/s Dinesh Engineering Corporation and Ors (2001) 8 SCC 491</i>
4.	<i>Reliance Energy Ltd. & Anr. V. Maharashtra State Road Development Corporation Ltd (2007) 8 SCC 1</i>
5.	<i>Vikas Singh and Ors. Vs. Airport Authority of India 2013 (138) DRJ 475</i>
6.	<i>Airport Authority of India Vs. Vikas Singh 2015 SCC Online Del 13413</i>
7.	<i>Union Public Service Commission Vs. Hiranyalal Dev and Ors. 1988 (2) SCC 242</i>
8.	<i>Ramesh Kumar Vs. High Court of Delhi and Anrs. (2010) 3 SCC104.</i>
9.	<i>K Manjusree Vs. state of Andhra Pradesh and Anrs. (2008) 3 SCC 512</i>
10.	<i>Addendum 1 to the Invitation for Bid for the 10th round”</i>

122. The gist of these decisions is as under:

- Judicial decision in the matter of tender process and award of contract show that while public interest is paramount, there should be no arbitrariness in the matter of award of contract and all participants in the tender process should be treated alike. The legal position which can be summed up as thus:

The government is free to enter into any contract with citizens, but the court may interfere where it acts arbitrarily or contrary to the public interest.

The government cannot arbitrarily choose any person it likes for entering into such a relationship or to discriminate between persons similarly situated.

It is open to the Government to reject even the highest bid at a tender where such rejection is not arbitrary or unreasonable or such rejection is in public interest for valid and good reasons.

The courts would not interfere with the matter of administrative action or changes made therein, unless Government's action is arbitrary or discriminatory or the policy adopted has no nexus with the object it seeks to achieve or is *mala fide*.

- Even if the Government contracts indicate power to reject any tender or offer without assigning any reasons or to accept or not to accept the lowest offer, such a power conferred by a clause in the Guidelines could be exercised within the scope of

the object of relevant clause but it cannot be exercised arbitrarily.

- “Legal certainty” is an important aspect of the rule of law which is the heart of parliamentary democracy. If there is vagueness or subjectivity in the norms specified in the tender, it may result in unequal and discriminatory treatment and violate the doctrine of “level playing field”. If State policy or Act ,even in contractual matters, fails to satisfy the test of “reasonableness”, then ingredients of Article 14 of the Constitution of India is attracted and such an act or decision would be unconstitutional.
- The judicial review covers contractual matters involving the Government if it is intended to prevent arbitrariness.
- Law requires a definite selection criteria before the commencement of the selection process. Adoption of an existing or new criteria at the end of the process is not justified.
- Selection criteria has to be prescribed in advance. A rule of game cannot be changed afterwards.

123. Respondent-Board relies upon various Judgments of the Apex Court, the relevant portions of which are as under:

“A. Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium) : (2016) 8 SCC 622

38. In *G.J. Fernandez v. State of Karnataka* [(1990) 2 SCC 488] both the principles laid down in *Ramana Dayaram Shetty* [(1979) 3 SCC 489] were reaffirmed. It was reaffirmed that the party issuing the tender (the employer) “has the right to punctiliously and rigidly” enforce the terms of the tender. If a party approaches a court for an order restraining the employer from strict enforcement of the terms of the tender, the court would decline to do so. It was also reaffirmed that the employer could deviate from the terms and conditions of the tender if the “changes affected all intending applicants alike and were not objectionable”. Therefore, deviation from the terms and conditions is permissible so long as the level playing field is maintained and it does not result in any arbitrariness or discrimination in *Ramana Dayaram Shetty* sense.

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42. Unfortunately, this Court in *Poddar Steel Corporation v. Ganesh Engg. Works* [(1991) 3 SCC 273] did not at all advert to the privilege-of-participation principle laid down in *Ramana Dayaram Shetty* and accepted in *G.J. Fernandez*. In other words, this Court did not consider whether, as a result of the deviation, others could also have become eligible to participate in the bidding process. This principle was ignored in *Poddar Steel*.

43. Continuing in the vein of accepting the inherent authority of an employer to deviate from the terms and conditions of an NIT, and reintroducing the privilege-of-participation principle and the level playing field concept, this Court laid emphasis on the decision-making process, particularly in respect of a commercial contract. One of the more significant cases on the subject is the three-Judge decision in *Tata Cellular v. Union of India* [(1994) 6 SCC 651] which gave importance to the lawfulness of a decision and not its soundness. If an administrative decision, such as a deviation in the terms of NIT is not arbitrary, irrational, unreasonable, mala fide or biased, the courts will not judicially review the decision taken. Similarly, the courts will not countenance interference with the decision at the behest of an unsuccessful bidder in respect of a technical or procedural violation. This was quite clearly stated by this Court (following *Tata Cellular*) in *Jagdish Mandal v. State of Orissa* [(2007) 14 SCC 517] in the following words: (SCC p. 531, para 22)

“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made “lawfully” and not to check whether choice or decision is “sound”. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract

is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold.”

This Court then laid down the questions that ought to be asked in such a situation. It was said: (*Jagdish Mandal case*, SCC p. 531, para 22)

“22. ... Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”;

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226.

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47. The result of this discussion is that the issue of the acceptance or rejection of a bid or a bidder should be looked at not only from the point of view of the unsuccessful party but also from the point of view of the employer. As held in *Ramana Dayaram Shetty* the terms of NIT cannot be ignored as being redundant or superfluous. They must be given a meaning and the necessary significance. As pointed out in *Tata Cellular*⁸ there must be judicial restraint in interfering with administrative action. Ordinarily, the soundness of the decision taken by the employer ought not to be questioned but the

decision-making process can certainly be subject to judicial review. The soundness of the decision may be questioned if it is irrational or mala fide or intended to favour someone or a decision “that no responsible authority acting reasonably and in accordance with relevant law could have reached” as held in Jagdish Mandal⁹ followed in Michigan Rubber [(2012) 8 SCC 216].

48. Therefore, whether a term of NIT is essential or not is a decision taken by the employer which should be respected. Even if the term is essential, the employer has the inherent authority to deviate from it provided the deviation is made applicable to all bidders and potential bidders as held in Ramana Dayaram Shetty. However, if the term is held by the employer to be ancillary or subsidiary, even that decision should be respected. The lawfulness of that decision can be questioned on very limited grounds, as mentioned in the various decisions discussed above, but the soundness of the decision cannot be questioned, otherwise this Court would be taking over the function of the tender issuing authority, which it cannot.”

“B. Jagdish Mandal v. State of Orissa : (2007) 14 SCC 517

22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made “lawfully” and not to check whether choice or decision is “sound”. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”;

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.”

“C. Air India Ltd. v. Cochin International Airport Ltd. : (2000) 2 SCC 617

7. The law relating to award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government has been settled by the decision of this Court in *Ramana Dayaram Shetty v. International Airport Authority of India* [1979 (3) SCC 489], *Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India* [1981 (1) SCC 568], *CCE v. Dunlop India Ltd.* [1985 (1) SCC 260], *Tata Cellular v. Union of India* [1994 (6) SCC 651], *Ramniklal N. Bhutta v. State of Maharashtra* [1997 (1) SCC 134] and *Raunaq International Ltd. v. I.V.R. Construction Ltd.* [1999 (1) SCC 492] The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion

that overwhelming public interest requires interference, the court should intervene.”

“D. Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd. : (2016) 16 SCC 818

11. Recently, in *Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium)* [2016 (8) SCC 622] it was held by this Court, relying on a host of decisions that the decision-making process of the employer or owner of the project in accepting or rejecting the bid of a tenderer should not be interfered with. Interference is permissible only if the decision-making process is mala fide or is intended to favour someone. Similarly, the decision should not be interfered with unless the decision is so arbitrary or irrational that the Court could say that the decision is one which no responsible authority acting reasonably and in accordance with law could have reached. In other words, the decision-making process or the decision should be perverse and not merely faulty or incorrect or erroneous. No such extreme case was made out by GYT-TPL JV in the High Court or before us.

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13. In other words, a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a constitutional court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision-making process or the decision.”

“E. Manohar Lal Shgarma v. Narendra Damodardas Modi : (2018) SCC OnLine SC 2807

11. Parameters of judicial review of administrative decisions with regard to award of tenders and contracts has really developed from the increased participation of the state in commercial and economic activity. In *Jagdish Mandal v. State of Orissa* [2007 (14) SCC 517] this Court, conscious of the limitations in commercial transactions, confined its scrutiny to the decision making process and on the parameters of unreasonableness and mala fides. In fact, the Court held that it was not to exercise the power of judicial review even if a procedural error is committed to the prejudice of the tenderer since private interests cannot be protected while exercising such judicial review. The award of contract, being essentially a commercial transaction, has to be determined on the basis of considerations that are relevant to such commercial decisions, and this implies that terms subject to which tenders are invited are not open to judicial scrutiny unless it is found that the same have been tailor-made to benefit any particular tenderer or a class of tenderers. [See *Maa Binda Express Carrier v. North-East Frontier Railway* (2014 (3) SCC 760)]”

Analysis of the arguments and opinion

124. The entire dispute revolves around the so called Board Agenda Note dated 23-7-2018 and the minutes of the Respondent Board from 10-8-2018 to 29-8-2018. During the course of the arguments and also the pleadings of the Appellant, the main attack was with regard to parameter / criteria of domestic piped line natural gas to be achieved in eight contract years from the date of authorization. Admittedly, out of 100% benchmark allotted against various columns, i.e. achievement of applicant-cum-bidder as indicated in the ACBD, the applicants were expected to mention their expected target which they intend to achieve by the end of contract period which is part of the bid document. It is column 7 of the Bidding Criteria which reads as under:

<i>Sl. No.</i>	<i>Bidding Criteria</i>	<i>Weightage (%)</i>	<i>Explanation</i>
1	<i>Lowness of transportation rate for CGD – in rupees per million British Thermal Uni (Rs./MMBTU)</i>	10	<i>Bidder is required to quote transportation rate for CGD only for the first contract year which shall not be less than Rs. 30 /MMBTU. Rates for the subsequent contract years shall be derived considering the quoted rate</i>

			<i>and escalation as per Note</i>
2	<i>Lowness of transportation rate for CNG –in rupees per kilo gram (Rs. / Kg)</i>	10	<i>Bidder is required to quote transportation rate for CNG only for the first contract year which shall not be less than Rs. 2 /Kg. Rates for the subsequent contract years shall be derived considering the quoted rate and escalation as per Note.</i>
3	<i>Highness of number of CNG stations (online and daughter booster stations) to be installed within 8 contract years from the date of authorisation</i>	20	
4	<i>Highness of number of domestic piped natural gas connections to be achieved within 8 contract years from the date of authorization</i>	50	
5	<i>Highness of inch-kilimeter of steel pipeline (including sub-transmission steel pipelines) to be laid within 8 contract years from the date of authorization</i>	10	

Note – Annual escalation shall be considered from the second contract year and onwards based on the “Wholesale Price Index (WPI) Date (2011-12 = 100)” for “All Group / Commodity”, as normally available on the website of the Office of the Economic Adviser, Government of India, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion (DIPP) on the link “<http://eaindustry.nic.in/home.asp>.”

Provided that in the case of the geographical areas of (i) Bilaspur, Hamirpur and Una Districts; (ii) Panchkula (Except area already authorised), Shimla, Solan and Sirmaur Districts and (iii) Barmer, Jaisalmer and Jodhpur Districts, it is not mandatory to supply natural gas through steel pipes. However natural gas has to reach in all charge areas. ...”

125. So far as fourth column, the weightage of percentage, it is 50% out of 100 weightage. Out of 5 parameters or eligibility criteria 50% of weightage was kept against fourth column, i.e. number of domestic piped line natural gas connections to be achieved. The entire dispute pertains to quote made by Respondents 2 to 3 against Sl. No. 4 of bidding criteria. Since weightage of 50%, i.e. half of the weightage is allocated to Sl. No. 4, the number or the percentage mentioned by each applicant-cum-bidder against this column will have serious impact on the composite score and would decide the fate of such bidder.
126. After completion of Respondents’ arguments, on 11-10-2018 this Bench directed Respondent Board to place Affidavit of a responsible person explaining the decision taken on 23-7-2018 as

well as the reasons why 37 bids were rejected which includes ground of high or low quote. On 9-11-2018, Affidavit of an officer of the Respondent Board with certain documents, extract of Board Agenda Notes and minutes came to be placed on record.

127. It is not in dispute that the Respondent Board has to function in accordance with the PNGRB Act 2006 Regulations made thereunder. The prime obligation of the Board under the Act is to ensure uninterrupted and adequate gas supply being made to each and every part of the country. It also has to protect the interest of the consumers / entities engaged in specified activities regarding petroleum, petroleum products and natural gas. This is reflected in various regulations framed by the Board in terms of powers conferred under the Act. Section 11 of the Act provides that the Board shall protect interest of consumers by fostering fair trade and competition among entities. Under this Section, Board is required to authorise entities to lay, build, operate or expand CGD network. Section 17 deals with the process how an entity could lay, build, operate or expand CGD network. In terms of Section 19, the Board after wide publicity shall invite applications from interested parties and thereafter in a transparent and non-discriminatory manner shall select entities and the process is provided under Regulations 2008,

i.e. authorising entities to lay, build, operate or expand city or local natural gas distribution.

128. In terms of Regulation 4 (2), Board has invited bids *suo motu* so far as the issue in question, i.e. 9th CGD bidding round. It consists of 86 GAs in 174 districts of various States of India. So far as issue in question, it relates to three GAs, i.e. 61, 62 and 51. The relevant Clauses are hereunder:

“4.4 PNGRB’s RIGHT TO ACCEPT OR REJECT ANY OR ALL APPLICATION-CUM-BIDS

4.4.1 PNGRB reserves the right to reject any Application-cum-Bid comprising quoted work programme considered by it to be unreasonably high or low.”

“14. Single Bids & Unreasonable Quotes (As per Addenda-I)

14.1 PNGRB shall process the cases of those GA’s also where a single bid has been received.

14.2 What should be considered to be the level of “unreasonably high” or “unreasonably low” quotes shall be decided by Board at the time of bid evaluation on a case to case basis after considering the relevant factors.”

129. First Respondent in its Affidavit admits that in terms of Clause 4.4.1 of the ACBD, read with Addendum-1 referred to above, the interference that can be exercised only in an extraordinary situation and not just as a matter of course. Therefore, they contend that if Board does not exercise such power, Board cannot be said to have done anything wrong. According to the Board, it had full power and

right to decide what would constitute unreasonably high or unreasonably low quote on a case to case basis. The philosophy of Article 14 of the Constitution is clearly indicated in the provisions of the Act in Section 19 and Regulation 7. Therefore, Board is right in stating that the Clauses of ACBD would not overwrite the statutory mandate and if there is any conflict between the Act, Regulations and the Clauses of ACBD, the Board is bound by Act and Regulations. Therefore, they contend that Board cannot take any decision contrary to the Act and Regulations in violation of Article 14 by applying Clause 4.4.1 rigidly.

130. According to them, the Note dated 23-7-2018 cannot be read in isolation ignoring the scheme of the Act. The functions of opening technical and financial bids, scrutiny of the technical and financial bids, tabulation of the data highlighting any issues before the Board and securing clarifications from the entities were delegated to Bid Evaluation Committees, individual offices and specific members of the Board who are referred collectively as to *delegates*. Since 9th CGD consist of 86 GAs, the workload was distributed to three Bid Evaluation Committees who were nominated on 10-7-2018 for the purpose of scrutiny of the Bids. According to Board, there is fundamental differences between scrutiny of the bids by the delegates and evaluation/final decision on the bids by the Board.

The decision making so far as successful bids is that of the privilege of the Board and none else, and this has to be strictly as per statutory scheme of the Act.

131. In terms of Clause 4.4.1 of the ACBD, it reserved the right to reject any application-cum-bid comprising quoted work program considered by it to be unreasonably high or low. This was provided only in order to promote serious bidders and to avoid unrealistic/unreasonable bidding numbers. A Note came to be moved on 23.07.2018 for consideration and approval of the Board, but there was no meeting of the Board on the said date. Only the note was approved through circulation by the members of the Board. The said note detailed the rationale for setting the lower and also maximum limit of PNG connections. Apparently no financial bids were opened before moving the Note dated 23.07.2018. None of the Board members as well as officers concerned were aware of the numbers quoted by any of the entities. Therefore, the Respondents contend that the Note dated 23.07.2018 was not the bidding criteria, therefore it did not curtail or restrict the exercise of power of the Board on deciding the successful bidder in terms of the Act and the Regulations. The Note was only to guide as to what should be considered as unreasonably low and high. The delegates had highlighted to the

Board the quote pertaining to unreasonably low or high. In such a situation, there cannot be mechanical rejection of the bids to consider whether the numbers quoted are reasonable or not is the stand of the Board. Therefore, the Board contends it offered opportunity of hearing to H1 bidder to ascertain feasibility of the quote. There was no need to call all the unsuccessful bidders of a particular GA for hearing. If H1 bidder could not satisfy, then next highest bidder could be called for hearing. Therefore, they contend that the Note dated 23.07.2018 cannot be considered as bid criteria for selection of an entity. If the Note had been disclosed, all entities would have quoted based on 2011 census and this would have defeated the purpose of 9th round bidding to secure maximum domestic PNG connections of 2026 is the stand of the Board.

132. According to Board, out of 406 bids received by the Board, it was only in 9 successful H1 bids, the issue of low or high bids came to be considered. These 9 bids were highlighted in the Agenda Note. After hearing the concerned parties, the Board has taken objective decision. There was no arbitrariness or favouritism shown to any of the entities by the Board while evaluating the bids for GA 51, 61 and 62. They further submit with regard to the minutes for the meetings held on 03.08.2018, 10.08.2018, 20.08.2018 and 29.08.2018 that on 03.08.2018, out of 52 GAs, Board approved the

issuance of LOIs only in respect of 48 GAs. Out of four bids, two bids in each GA were not to be considered as per Note dated 23.07.2018, but the Board deliberated and decided that bidders in respect of 4 GAs with the highest composite score would be given a chance to achieve domestic PNG connections at least equivalent to 2% of the households in the respective GAs. This was done keeping in mind public interest to cover maximum GAs. On 10.08.2018 all the four members of the Board were present. Four bids which quoted numbers higher than the guidance limits recommended on 23.07.2018, the Board was informed by the Delegates that the bidder for GA-63 (Coimbatore) was not considered as composite score was not the highest. The Board thought that the upper and lower thresholds as per Agenda Note need not be mechanically exercised and the opportunity of hearing must be given to affected entities to explain reasonableness of their quote i.e., GAs 61, 62 and 72. On 20.08.2018 all four members of the Board were present.

133. For Puducherry GA between SKN Haryana City Gas Pvt. Ltd. and Torrent Gas Pvt. Ltd., SKN Haryana City Gas Pvt. Ltd., has been approved for having highest composite score. Torrent Gas Pvt. Ltd. and another were placed at second and third position. In the 82nd Board Meeting on 29.08.2018 all the Board members were

present in respect of four geographical areas GA 51, 61, 62 and 72. The Board after hearing the successful bidders on merits opined that the quote by successful bidders was not violative of the Act, Regulations and Bid Documents. Recommendation of the BEC (Bid Evaluation Committee) was to reject 37 bids, but Board accepted four bids after re-negotiation. They contend that four GAs i.e., GA Nos. 35,46, 48 and 49 were recommended to be rejected due to unreasonably low quote. In all these four GAs, only two bids each were received and all of them had quoted unreasonably low as per the Delegates. In respect of 33 bids, the same were rejected by the Board on the ground of unreasonably low quotes or deficit of complying with other requirements. None of the bidders in 33 GAs were H1 bidders and there were other entities with a higher composite score than the rejected bidders. After considering the recommendations of BEC on 03.08.2018, 48 GAs were approved for issuance of LOIs. Four GAs i.e., GA Nos. 35,46, 48 and 49 were asked to improve the quoted work program by negotiation. The Respondent-Board has brought these facts on record by filing affidavit as directed by us.

134. The earliest decision of the Apex Court on the administrative action and how the administrative authority is bound by the norms

standards and procedures laid down by it for others is in the case of ***Ramana Dayaram Shetty v. International Airport Authority of India and Ors.*** [1979 (3) SCC 489]. Standard of eligibility if indicated in the notice for tenders, it cannot be deviated or departed. Such departure was held to be denial of equal opportunity to those who felt bound by the standards of eligibility and therefore did not submit their tenders. Once the Executive Authority lays down norms or standards, the Executive Authority must rigorously follow those standards by which it professes its action to be judged. The defined procedure, even though generous beyond the requirements that bind such agency must be scrupulously observed. It was held that this rule though supportable also as emanating from Article 14 does not rest merely on that Article since it has an independent existence apart from Article 14 i.e., rule of administrative law, which has been judicially evolved as a check against exercise of arbitrary power by the Executive Authority. It was further held that application of this principle makes no distinction or difference whether exercise of power involved affectation of some right or denial of some privilege. Though State need not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure. This principle will hold good in all cases of

dealing by the Government with the public where the interest is sought to be protected is a privilege. It was further held as under:

“It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant, and if the government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary but was based on some valid principle which in itself was not irrational unreasonable or discriminatory.

This rule also flows directly from the doctrine of equality embodied in Article 14, which strikes at arbitrariness in State action and ensures fairness and equality of treatment. The State cannot, therefore, act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory.”

135. In ***Food Corporation of India v. Kamdhenu Cattle Feed Industries*** [1993 (1) SCC 71], the relevant paragraphs 7, 8 & 10 read as under:

7. *In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is ‘fairplay in action’. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona*

fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.

8. *The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.*

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10. *From the above, it is clear that even though the highest tenderer can claim no right to have his tender accepted, there being a power while inviting tenders to reject all the tenders, yet the power to reject all the tenders cannot be exercised arbitrarily and must depend for its validity on the existence of cogent reasons for such action. The object of inviting tenders for disposal of a commodity is to procure the highest price while giving equal opportunity to all the intending bidders to compete. Procuring the highest price for the commodity is undoubtedly in public interest since the amount so collected goes to the public fund. Accordingly, inadequacy of the price offered in the highest tender would be a cogent ground for negotiating with the tenderers giving them equal opportunity to revise their bids with a view to obtain the highest available price. The inadequacy may be for several reasons known in the commercial field. Inadequacy of the price quoted in the highest tender would be a question of fact in each case. Retaining the option to accept the highest tender, in case the negotiations do not yield a significantly higher offer would be fair to the tenderers besides protecting the public interest. A procedure wherein resort is had*

to negotiations with the tenderers for obtaining a significantly higher bid during the period when the offers in the tenders remain open for acceptance and rejection of the tenders only in the event of a significant higher bid being obtained during negotiations would ordinarily satisfy this requirement. This procedure involves giving due weight to the legitimate expectation of the highest bidder to have his tender accepted unless outbid by a higher offer, in which case acceptance of the highest offer within the time the offers remain open would be a reasonable exercise of power for public good.”

136. From the above judgments, it is clear that though in commercial contracts, the interference of the Court by exercising the power of judicial review is limited, still the court can interfere, if it appears that there was no transparency in the process of selection but existed an exercise of arbitrariness and discriminatory manner. It is not in dispute that three members of the Board were part of Bid Evaluation Committee. On 23.07.2018 certain criteria/parameters were indicated by this so called Evaluation Committee in the Agenda Note. This is with reference to clause 4.4.1 of the bid documents and also Addendum-1 issued by the Board wherein they decided to consider each bid on case to case basis. This indicates that the exercise so far as criteria/ parameters was uniform for all the bids. In other words, evaluation of each bid has to be decided against common criteria, which was recommended on 23.07.2018. The report on Agenda Note dated 09.08.2018, in fact, recommended that the highest bidders of GA 51, 61 and 62 were disqualified since their quote of PNG connections were

beyond 100% of the total households of 2011 census. This Note was approved by three members out of four members of the Board. This clearly indicates that three members out of four members felt that the highest bidder of these three GAs were not qualified since they quoted unreasonably high numbers. However, the Minutes of the Board dated 10.08.2018 indicate that the four members of the Board out of which three had approved Agenda Note, changed their opinion so far as disqualification of highest bidders of these three GAs 51, 61 and 62. It's also noticed from the affidavit of the Board filed on 09.11.2018 that the Board has correctly applied the unreasonable low criteria to all the bidders whose bid was below 2%, but surprisingly the bids which were beyond the limit of 100% of 2011 census, the Board thought it fit to relax the criteria by calling the higher bidders for negotiation. If the Board thought it fit to hear the affected parties, then it ought to have invited all the affected parties of the said GA i.e., all the bidders who stand to lose the bid, since such procedure was exercised so far as unreasonably low criteria to all bidders who quoted below 2% of 2011 census. Assessment of reasonability of a bid cannot be equated with the concept of rejection of a bid as not qualified for a particular criteria. Reasonability of a bid has reference to subjective assessment/satisfaction. The assessment of a bid based

on the available material would amount to objective assessment. It is also seen that till the Appellant agitated and sought information by filing RTI, the methodology adopted by the 1st Respondent or the process of selecting bidders as successful bidder for these 3 GAs in issue was not made public. As a matter of fact, by 14.09.2018, the names of all successful bidders were published on the website of the Board, except so far as the GAs in issue, there was no declaration of successful bidders name on the website of the Board. Now the Board comes up with an excuse that they were having the huge task of processing the documents of more than 400 bids and therefore by oversight the names of the successful bidders were not put on the website when all other successful bidders were notified on the website.

137. This explanation seems to be without good reason and cannot be accepted. There is no reason why the Board had to maintain such secrecy especially these 3 GAs in issue.
138. Application of vague and uncertain criteria, following different yardsticks to different cases in the garb of exercising administrative authority by a statutory body i.e., 1st Respondent-Board cannot be appreciated since it being constituted under a regulatory Act meant for protection of interest of consumers and entities, it should not lack in transparency in its actions. The process of selection must

be transparent and non-discriminatory and it should not indicate any favouritism. This is clearly indicated in Section 19 of the said Act which deals with “Grant of authorization” which is to be transparent. The selection process in selecting successful bidders must be an objective process totally conforming to the process of transparency. If the process is infected with discrimination, favouritism or nepotism, it is nothing but violation of mandate of Article 14 of the Constitution of India. In terms of clause 4.4.1 of the invitation for bid, no doubt, a discretion lies in the Respondent-Board to reject or accept any bid, but this does not empower them to act in an arbitrary manner adopting the process, which is not transparent. Neither the bid documents nor 2008 Regulations authorize the Board to negotiate the bids of the different bidders to satisfy either unreasonable quote being low or high by the bidders. If for any reason such methodology or criteria is adopted by the Board, it must be uniformly applied to all bidders and should have been applied to all bidders of 9 GAs, referred to above. The Board has chosen to invite only few selected bidders who had quoted beyond the limit of 100% of total households of 2011 census. It is also seen that out of biddings of 86 GAs, except in 9 or 10 GAs, all bids seem to be between 2% to 100% of 2011 census. This clearly indicates that the bid documents, as a whole,

if read, indicate that 2011 census seems to be the criteria to quote number of gas connections expected to be achieved by the bidders within the eight contract years from the date of authorisation.

139. The Respondent-Board in its affidavit states that the provisions of clause 4.4.1 and Addendum –1 to the bid documents have to be applied in a restricted manner in extraordinary situations where the bid itself suffers from impossibility. However, the extraordinary situation, where the discretionary power came to be exercised by the Board, is not forthcoming. It is also seen that in terms of Note dated 23.07.2018, the criteria of lower/minimum limit for evaluating the bids with reference to number of PNG connections was proposed to be 2% of the total households of 2011 census and the upper/maximum limit for the number of said connections was proposed to be 100% of the total households of 2011 census. This was not done without reference to any material. As a matter of fact, the contents of the Note indicate as under:

“ ...

1. No. of PNG Domestic connections:

Lower Limit: Ministry of Petroleum and Natural Gas (MoP&NG) vide Letter No. L-16021/9/2013-GP-I (pt.) dated 16th August 2016, constituted a committee to examine the City Gas Distribution (CGD) bidding related issues. The committee in its report recommended minimum work programme (MWP) for inert-alia PNG domestic connections as 7.5% of within district headquarters/municipal limit. Prior to 9th round, MWP for PNG domestic connections was fixed for 5% total households.

Considering above it is proposed that 2% of total Household (Census 2011 data) may be considered as minimum.

Maximum Limit: *In order to reach at maximum value various possibilities has been discussed in house which includes conversion of LPG to PNG, maximum penetration at present in Gas etc. It is proposed to keep maximum limit of PNG Domestic connections as 100% of total Household (Census2011 data). Beyond 100% may be treated as unreasonable quote.*

....”

140. This criteria of unreasonably low or unreasonably high between the range of 2% to 100% of the total households as per 2011 census has been defined, as stated above, but the same was not published by the Board. However, this is seen on record which was filed along with the affidavit filed by the Board pursuant to the directions of the Tribunal. The report of Agenda Notes of various dates between 02.08.2018 to 29.08.2018 indicate that approval of the Board was taken on the Note deciding the minimum PNG connections at 2% of 2011 census and maximum connections at 100% of census of household of 2011. The relevant portion of the report of the Agenda Note is as under:

“ ...

Accordingly, approval has been taken by Board through circulation (Annexure-5) for minimum and maximum numbers of PNG connections and minimum number of GNG stations. As approved, 2% of total household (Census 2011 data) PNG

connections was kept as minimum PNG connection, 100% household (Census 2011 data) was kept as maximum PNG connections and 2 CNG stations in each district/part-district was kept as minimum CNG stations, without any upper limit.

.....”

141. What is Annexure-5 is not forthcoming. This Note establishes the fact that Respondent-Board had approved the ranging between 2% and 100%. It is with reference to total households on 2011 Census. The Note indicates that the threshold limits were proposed by said Note and the purpose was to decide reasonability of the bidding criteria with regard to work program of 9th CGD round. This Note was subsequently approved by the Board. Though ACBD through clause 4.4.1 given authority to the Board to reject any Application-Cum-Bid Document, if at all the quoted work program were to be unreasonably high or low, there was no certainty or clarity with regard to criteria or parameter either in 2008 Regulations or the bid documents indicating on what basis bids could be rejected by the Board being unreasonably high or low. Therefore, it can be presumed that the said Note after being approved by the Board itself formed a foundation laying down /

indicating criteria or parameter upon which the Board could evaluate each bid and decide the successful bidders.

142. At the cost of repetition, it is to be said that the Board's Agenda Note has been deliberated upon in a meeting of the Board having three of the four members of the Board. Surprisingly, they have reversed the decision by taking completely contradictory stand. The stand of the Board that the Agenda Note was made only as a guidance during the scrutiny of the bids cannot be appreciated. If it can be provided as guidance for the scrutiny and how it could be disregarded while final selection is taken? Board did accept the proposal of the Evaluation Committee to reject 16 bids which were admittedly unreasonably low, which is seen from the Agenda Note dated 2-8-2018. Now, is it open to a Statutory body, i.e. the Board to contend that parameters detailed in the Note are only for guidance purpose and it cannot be mechanically accepted by the Board to evaluate and select the successful bidder?

143. As per the details mentioned in Table – V of the Board Agenda Note dated 9-8-2018, 16 bids were listed for rejection; 3 were unreasonably high by quoting beyond 100% and 13 were categorised as unreasonably low, i.e. below 2% of the total Census. All the four Members including three Members who approved the

Agenda Note conclude that it need not be a mechanically exercise and opportunity must be given to the affected entities. In 80th meeting, Respondent Board accepts part of the threshold limits with regard to unreasonably low, but chooses to give an opportunity to others who quoted unreasonably high numbers. Therefore, the Appellants have rightly contended that the Board has acted in discriminatory and arbitrary manner.

144. The Board in terms of Addendum-1, had to evaluate the bids on case to case basis. This is obligatory on the Respondent Board in order to evaluate and select the successful bidder in an objective and transparent manner. Having approved the Note dated 23-7-2018, can the Respondent Board on its own whims and fancies decide to call upon selective bidders for particular GA to justify and explain their respective bids? Such an opportunity was not given to other affected entities. The Respondent Board being an authority constituted to protect interest of consumers and the entities, it was obligatory on its part to act in a complete transparency manner applying uniform criteria/parameter for selecting the successful bidders. In terms of Addendum-1, the Board could adopt its procedure with regard to single bids. The Agenda Note also indicates that only exception provided in respect of minimum and maximum limits for GAs where they have received single bid.

145. We fail to understand how all those entities whose interest would be prejudiced by the process of selection would not fall within the ambit of affected entities, according to the Board. The Board contends that it is only the highest scored entity, who have quoted beyond 100% would be the affected entity.
146. To me, an aggrieved entity would be an entity who suffers on account of discriminatory or non-transparent process. Appellants would be an affected entities since against their interest, Respondent Board has taken the decision. If the alleged H1 bidders in these 3 GAs in issue were not selected for issuance of LOI, the Appellants would have been next in line for consideration of authorization, therefore, the Appellants are affected entities since their rights have been affected and thus they have legal grievance.
147. If other bidders pertaining to these GAs in issue who were qualified in the technical bid were also called upon to justify their respective bids, at least they would have had a chance to indicate unreasonableness in the quote made by the so-called successful bidders selected by the Respondent Board. Having not given such

uniform treatment in the process of selecting successful bidders, the Respondent Board has acted in discriminatory fashion. It is also felt that if H2 bidder who had submitted quote according to the bidder achievable, probably the Board would have had opportunity to compare and then conclude which would be the best quote achievable in terms of ACBD.

148. At the cost of repetition, it is to be mentioned that calling the entities to substantiate reasonableness in their quote was not the parameter or permissible procedure in terms of the Act or the Regulations of ACBD. If at all such exercise were to be taken in order to protect larger public interest, each of the bidder concerning the GAs ought to have been given such opportunity. Procedure adopted has resulted in violation of principles of natural justice. The contention of the Respondent Board that in terms of Clause 4.4.1 of ACBD and 14.1 and 14.2 of the Addendum without giving any reasons, they could act has to be accepted with a pinch of salt. The Respondent Board is a Regulatory body constituted under Statute and is expected to act in a fair, transparent manner which is non-arbitrary and non-discriminatory. None of the above Regulations empowers the Respondent Board to act according to its whims and fancies. On the other hand, the

Appellant can challenge such whimsical conclusion of the Respondent Board if the action of the Board has caused prejudice to the interest of the Appellants.

149. Was there uniform application of methodology in the procedure adopted by the Respondent Board is to be seen?

150. It is seen from evaluation of bid GA 63 (Coimbatore District) IMC Ltd. was H2 bidder who had apparently quoted an unreasonable high number of PNG connections. However, the bid of IMC was rejected since it had exceeded Respondent Board's criteria of reasonable high quote pertaining to households of 2011 Census. However, IMC was not the H1 bidder. If H2 bidder were to be rejected for having quoted unreasonably low/high quote, then H1 bidder who violates such criteria ought to be rejected. In this case, IOC was originally H1 bidder and H2 was IMC Ltd. If for some reasons, IOC had not taken up project, IMC would have been entitled to get the bid. In that situation, IMC Ltd. would be entitled to substantiate the reasonableness in the quote. For the reasons best known to the Respondent Board, bid of IMC was rejected on the ground of quoting unreasonably low/high household connections. Therefore, the procedure adopted by Respondent Board or its area of applying low or high criteria mechanically to H2

bidder other than H1 bidder seems to be without application of mind.

151. Similarly in the case of GA 51 Puducherry, there were two bids. In both bids the number of household connections was beyond 100%. Agenda Note dated 18.8.2018 recommends that they were to be not qualified. However, Respondent Board opted to notify the H1 bidder, i.e. the bidder with higher composite score amongst the said two bidders for discussion to explain the reasonableness of the bid quoted by it. In this case, opportunity was not given to the H2 bidder who also had quoted beyond the limit of 100%.
152. It is also seen from the Note and the minutes that in some GAs where only one bid was received and where such bid was unreasonably low in terms of 23.7.2018 Note, the Respondent Board still proceeded with issuing LOI to such bidders. However, the Board asking for such bidder to revise its bid to reach up to the minimum of 2% of the total household criteria is not forthcoming.
153. Surprisingly in GAs where only two bids were received who had quoted less than the minimum criteria of 2% of the total households of the 2011 Census, the Respondent Board felt it necessary to call upon the H1 of the two bidders, i.e. the entity with the highest

composite score to negotiate and improve/revise its quote to the minimum requirement of 2% of the total households. Upon the said entity, confirming the acceptance of the revised quote, Respondent Board did issue LOI to such entities (GA 35, 46, 48 & 49).

154. Pertaining to GA 37 Satna – Shahdol District case, the Respondent Board disqualified the highest H1 bidder and issued LOI to the next highest bidder which had quoted more than 2% of the total household number of PNG connections. In this case, more than two bids were received. The manner in which the Respondent Board has acted in the above situations, clearly indicate that there was no certain and fixed criteria or parameters which was relied and followed by the Respondent Board.
155. Let me now examine the contention of the Appellants that the Respondent Board has made wrong calculations in respect of GA of Chennai – Tiruvalur by taking the base of number of households as 23,33,500 as against 21,01,931 household population as has been in the map annexed to the bid document, which is referred to in the report on Agenda Note dated 28.8.2018. If 23,33,500 number is taken, it would lead to wrong calculations and wrong conclusions. The figures in terms of 2011 Census and the

households considered by the Board in 2011 are indicated by the Appellant is as under:

	“Households in 2011 as per census	Households considered by PNGRB in 2011
<i>Chennai</i>	11,54,982	12,70,391
<i>Thiruvallur</i>	9,46,949	10,63,109
Total (Chennai + Thiruvallur)	21,01,931	23,33,500”

156. The details of decadal population growth rate between 2001–2011 as per 2011 Census and as per PNGRB calculations pertaining to Chennai and Tiruvallur clearly indicate what would be the annual growth rate of population in both those areas. The details are as under:

	“As per Census 2011		As per PNGRB calculations	
	Decadal Population Growth Rate (2001-2011)	Derived Population Growth Rate per annum	Annual Growth Rate	Derived Decadal Growth
<i>Chennai</i>	6.98%	0.67%	3.98%	47.74%
<i>Tiruvallur</i>	35.30%	3.07%	3.98%	47.74%
<i>Tamil Nadu</i>	15.61%	1.46%”		

The above figures also indicate that the Respondent Board has taken into consideration high growth rate of 3.98% per annum for the entire GA of Chennai and Tiruvallur which is six times the actual growth reduced in Chennai between 2001 and 2011 as per 2011 Census.

157. Based on the decadal growth rate as mentioned in the Census of 2011, total population of GA of Chennai and Tiruvallur till 2026 can be estimated as 1,10,04,037. In terms of Census of 2011, average number of people per household in Chennai would come to 4.02 and Tiruvallur, it is 3.94. The total households based upon the said figure, in respect of GA of Chennai and Tiruvallur would be 27,67,090 in 2026. However, the quote or bid of number of household connections indicated by H1 bidder is 33,00,000, which is much beyond the limit of 100% of total households of 2011 Census. This is clear from the following table.

	“Year 2011		Annual Growth Rate between 2001 & 2011 as per Census 2011	Annual Growth Rate considered by PNGRB	Year 2026	
	Households 2011 as per census	Households considered by PNGRB in 2011			Projected Household in 2026 considering the decadal growth as per census 2011	Projected Household in 2026 by PNGRB
<i>Chennai</i>	11,54,982	12,70,391	0.67%	3.98%	1,276,663	2,087,729

<i>Thiruvallur</i>	<i>9,46,949</i>	<i>10,63,109</i>	<i>3.07%</i>	<i>3.98%</i>	<i>1,490,427</i>	<i>2,134,971</i>
Total (Chennai + Thiruvallur)	21,01,931	23,33,500	1.46% (on wtd avg basis)	3.98%	2,767,090	4,222,700”

The above said calculation also goes to show that for every 100 people added between 2001 to 2011 in the State of Tamil Nadu, 13 were added exclusively to the GA of Chennai and Tiruvallur, whereas 87 people would be distributed among the rest of the areas of Tamil Nadu State. The expected projected population of Tamil Nadu is to be 8,96,68,794 i.e. an addition of 1,75,21,764 persons between 2011 and 2026. This would mean 66,64,322 will be added to GA of Chennai and Tiruvallur between 2011 and 2026 out of 1,75,21,761 only to the GA of Chennai and Tiruvallur. This goes to show that out of every 100 persons added in the State of Tamil Nadu between 2011 and 2026, 38 persons would get added to Chennai and Tiruvallur and balance 62 would be distributed among the other parts of Tamil Nadu. The following format would show such calculations.

	“As per Census 2011				As per PNGRB	
	Population as per census 2011 (A)	Absolute Population growth during 2001-11 as per census 2011	Expected Population in 2026 considering decadal growth as per Census 2011 (B)	Absolute Population growth 2011-2026 (X) = (B-A)	Population as projected till 2026 (Y)	Population growth between 2011-2026 (Z) = (Y-A)
<i>Chennai</i>	46,46,732	3,03,087	51,36,280	4,89,548	83,44,394	36,97,662
<i>Tiruvallur</i>	37,28,104	9,73,348	58,67,758	21,39,654	66,94,763	29,66,659
Chennai + Tiruvallur	83,74,836	12,76,435	1,10,04,037	26,29,201	1,50,39,158	66,64,322
<i>Tamil Nadu</i>	7,21,47,030	97,41,351	8,96,68,794	1,75,21,764	12,95,58,423	5,74,11,393”

158. Coming to Kanchipuram area, as per 2011 Census the decadal growth in the said district is only 38.95% which makes annual growth rate in the said district as 3.34%. As per the calculations of the Board the decadal growth rate in Kanchipuram comes out between 62.73 as against 38.95 (as per Census of 2011). The actual calculations of 2011 Census and the calculation of Respondent Board pertaining to this aspect is as under:

	“As per Census 2011		As per PNGRB calculations	
	Decadal Population Growth Rate (2001-2011)	Derived Population Growth Rate per annum	Annual Growth Rate	Derived Decadal Growth
<i>Kanchipuram</i>	38.95%	3.34%	4.99%	62.73%”

The above calculation clearly indicate that out of 97,41,351 population added in the State of Tamil Nadu between 2001 and 2011, 12,76,435 would get included in the three districts, i.e. Chennai, Tiruvallur and Kanchipuram. That means out of 100 people added in Tamil Nadu, 24 get distributed in these three districts and 76 are added to rest of the State. The calculations projected for 2026 for the entire State of Tamil Nadu is expected to be 8,96,68,794, i.e. an addition of 1,75,21,764 between 2011 and 2026. However, the Respondent Board has projected the population of these three districts till 2026 as 23,339,370, i.e. an addition of 10,966,282 people between 2011 and 2026. This means 63% of the increase in population would be added to these three districts alone. In other words, out of 100 people, 63 would be in these three district GAs and balance 37 would be for the other areas of Tamil Nadu. The calculations approved by the Respondent Board so far as combined population share of above three GAs is 17.14 in the State of Tamil Nadu in 2011. The expected increase is 19.57 by 2026 and not 26.02 as projected by the Respondent Board. The relevant table with the comparative figures is mentioned as under:

	“Population as per census 2011 (A)”	Absolute Population growth during 2001-11 as per census 2011	Expected Population in 2026 considering decadal growth as per Census 2011 (B)	Absolute Population growth as per Census 2011 2011-2026 (X) = (B-A)	Population as projected by PNGRB till 2026 (Y)	Population growth as projected by PNGRB between 2011-2026 (Z) = (Y-A)
<i>Chennai</i>	46,46,732	3,03,087	51,36,280	4,89,548	83,44,394	36,97,662
<i>Tiruvallur</i>	37,28,104	9,73,348	58,67,758	21,39,654	66,94,763	29,66,659
<i>Kanchipuram</i>	39,98,252	1,120,784	65,44,810	25,46,558	83,00,212	43,019,60
<i>Chennai + Tiruvallur + Kanchipuram</i>	12,373,088	23,97,219	1,754,8,847	51,75,759	23,339,370	10,966,282
Tamil Nadu	7,21,47,030	97,41,351	8,96,68,794	1,75,21,764	12,95,58,423	5,74,11,393”

159. Coming to Medchal, Rangareddy and Vikarabad GA, the projections of the total number of households as per Census up to 2026, GA 72 would be 10,17,096 as against which Torrent Gas Pvt. Ltd., i.e. 2nd Respondent herein submitted a bid of 10,05,300 PNG connections which makes it 99% of total households for the year 2026. However, despite the said quote by 2nd Respondent, which is less than 100% of the households, Torrent Gas Ltd. is not declared as H1 bidder. The relevant table with the comparative figures is mentioned as under:

GA ID	GA	Highest PNG Connections quoted by bidder	HH as per 2011 Census i.e. Upper Limit of PNG connections fixed by PNGRB	Projected HH's in 2026 considering decadal growth as per Census 2011	PNG penetration in 2026 as per H1 bid number	Bidder name with highest composite score	PNGRB final decision
<i>B</i>	<i>C</i>	<i>D</i>	<i>E</i>	<i>F</i>	$G=(D/F)*100$		
51	Puducherry	275,000	231,513	340,240	81%	SKN Haryana City gas Distribution Pvt. Ltd. (Consortium with M/s Chopra Electricals)	Accepted H1's Bid
61	Kanchipuram	1,151,111	1,006,245	1,647,140	70%	AG&P LPG Marketing Pvt. Ltd.	Accepted H1's Bid
62	Chennai	3,300,000	1,154,982	1,276,663	119%	Torrent Gas Private Limited	Accepted H1's Bid
	Tiruvallur		946,949	1,490,427			
	Total (Chennai & Tiruvallur)		2,101,931	2,767,090			
72	Ranga Reddy (except authorised area) Presently, Medchal, Rangareddy & Vikarabad Districts	1,005,300	456,557	1,017,096	99%	Torrent Gas Private Limited	Rejected H1's Bid and awarded to H2"

160. At the cost of repetition, though there is no Clause/term or criteria which authorizes the Respondent Board to call the bidders for any sort of clarification especially after opening of the technical and financial bids, the Respondent Board has adopted this procedure

only in respect of certain GAs which were either unreasonably low or unreasonably high. It is seen that same treatment or procedure is not followed in cases where there was single bid. Though in single bid cases, they blindly accepted the bid they called, but they chose to seek explanation where they got two or three bids for a particular GA. This clearly goes to show that there was no uniformity in the process of selection made by the Respondent Board.

161. It is seen that out of 86 GAs, in 9 or 10 GAs (including the three GAs in issue), this procedure was adopted. The argument of the Respondent Board that one of the Appellants has secured 25% of the bids may not be a good ground to suspect the bona fides of the Appellants, if they were to be successful in more number of bids, which is based on the composite score secured by them. The same cannot be a ground not to consider the grievances/challenge made by the Appellants in these appeals.
162. No doubt, scope of interference by the Court in award of the contracts is very limited. One has to see whether the selection process is not arbitrary or made with *malafide* intention. The Court can definitely interfere with the process, if it finds absence of transparency and uniform application of procedure. In other words,

the process adopted by the Respondent Board should be non-discriminatory and non-arbitrary. It is also well settled that the terms and conditions of the bid could be without any reason or foundation, but selection process has to be fair and without any discrimination. The freedom of statutory authority to award contract is not unlimited. Though it has freedom to choose the best person in public interest, but the said freedom is not un-canalized or un-restricted. It should act impartially and in accordance with the terms and conditions of tender. The process in choosing the person should not be on the basis of un-reasoned or un-principled procedure. In other words, it cannot be arbitrary or fanciful. Though authority which invites tenders is entitled to make pragmatic adjustments which are required in certain circumstances, but the pattern or the procedure adopted by the selecting authority should not suffer from discrimination and arbitrariness. Non application of mind and acting mechanically in a manner which is not uniform also can be found fault with. In these appeals, the selection process adopted by the 1st Respondent Board in selecting H1 bidders to these three GAs 51, 61 and 62 suffers from such prejudice. Therefore, the decision of the 1st Respondent Board in issuing LOIs to the so called H1 bidders is not justified. Accordingly, they deserve to be quashed and are quashed. The

H2 bidders if otherwise qualified shall be considered for issuance of LOIs, if other terms and conditions of bid are complied with by them. Accordingly, the appeals deserve to be allowed and are allowed. There shall be no order as to costs.

163. Pronounced in the Open Court on this 28th day of February, 2019.

**(Justice Manjula Chellur)
Chairperson**


REPORTABLE / ~~NON-REPORTABLE~~

APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI

(APPELLATE JURISDICTION)

APPEAL NO. 292 OF 2018

&

APPEAL NO. 323 OF 2018

Dated : 28th February, 2019

**PRESENT: HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON
HON'BLE MR. B. N. TALUKDAR, TECHNICAL MEMBER (P&NG)**

IN THE MATTER OF :

APPEAL NO. 292 OF 2018

Adani Gas Limited

.... APPELLANT

Versus

Petroleum and Natural Gas Regulatory Board & Ors.

...RESPONDENTS

Counsel for the Appellant(s) : Mr. Buddy A. Ranganadhan
Mr. Mahesh Agarwal

Counsel for the Respondent(s) : Mr. Prashant Bezboruah
Mr. Jitin Chaturvedi
Mr. Shuaib Hussain
Mr. Vidhi Thakur for R-1

Mr. Gaurav Juneja
Mr. Dibyanshu
Mr. Aayush Jain
Ms. Sylona Mohapatra for R-2

Mr. Gaurav Mitra
Mr. Rohan Ganpathy for R-3

Mr. Sandeep Singh for R-4

IN THE MATTER OF :

APPEAL NO. 323 OF 2018

IMC Limited

.... APPELLANT

Versus

Petroleum and Natural Gas Regulatory Board & Anr.

.... RESPONDENTS

Counsel for the Appellant(s) : Ms. Nafisa Khandepaskar
Ms. Bhargavi Kannan
Ms. Aishwarya Modi

Counsel for the Respondent(s) : Mr. Prashant Bezboruah
for R-1

Mr. Gaurav Mitra
Mr. Rohan Ganpathy for R-2

ORDER

Since the Members of the Bench (including the Chairperson) differs in opinion, as envisaged under Section 34 of the Petroleum and Natural Gas Regulatory Board Act, 2006 read with Section 123 of the Electricity Act, 2003, these appeals are referred to the third Member i.e., Judicial Member of this Tribunal for hearing and expressing his opinion.

As there is divergent views/opinion on merits of the appeal, the status quo order shall continue till the reference is decided by the third Member.

List this reference before the Judicial member of this Tribunal on 07.03.2019 in Court II.

(B.N. Talukdar)
Technical Member

(Justice Manjula Chellur)
Chairperson