* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 19th AUGUST, 2025

IN THE MATTER OF:

\+ **O.M.P. (COMM) 301/2023**

GUJARAT STATE FERTILIZERS & CHEMICALS LTD.

....Petitioner

Through: Mr. Dayan Krishnan, Sr. Advocate with Mr. Kunal Vyas, Mr. Pratham Vir Agarwal, Mr. Sukrit Seth, Ms Niyati Kohli, Advocates

versus

M/S GAIL (INDIA) LTD. .....Respondent

Through: Mr. Vivek Kohli, Sr. Advocate with Mr. Somiran Sharma, Mr.Yashweer Hooda, Advocates

\+ **O.M.P. (COMM) 302/2023**

GUJARAT STATE FERTILIZERS & CHEMICALS LTD.

.....Petitioner

Through: Mr. Dayan Krishnan, Sr. Advocate with Mr. Kunal Vyas, Mr. Pratham Vir Agarwal, Mr. Sukrit Seth, Ms Niyati Kohli, Advocates

versus

M/S GAIL (INDIA) LTD. .....Respondent

Through: Mr. Vivek Kohli, Sr. Advocate with Mr. Somiran Sharma, Mr.Yashweer Hooda, Advocates

\+ **O.M.P. (COMM) 303/2023**

GUJARAT STATE FERTILIZERS & CHEMICALS LTD.

.....Petitioner

Through: Mr. Dayan Krishnan, Sr. Advocate with Mr. Kunal Vyas, Mr. Pratham Vir Agarwal, Mr. Sukrit Seth, Ms Niyati Kohli, Advocates

versus

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Through: Mr. Vivek Kohli, Sr. Advocate with Mr. Somiran Sharma, Mr.Yashweer Hooda, Advocates

\+ **O.M.P. (COMM) 304/2023**

GUJARAT STATE FERTILIZERS & CHEMICALS LTD.

.....Petitioner

Through: Mr. Dayan Krishnan, Sr. Advocate with Mr. Kunal Vyas, Mr. Pratham Vir Agarwal, Mr. Sukrit Seth, Ms Niyati Kohli, Advocates

versus

M/S GAIL (INDIA) LTD. .....Respondent

Through: Mr. Vivek Kohli, Sr. Advocate with Mr. Somiran Sharma, Mr.Yashweer Hooda, Advocates

\+ **O.M.P. (COMM) 305/2023**

GUJARAT STATE FERTILIZERS & CHEMICALS LTD.

.....Petitioner

Through: Mr. Dayan Krishnan, Sr. Advocate with Mr. Kunal Vyas, Mr. Pratham Vir Agarwal, Mr. Sukrit Seth, Ms Niyati Kohli, Advocates

versus

M/S GAIL (INDIA) LTD. .....Respondent

Through: Mr. Vivek Kohli, Sr. Advocate with Mr. Somiran Sharma, Mr.Yashweer Hooda, Advocates

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The challenge in the present petitions being O.M.P. (COMM) 301/2023, O.M.P. (COMM) 302/2023, O.M.P. (COMM) 303/2023, O.M.P. (COMM) 304/2023 and O.M.P. (COMM) 305/2023, is to the Award dated 29.07.2023 passed by the Ld. Sole Arbitrator in Arbitration Case Nos.501/2019, 502/2019, 503/2019, 504/2019 and 500/2019.

2. The parties to the present petitions had entered into the following five contracts, whereunder the Respondent/GAIL was sourcing gas from various oil fields and supplying the same to the Petitioner/GSFCL:

(a) Gas Sales and Transmission Contract dated 05.07.2008, whereunder the Respondent supplies Gas sourced from Panna-Mukta-Tapti fields. The Agreement is referred to as PMT-PSC Contract, which is dealt with in O.M.P. (COMM) 301/2023;

(b) Gas Sales and Transmission Contract dated 05.07.2008, whereunder the Respondent supplies Gas sourced from Panna-Mukta-Tapti fields. The Agreement is referred to as PMT-APM Contract, which is dealt with in O.M.P. (COMM) 303/2023;

(c) Term Sheet / Agreement dated 29.12.2011, whereunder the Respondent supplies Gas sourced from Western Offshore fields of ONGC, which is dealt with in O.M.P. (COMM) 305/2023.

(d) Gas Sales Agreement dated 27.01.2016, whereunder the

Respondent supplies Gas sourced from Gandhar (South Gujarat Low Pressure Gas). The Agreement is referred to as Gandhar Supplies Contract, which is dealt with in O.M.P. (COMM) 302/2023;

(e) Gas Sales Agreement dated 27.01.2016, whereunder the Respondent supplies Gas sourced from HVJ. The Agreement is referred to as HVJ Contract, which is dealt with in O.M.P. (COMM) 304/2023; and

3. For the sake of clarification, the five contracts enumerated above shall be collectively referred to as "contracts in question," except where otherwise required.

4. Apart from certain differences in the terms of Contracts, since the contesting parties are common, the issues are common and largely common arguments have been advanced by both sides, all the petitions are being disposed of by a common judgment. Be that as it may, any separate issue arising out of any of the contracts in question, shall be dealt with separately.

5. The facts, in brief, leading to the filing of the present petitions are as under:

i. The Petitioner is a Public Limited Company incorporated under the Companies Act, 1956, engaged in the business of manufacturing of fertilizers and chemicals. The Petitioner is a company promoted by the Government of Gujarat and several other Government promoted companies are shareholders of the Petitioner.

ii. The Respondent is a Government of India Undertaking company incorporated under Companies Act, 1956, engaged in distribution

and marketing of gas in India and also engaged in several other aspects of gas chain, including exploration, production, transmission, extraction, processing of natural gas and its related process, products and services.

iii. The Respondent, in its capacity as Government nominee procures and markets Domestic Gas from the various fields of M/s ONGC, OIL, Tapti, Panna-Mukta and Ravva Agreement area as well as other sources in India. The Respondent owns and operates pipeline network and other associated facilities for supplying and distributing gas.

iv. On 20.06.2005, the Ministry of Petroleum and Natural Gas [**"MoPNG"**] prioritized a policy for allocation and pricing of natural gas and issued a pricing order to ONGC, Respondent/GAIL and OIL, the entities who were authorised and were having rights for production, sale and distribution of natural gas. In the said policy, MoPNG recognized the fact that power and fertilizer sectors were critical to the economical development of the country and that output price of these sectors is either controlled or regulated by the Central and State Government, who bear subsidy to a large extent for any increase in the output price. By the said policy, it was decided that all available Administered Price Mechanism [**"APM"**] gas would be supplied to only power and fertilizer sector consumers against their existing allocations at revised price of Rs.3200/MCM. Further, by the said policy, Gas Pool Account mechanism was to be implemented for the purpose of operationalizing the decision of allocation, whereby the inflow

coming from APM gas sales to consumers not entitled to APM gas at market price would go into Gas Pool Account and the outflow would be utilized for purchase of non-APM gas to supply to consumers entitled to gas at APM price.

v. On 10.07.2006, MoPNG *vide* its letter No.L-12014/1/06-GP directed the Respondent to procure details about quantities of APM Gas being used by fertilizer units for non-fertilizer purposes. By the said letter, MoPNG clarified that APM Gas being used by fertilizer units for manufacturing of products other than fertilizers, should be charged at market price. The letter dated 10.07.2006 issued by the MoPNG to the Respondent reads as under:

> *"To*
> *The Director (Marketing)*
> *GAIL (India) Limited,*
> *New Delhi.*
>
> ***Subject: APM Gas price anomaly.***
>
> *Sir,*
>
> *It has come to the notice of this Ministry that some of the fertilizer units like RCI-and Deepak Fertilizers are using APM gas for production of fertilizers as well as chemicals, e.g. methanol. This matter has been examined in terms of the Gas Pricing Order dated 20th June, 2005. From the said Order, it is evident that products other than fertilizers are not covered under supply of APM gas.*
>
> *2. Accordingly, I am directed to clarify that the APM gas being used by such fertilizer units for manufacturing of products other than fertilizers should be charged at market price. Details about such quantities being used for non-fertilizer*

purposes may be procured from consumers concerned.

3. This order may be implemented with immediate effect.

Yours faithfully,
Sd/-
(Swami Singh)
Director
Tele.No.23381029"

vi. The aforesaid clarification issued by the MoPNG was subsequently reiterated by the Ministry of Fertilizers *vide* an Office Memorandum dated 13.04.2009.

vii. Thereafter, taking note of the Comptroller and Auditor General of India's Report No. 8 of 2012-13 on "under recovery of gas pool account and excess payment of fertilizers subsidy," ["**CAG Report**"] and noticing a shortfall in reporting of APM Gas usage, MoPNG held a meeting for deciding further course of action to address the issues. MoPNG was of the view that the Respondent could not devise a suitable mechanism for ascertaining the usage of APM Gas by fertilizer units. Resultantly, MoPNG issued directives on 02.07.2014, including a direction that for all future gas supplies to fertilizer units, the Respondent should insist on quarterly returns duly certified by the Fertilizer Industry Coordination Committee [**"FICC"**]. In case these FICC certificates were not received on time, the Respondent would charge non-APM rates for entire gas supplied. The Letter dated 02.07.2014 issued by the MoPNG to the Respondent is reproduced

as under:

> *"To*
> *CMD,*
> *GAIL,*
> *New Delhi*
>
> *Subject: CAG published para no. 11.6 of Report No.8 of 2012-13 on "Under recovery of Gas Pool Account and excess payment of fertilizer subsidy".*
>
> *Sir,*
>
> *I am directed to invite your attention to the meeting taken by Joint Secretary (IC/GP), MoPNG on 05.11.2013 to decide the further course of action for settlement of the above mentioned audit para keeping in view the non receipt of end use certificate from the conceded fertilizer units certifying therein the usage of APM gas for production of Urea. As the requisite information is not forthcoming from the concerned fertilizer units despite repeated reminders and GAIL has also not been able to devise a suitable mechanism for ascertaining the usage of gas, it has been decided to adopt, the following modalities:*
>
> *(i) For all future gas supplies to fertilizer units, GAIL would insist on quarterly returns, duly certified by the Fertilizer Industry Coordination Committee (FICC) (the agency responsible for calculating the eligibility of subsidy for fertilizer plants). In case the quarterly statements, duly certified by FICC, are not received in time, GAIL would charge non-APM rates for the entire gas supplied.*
>
> *(ii) For past period, GAIL may issue a notice to all the units to submit the utilisation certificate indicating the usage of supplied gas within a period of three months, duly certified by FICC,*

taking which, GAIL would raise invoice for the differential amount between non-APM and APM gas price for the entire period and quantity of past supplies.

2. This issues with the approval of Secretary (P&NG).

viii. The abovestated letter dated 02.07.2014 issued by the MoPNG was communicated by the Respondent to the Petitioner *vide* a separate letter dated 28.07.2014. In response, the Petitioner claimed that APM gas supply was insufficient and as such, they would submit monthly Cost Auditor Certified End Use Certificates instead. However, the Respondent clarified that only the certificates issued by FICC would be accepted in terms of the MoPNG's directions and in absence thereof, the Respondent would be constrained to raise invoices for the differential amount between the non-APM and APM price for the entire gas supplied.

ix. Taking note of the directions of the MoPNG in the letter dated 02.07.2014, the Department of Fertilizers issued an Office Memorandum dated 22.10.2014, stating that the urea producing units submit their annual claims after the end of financial year, on finalization of their annual accounts. This letter, that was addressed to several fertilizer units including the Petitioner herein, also stated that the FICC would provide the data for the quantity of gas utilized for the production of urea annually, after approval of annual concession rates by the Department of Fertilizers.

x. It is stated that in the absence of FICC Certificates, the Respondent treated the entire gas supplied under the APM

contracts for the period from July to September 2014, as the gas utilized for the manufacture of products other than urea, and issued two debits notes dated 15.01.2015 for Rs. 8,48,07,465/- and Rs. 59,97,474.04/-.

xi. The Petitioner challenged the two debit notes dated 15.01.2015 issued by the Respondent before the Hon'ble High Court of Gujarat by way of Special Civil Application ["**SCA**"] No. 2065 of 2015. By way of an order dated 22.01.2015, the Hon'ble High Court of Gujarat ordered a stay on the discontinuation of the supply of gas.

xii. While the stay order by the Hon'ble High Court of Gujarat was in operation, FICC issued the APM usage certificates for FY 2005-06 to FY 2013-14 to the Petitioner *vide* a letter dated 02.02.2015.

xiii. Thereafter, the Petitioner received the certification from the FICC on 02.02.2015, computing APM Gas allocation for the period 2006-07 till 2013-14, whereby APM Gas was computed, and its allocation was certified only qua manufacture of urea and not for other subsidized fertilizers. Pursuant to such certification, the Respondent withdrew the previous debit notes dated 15.01.2015, and issued a fresh debit note dated 29.04.2015 of Rs.182.17 crores towards the difference amount between APM Gas actually supplied by the Respondent as against the quantity of APM Gas certified by FICC for the period commencing from 2006-07 till 2011-12. Resultantly, the Petitioner's stay application, was dismissed by the Hon'ble High Court of Gujarat *vide* its order dated 05.05.2015 as withdrawn.

xiv. Subsequently, *vide* a Notification dated 20.05.2015, the MoPNG notified the 'Guidelines for Pooling of Gas in Fertilizer (Urea) Sector', whereby the Respondent was appointed as the pool operator. Among the several functions as the pool operator under the said Guidelines, the Respondent was directed to collect the data regarding anticipated quantity of gas to be supplied to fertilizer units on a quarterly basis as per existing contracts. Further, the Guidelines specifically prescribed that the FICC shall monitor the utilization of pooled gas by the fertilizer units for the intended purpose only, that is, for the manufacture of urea.

xv. The Petitioner again preferred a challenge against the revised debit note dated 29.04.2015 issued by the Respondent before the Hon'ble High Court of Gujarat *vide* SCA No. 9026 of 2015. By way of its order dated 30.06.2015, the Hon'ble High Court of Gujarat granted a stay on the revised debit note, while also directing that it would be open to the Respondent or any authority which may be specified by Government of India, to get the details for respective period for the use of APM Gas for the purposes other than the specified purpose and those details, if acquired by the Government of India or the Respondent, shall be placed before the Court at the time of final hearing of the matter.

xvi. On 16.12.2015, MoPNG issued modalities clarifying its earlier letter dated 02.07.2014, directing that the market determined price has to be charged for APM gas used by fertilizer units for manufacture of products other than fertilizers from June 2006-31.03.2010 (i.e., date of implementation of Nutrient Based

Subsidy) and for manufacture of products other than urea from 01.04.2010 to 31.10.2014. It is stated in the said letter dated 16.12.2015, that for manufacture of products other than urea after 01.11.2014 (i.e., date of notification of new domestic gas pricing guidelines), the highest rate of Regasified Liquified Natural Gas ["**RLNG**"] would be charged. It is further stated that for the period April, 2014 onwards, invoices shall be raised based on monthly certificate submitted by FICC. It is also specified that the difference between domestic gas price and highest rate of RLNG used for production of urea collected on the quantity of domestic gas utilized for Non-Urea purpose shall be transferred to Pool Fund Account ["**PFA**"] maintained by the Respondent and this amount shall be adjusted in future uniform pooled price declared by it. The letter dated 16.12.2015 reads as under:

> *"To,*
> *CMD, GAIL (India) Ltd.*
> *New Delhi*
>
> *Subjcet: CAG Published Para No.11.6 of Report No.8 of 2012-13 on "Under recovery of Chas Pool Account and Excess payment of fertilizer subsidy".*
>
> *Sir,*
>
> *I am directed to refer this Ministry letter of even No. dated 01.07.2014 above mentioned subject. After detailed deliberation of the matter in the Ministry it has been decided modify the modalities curlier approved by MoP&NG vide above mentioned letter dated 01.07.2014 to the*

following extent:

S. GAIL shall charge Market determined price for the quantity of APM gas used by fertilizer units for manufacturing of products other than fertilizers during July-2006 fill implementation of Nutrient Based Subsidy (NBS) Scheme: (i.e. 31.03.2010).

ii. GAIL shall charge Market determined price for the quantity of APM gas used by fertilizer units for manufacturing of products other than urea after implementation of NBS i.e. from 01.04.2010 to 31.10.2014.

iii. GAIL shall charge the highest rule of RLNG used for production of urea during the concerned period, for the quantity of APM gas used by fertilizer units for manufacturing of products other than urea after notification of new domestic gas pricing guidelines i.e., 01.11.2014 onwards.

iv. In line with above clarification for the period April 2014 onwards GAIL will raise invoices based on monthly certificate submitted by FICC. The difference between domestic gas price and highest rate of RLNG used fur production of urea collected on the quantity of domestic gas utilized for Non-Urea purpose shall be transfer to Pool Fund Account (PFA) maintained by GAIL as pool operator and the same amount will be adjusted in future uniform pooled price declared by Pool Operator.

V. The above methodology mentioned in Para (iii) and (iv) will be applicable on all

the quantity of domestic gas used for production of Non Urea purpose.

2. This issues with the approval of Secretary, P&NG and concurrence of JFD

Yours Faithfully,
Sd/-
(S.P. Agarwal)
Under Secretary to the Government of India
Tele. No.23388652"

xvii. An interim application was again preferred by the Petitioner before the Hon'ble High Court of Gujarat against the issuance of invoices by the Respondent after the stay order dated 30.06.2015. *Vide* Order dated 18.02.2016, Hon'ble High Court of Gujarat observed that issuance of invoices in itself does not violate the terms of the stay order dated 30.06.2015. However, the Court also ordered that that any attempt at coercive recovery of amounts raised through invoices by the Respondent for past dues would be in defiance of interim stay order passed on 30.06.2015.

xviii. On different dates i.e., 29.03.2018, 22.10.2018, 26.02.2019, 27.02.2019, the Respondent raised claim letters upon the Petitioner, though specifying that the matter of recovery of the provisional claim amounts mentioned therein have been kept in abeyance in terms of the orders dated 30.06.2015 and 18.02.2016 passed by the Hon'ble High Court of Gujarat and any further action qua recovery of above amount will be taken by the Respondent as per further directions.

xix. On 22.10.2018, the Respondent issued a claim letter raising an

aggregate claim of Rs.35,95,60,293/- calculated by the Respondent pursuant to FICC Certificate for the gas supplied during 2016-17. The said amount is calculated for gas supplied under the five different Contracts by the Respondent. The said claim letter 22.10.2018 is extracted below for ease of reference:

Without Prejudice
Date: 22.10.2018

Ref: GAIL/AZO/GAS MKTG/2018/GSFC/FICC

Shri HD Dalsania, Sr V.P.
Gujarat State Fertilizer & Chemicals Limited
PO Fertilizer Nagar, Vadodara,
Gujarat-391750

SUB: Claim against FICC certificate for usage of Domestic Gases for production of Urea during FY 2016-17 in reference to MoP&NG letter dated 02.07.2014 and 16.12.2015.

Dear Sir,

This has reference to MoP&NG Letter No. L-13013/3/2012-GP dated 02.07.2014 and L-13013/3/2012-GP-1 (Fls:23311) dated 16.12.2015 for submission of FICC certificate against the supply of domestic Gas to Fertilizer units for production of Urea.

In line with the above directives, the claim amount of GAIL calculated for various domestic gases for the period FY 2016-17 are tabulated below: (detailed calculations along with assumptions annexed).

Type of Gas	***FY***	***Claim Amount (Rs.)***
APM (HVJ)	*2016-17*	*5,21,31,384.00*
APM (SG)	*2016-17*	*7,08,03,903.00*

PMT	*2016-17*	*8,20,55,436.00*
PMT JV	*2016-17*	*5,16,05,932.00*
WOS	*2016-17*	*10,29,63,638.00*
GRAND TOTAL		*35,95,60,293.00*

You are requested to note & acknowledge the provisional claimed amount of Rs. 35,95,60,293/- only payable by GSFC to GAIL. Please note that the above amount has been calculated based on the available data and few assumptions, in cases where the data in requisite format is not available from FICC. The amount is subject to change, once complete data/ clarifications are received from FICC.
Please also note that matter of recovery of above provisional claim amount has been kept in abeyance by GAIL (India) Limited in terms of Order dated 30.06.2015 & 18.02.2016 passed by Hon'ble High Court of Gujarat in SCA No.9026 of 2015 & SCA No. 1444 of 2015 and any further action qua recovery of above amount will be taken by GAIL as per further directions of competent Court in the above stated matters.

Thanking you,

Yours sincerely,
Sd/-
(R Kumar)
Zonal CGM, Ahmedabad
rk01304@gail.co.in"

xx. Thereafter on 17.01.2019, FICC issued two letters to the Petitioner attaching its Annual Certificates for usage of domestic gas in the activities related to urea production during 2016-2017 and 2017-2018 respectively.

xxi. Claim/Demand Letters were issued by the Respondent raising

claims for the various contracts.

xxii. Challenging the Demand/Claim Letters, the Petitioner approached this Court by filing various petitions under Section 9 of the Arbitration and Conciliation Act, 1996 [**"Arbitration Act"**] which were disposed of by this Court by directing the Respondent to maintain the status quo. This Court, however, while disposing of the petitions of Section 9, constituted an Arbitral Tribunal and appointed Hon'ble Mr. Justice K.S.P. Radhakrishnan, retired Judge of Hon'ble Supreme Court as the Sole Arbitrator to adjudicate upon the disputes between the parties. The petitions filed under Section 9 were directed to be treated as applications filed under Section 17 of the Arbitration Act and it was also ordered that status quo order shall be continued till the learned Sole Arbitrator decides the controversy which have arisen between the parties.

xxiii. The challenge of the Petitioner before the learned Sole Arbitrator was against the demand notices issued by the Respondent. The Petitioner had also sought for a declaration that the demand for differential price of gas based on end use raised by the Respondent, purportedly as per the MoPNG's letter dated 16.12.2015 is illegal and contrary to the provisions of the contracts in question entered into between the parties. The claims made by the Petitioner before the learned Arbitrator in all the five cases are extracted below for reference and the same read as under:

(I) In O.M.P.(COMM)301/2023 the claims made by the

Petitioner are as follows:

> "*(a) In the facts and circumstances of the present case, the Hon'ble Tribunal may be pleased to hold and declare that the demand for differential price of gas based on end use raised by the Respondent purportedly as per the MoPNG letter dated 16.12.2015 is illegal and de hors the provisions of Contract and that the Respondent is not entitled to raise such demand;*
>
> *(b) In the facts and circumstances of the present case, the Hon'ble Tribunal may be pleased to hold and declare that the demand raised by the Respondent vide claim / demand letters dated 22.10.2018, 26.02.2019, 27.02.2019, 03.04.2019, 30.07.2019, 07.08.2019 and 31.10.2019 is illegal;*
>
> *(c) In the facts and circumstances of the present case, the Hon 'ble Tribunal may be pleased to quash and set aside the claim / demand letters dated 22.10.2018, 26.02.2019, 27.02.2019, 03.04.2019, 30.07.2019, 07.08.2019 and 31.10.2019;*
>
> *(d) In the facts and circumstances of the present case, the Hon'ble Tribunal may be pleased to grant a permanent injunction restraining the Respondent from taking any action against the Claimant to recover the said claim towards differential price of gas based on its end use raised vide claim / demand letters;*
>
> *(e) In the facts and circumstances of the present case, the Hon'ble Tribunal may be pleased to Award costs incurred by the Claimant in the proceedings before the Hon'ble Delhi High Court and before this Hon'ble Tribunal;*
>
> *(f) The Hon'ble Tribunal may grant such other*

relief(s) as may be necessary in the interest of justice and equity."

(II) In O.M.P.(COMM)302/2023 the claims made by the Petitioner are as follows:

"(a) In the facts and circumstances of the present case, the Hon'ble Tribunal may be pleased to hold and declare that the demand for differential price of gas based on end use raised by the Respondent purportedly as per the MoPNG letter dated 16.12.2015 is illegal and de hors the provisions of Contract and that the Respondent is not entitled to raise such demand

(b) in the facts and circumstances of the present case, the Hon'ble Tribunal may be pleased to hold and declare that the demand raised by the Respondent vide claim/demand letters dated 22.10.2018, 26.02.2019, 27.02.2019, 03.04.2019. 30.07.2019, 07.08.2019 and 31.10.2019 is illegal;

(c) in the facts and circumstances of the present case the Hon'ble Tribunal may be pleased to quash and set aside the claim / demand letters dated 22.10.2018 26.02.2019, 27.02.2018, 03.04.2019, 30.07.2019,07.08.2019 and 31.10.2019;

(d) in the facts and circumstances of the present case the Hon'ble Tribunal may be pleased in Award costs Incurred by the Claimant in the proceedings before the Hon'ble Delhi High Court and before this Hon'ble Tribunal"

(III) In O.M.P.(COMM)303/2023 the claims made by the Petitioner are as follows:

"(a) In the facts and circumstances of the present

case, the Hon'ble Tribunal may be pleased to hold and declare that the demand for differential price of gas based on end use raised by the Respondent purportedly as per the MoPNG letter dated 16.12.2015 is illegal and de hors the provisions of Contract and that the Respondent is not entitled to raise such demand;

(b) In the facts and circumstances of the present case, the Hon'ble Tribunal may be pleased to hold and declare that the demand raised by the Respondent vide claim / demand letters dated 22.10.2018, 26.02.2019, 27.02.2019, 03.04.2019 and 30.07.2019 is illegal;

(c) In the facts and circumstances of the present case, the Hon'ble Tribunal may be pleased to quash and set aside the claim / demand letters dated 22.10.2018, 26.02.2019, 27.02.2019, 03.04.2019 and 30.07.2019;

(d) In the facts and circumstances of the present case, the Hon'ble Tribunal may be pleased to grant a permanent injunction restraining the Respondent from taking any action against the Claimant to recover the said claim towards differential price of gas based on its end use raised vide claim / demand letters;

(e) In the facts and circumstances of the present case, the Hon'ble Tribunal may be pleased to Award costs incurred by the Claimant in the proceedings before the Hon'ble De1hi High Court and before this Hon'ble Tribunal;

(f) The Hon'ble Tribunal may grant such other relief(s) as may be necessary in the interest of justice and
equity."

(IV) In O.M.P.(COMM)304/2023 the claims made by the Petitioner are as follows:

> *" (a) In the facts and circumstances of the present case, the Hon'ble Tribunal may be pleased to hold and declare that the demand for differential price of gas hased on end use raised by the Respondent purportedly as per the MoPNG letter dated 16.12.2015 is illegal and de hors the provisions of Contract and that the Respondent is not entitled to raise such demand;*
>
> *(b) In the facts and circumstances of the present case, the Hon'ble Tribunal may be pleased to hold and declare that the demand raised by the Respondent vide claim / demand letters dated 22.10.2018, 26.02.2019 and 03.04.2019 is illegal;*
>
> *(c) In the facts and circumstances of the present case, the Hon'ble Tribunal may be pleased to quash and set aside the claim / demand letters dated 22.10.2018, 26.02.2019 and 03.04.2019;*
>
> *(d) In the facts and circumstances of the present case, the Hon'ble Tribunal may be pleased to grant a permanent injunction restraining the Respondent from taking any action against the Claimant to recover the said claim towards differential price of gas based on its end use raised vide claim / demand letters;*
>
> *(e) In the facts and circumstances of the present case, the Hon'ble Tribunal may be pleased to Award costs incurred by the Claimant in the proceedings before the Hon'ble Delhi High Court and before this Hon'ble Tribunal;*

(f) The Hon'ble Tribunal may grant such other relief(s) as may be necessary in the interest of justice and equity."

(V) In O.M.P.(COMM)305/2023 the claims made by the Petitioner are as follows:

" (a) In the facts and circumstances of the present case, the Hon'ble Tribunal may be pleased to hold and declare that the demand for differential price of gas based on end use raised by the Respondent purportedly as per the MoPNG letter dated 16.12.2015 is illegal and de hors the provisions of Contract and that the Respondent is not entitled to raise such demand;

(b) In the facts and circumstances of the present case, the Hon'ble Tribunal may be pleased to hold and declare that the demand raised by the Respondent vide claim demand letters dated 22.10.2018, 26.02.2019, 27.02.2019, 03.04.2019, 30.07.2019, 07.08.2019 and 31.10.2019 is illegal;

(c) In the facts and circumstances of the present case, the Hon'ble Tribunal may be pleased to quash and set aside the claim / demand letters dated 22.10.2018, 26.02.2019, 27.02.2019, 03.04.2019, 30.07.2019, 07.08.2019 and 31.10.2019;

(d) In the facts and circumstances of the present case, the Hon'ble Tribunal may be pleased to grant a permanent injunction restraining the Respondent from taking any action against the Claimant to recover the said claim towards differential price of gas based on its end use raised vide claim / demand letters;

(e) In the facts and circumstances of the present case, the Hon'ble Tribunal may be pleased to Award costs incurred by the Claimant in the proceedings before the Hon'ble Delhi High Court and before this Hon'ble Tribunal;

(f) The Hon'ble Tribunal may grant such other relief(s) as may be necessary in the interest of justice and equity."

xxiv. The Respondent raised counter-claims based on the various claim letters issued by it in the respective contracts in question for different financial years.

xxv. The learned Sole Arbitrator, after dealing with the distinct claims of the parties out of the distinct contracts, held that the pricing by the Respondent was done in terms of relevant clauses of the five contracts entered into between the parties.

xxvi. The learned Sole Arbitrator also noted – *albeit* separately – that all the five contracts contained clauses that impose restriction on the Petitioner as to the purpose of usage of gas, and that the parties to the said contracts are bound by the decision of the Government regarding the usage of gas.

xxvii. The learned Sole Arbitrator further observed that MoPNG *vide* its Notification dated 20.05.2015 notified the Guidelines for Pooling Gas for Fertilizer (Urea) Sector and the Respondent, which was appointed as the Gas Pool Operator, was obligated to follow the directions stipulated in the said Notification. It was the duty of the Respondent to collect the amounts due on account of the supply of gas made to the consumers at APM price and amounts so collected

to be passed on to the producer and supplier of APM Gas and other oil producers as stipulated under the various agreements. It was noted by the learned Sole Arbitrator that the Respondent only acts in accordance with the directives of MoPNG and Government of India and the amounts received from the consumers do not go to the Respondent's income or profit, but get deposited with the public exchequer.

xxviii. The learned Sole Arbitrator also noted that *vide* Letter dated 10.07.2006, the MoPNG had directed that APM gas used by fertilizer units for manufacturing of products other than urea must be charged at market price. The learned Sole Arbitrator also noted the instructions issued by the MoPNG *vide* its letter dated 02.07.2014, directing the Respondent to issue notice to all units to submit utilization certificates indicating the usage of gas supplied, within a period three months. The learned Sole Arbitrator also noted that the MoPNG had notified the Respondent that in case such utilization certificates are not received within the specified time, the Respondent would raise invoices for the differential amount between non-APM and APM gas price for the entire period and quantity of past supplies. The Arbitrator noted that MoPNG had directed the Respondent that for all future gas supplies to fertilizer units, the Respondent has to insist on quarterly returns duly certified by FICC and in case the same is not received in time, the Respondent would charge non-APM rates for the entire gas supply. The learned Sole Arbitrator was therefore, of the opinion that the Respondent was completely

bound by the directives of MoPNG. The learned Sole Arbitrator held that in terms of the MoPNG's directives, the highest rate of RLNG used for the production of urea would be charged for all other uses.

xxix. The learned Sole Arbitrator held that the fertilizer units, including the Petitioner herein, were well aware of the directives issued by MoPNG and that they were also well aware that the subsidised APM gas was to be used only for the production of urea which not only was specified in the contracts in question, but also was reiterated by the MoPNG from 20.06.2005 onwards. The learned Sole Arbitrator held that by way of the various directives, it was clearly stated that the subsidized APM Gas could be used only for the production of urea and if APM Gas is used by the fertilizer units for manufacture of products other than urea, the market rate would be charged.

xxx. The Arbitrator, therefore, rejected the contention of the Petitioner that the APM gas can be utilized for unrestricted industrial application, i.e., for non-urea purpose.

xxxi. The learned Sole Arbitrator further held that the revision of price and price methodology was introduced by the MoPNG from time to time and claims raised by the Respondent are squarely based on the directives of the Government and as such, the argument of the Petitioner that there is a retrospective revision of prices was incorrect. The learned Sole Arbitrator held that the MoPNG's directives contained in the letter dated 16.12.2015 were only a clarification of its earlier directives, which were already

communicated to the Petitioner. The learned Sole Arbitrator also observed that the Petitioner in Paragraph Nos.6 and 7 of the Statement of Claim has admitted that the pricing of domestic natural gas supplied by the Respondent is determined by the terms of the contract between the parties and the price of APM gas is regulated by MoPNG. The learned Sole Arbitrator also referred to clauses in the contracts in question, which specify that the rights and obligations of each party to the contracts in question, are subject to and governed by all applicable laws of India.

xxxii. The learned Sole Arbitrator further observed that the Respondent had no obligation or right to consider the data furnished by the Petitioner as it is bound by the directives of the MoPNG, which require the gas supplies to be duly certified by FICC, which is the only agency for calculating the eligibility of subsidy for the fertilizer units. The learned Sole Arbitrator held that the FICC alone can determine the usage of gas for urea/non-urea purpose and issue certificates to the respective fertilizer units, which Respondent is dependent on to thereafter raise invoices to the concerned fertilizer units.

xxxiii. The learned Sole Arbitrator, therefore, rejected the claims of the Petitioner challenging the various demand notices and held that these demand notices were valid and issued by the Respondent in terms of the directives of MoPNG.

xxxiv. The learned Sole Arbitrator also considered the counter-claims of the Respondent seeking payments on the basis of the claim letters, which were in turn based on the FICC certificates. The learned

Sole Arbitrator noted that the Respondent produced all the FICC certificates from FY 2014-15 till August 2019 and that claims have been raised by the Respondent in accordance with clauses contained in the contracts in question, read with the Office Memorandum of Department of Fertilizers dated 13.04.2009, MoPNG's directives dated 02.07.2014 and 16.12.2015. It was observed that all the demands made are prospective in nature, which have been made subsequent to the notification of MoPNG's directives dated 02.07.2014 and 16.12.2015. The learned Sole Arbitrator noted that only the retrospective claims up to the year 2013-14 have been kept in abeyance by the Stay Order passed by the Hon'ble High Court of Gujarat in SCA No. 9026/2015.

The learned Sole Arbitrator was of the opinion that the Petitioner had committed delay in furnishing details to FICC and as and when certificates were issued by FICC, the demand notices were issued by the Respondent. The Petitioner had also raised the issue of limitation which was negated by the Arbitrator based on Sections 15 and 16 of the Limitation Act. Resultantly, the Arbitrator rejected the claims made by the Petitioner and allowed the counter-claims raised by the Respondent.

xxxv. It is this Award dated 29.07.2023 passed by the learned Sole Arbitrator in the five connected arbitrations arising out of the contracts in questions, which is under challenge in the present batch of petitions under Section 34 of the Arbitration Act.

6. Learned Senior Counsel appearing for the Petitioner states has made the following submissions before this Court:

a. It is stated that at least two of the Contracts dated 05.07.2008 which arise in O.M.P. (COMM) 301/2023 and O.M.P. (COMM) 303/2023 does not have any clause restricting the user of the gas or prohibiting the use of the gas for a particular purpose or permitting the use of gas only for a particular product. He states that assuming that the two letters dated 02.07.2014 and 16.12.2015 issued by MoPNG to the Respondent amount to a variation of the contracts, then the Respondent could not have raised the claims without following the mechanism prescribed by the MoPNG in the said two letters.

b. It is further stated that MoPNG's Letter dated 16.12.2015 deals only with the diversion of gas and does not relate to price fixation. He further states that the difference of rate between the domestic gas and the highest price of RLNG used for production of urea during the concerned period shall be applied to the quantum of gas which was not certified to be used for the production of urea. He also states that it was for the Respondent to bring it to the notice of all the units to submit utilization certificate indicating the usage of gas supply within a period of three months duly certified by the FICC. He further submits that the Letter dated 16.12.2015 records that the Respondent has to issue invoices based on FICC Certificate which has not been done by the Respondent, and therefore, the provisional bills are not in line with the directives of the MoPNG.

c. It is further stated that the Respondent has admitted that for the period up to March 2017 and beyond, the FICC has not issued any monthly certificate to the Petitioner and in the absence of such certificates, the Respondent has raised provisional claims based on assumptions and

bills cannot be raised only on the ground of assumptions. He states the Petitioner has duly provided all the data to the Respondent, and if there was any delay in collating the data and issuance of FICC certificates, the Petitioner cannot be blamed for the same. He states that both FICC and MoPNG, being the Central Government Agencies, were duty bound to co-ordinate with each other, as the mechanism was prescribed by the MoPNG itself and the bills could not be raised *de hors* following such mechanism. He states that there is no evidence on record to show that the data was not furnished by the Petitioner which caused delay in FICC certification, and therefore, the *ad hoc* demand notices issued by the Respondent are completely contrary to law.

d. Learned Senior Counsel for the Petitioner further states that the claim letters are based on annual FICC Certificate and the annual consumption of gas is simply an average of 12 months, leading to erroneous claims. He states that the the learned Sole Arbitrator has not dealt with this issue at all in the award. He further states that the consumption of gas varies from each month and if the consumption is lesser than the average, then no credit is given for those months. He also states that for the period from 2017 onwards, the demand has not been raised on the basis of the FICC Certificates, instead the demand has been raised on the basis of gas pooling data which is contrary to the mechanism prescribed by the MoPNG *vide* its two Letters dated 02.07.2014 and 16.12.2015.

e. The learned Senior Counsel for the Petitioner has laid emphasis on the argument that provisional bills cannot be raised when the amount

stated to be paid is based on assumption. He states that without provisional bills being finalized, the demand letters could not have been issued, and therefore, the claim of the Petitioner for declaring these provisional bills to be bad ,ought to have been accepted by the learned Sole Arbitrator.

f. The learned Senior Counsel for the Petitioner has been critical about the Impugned Award by stating that the proceedings have been conducted by the learned Sole Arbitrator as if it was a writ petition. He states that there is no evidence to show as to how the quantification has been made and merely on the *ipse dixit* of the Respondent, the counter-claims have been allowed. He states that substantial liability has been fastened on the Petitioner based on paper calculations, without any cogent evidence in support thereof. He states that no evidence has been led by the Respondent before the learned Sole Arbitrator to show the highest rate of RLNG for urea during the concerned period which was to be applied in terms of the Letter dated 16.12.2015 issued by MoPNG, especially when all the demands were provisional in nature. He states that this assumes significance when the Petitioner has specifically denied the computations of claims.

g. Learned Senior Counsel for the Petitioner further states that the Impugned Award passed in all the 5 cases are a copy-paste Award by only making some changes in dates and clause numbers. He states that the language and purport of the contractual provisions significantly varies in different sets of contracts but the findings of the learned Sole Arbitrator are more or less identical in all the Awards.

h. Learned Senior Counsel for the Petitioner further states that the Arbitrator has travelled beyond the terms of the Contracts. He contends that the contracts in question cannot be novated by the letters of MoPNG without the contracts in question being amended with the consent of both the parties. He further states that in the contracts dated 05.07.2008 which arise in O.M.P. (COMM) 301/2023 and O.M.P. (COMM) 303/2023, there is no restriction in the usage of natural gas in any manner and it only links the price of the gas to the APM gas. He states that in both the Contracts dated 05.07.2008, the parties envisaged that the gas can be used for industrial utilization as fuel. He states that the Petitioner was, therefore, free to use the gas for any purpose and was not restricted to only using it for urea production.

i. Learned Senior Counsel for the Petitioner further states that on reading of Article 10.1 (a) and (b) of the Agreement fixes the price not exceeding the ceiling price of USD 5.57 per Metric Million British Thermal Unit ["**MMBTU**"] for supplies from Mid & South Tapti fields and USD 5.73 per MMBTU for supplies from Panna-Mukta fields. He states that the directives of the MoPNG cannot be applicable to these contracts in question without them being specifically amended, with the consent of both parties. He states that the Arbitrator has completely ignored this aspect while holding that the parties would be bound by the directives of the MoPNG. He states that the demands raised by the Respondent are therefore completely contrary to the contractual provisions and could not have been decreed by the learned Sole Arbitrator. He states that the procedure

for amending the contract has been given in Article 17.4 of the Contracts dated 05.07.2008 and Article 18.4 of the Contracts dated 27.01.2016, and unless the contracts in question were amended, there could not have been any increase in price.

j. Learned Senior Counsel for the Petitioner further states that as far as the second set of Contracts are concerned i.e., dated 27.01.2016 where the gas is sourced from Gandhar (South Gujarat Low Pressure Gas) and HVJ, the Contracts note that the gas is being used for industrial application as feedstock and the Petitioner has agreed to purchase the gas from the Respondent and pay for the same as per the terms and conditions of the Contracts. He states that since the price fixation is given by Article 10.2 of the Contracts, there was no doubt it would be in accordance with the directives of MoPNG. He states that however, the demands cannot be raised by the Respondent in a manner *de hors* the price mechanism as fixed in the Contracts.

k. Learned Senior Counsel for the Petitioner points out that two contracts were executed on 27.01.2016, which is post the issuance of the letter dated 16.12.2015 issued by the MOPNG. He states that despite the MoPNG Letter, the Petitioner in terms of these Contracts was free to use the gas supplied under the Contracts for industrial application as feedstock and/or fuel for manufacturing at its fertilizers and chemicals plant at Vadodara. He states that the argument raised in respect of the first set of Contracts, applies to the second of Contracts also, to state that the Arbitrator could not have gone beyond the terms of the contract. He states that the demand raised by the Respondent is against the specific provisions of these Contracts, which expressly

permit the Petitioner/Claimant to use gas for its industrial application as feedstock and/or fuel. It is, therefore, submitted that such demand being *de hors* the contractual provisions cannot be decreed by the learned Sole Arbitrator. He further states that no evidence was produced by the Respondent to show that the use of gas by the Petitioner was beyond the use contemplated by MoPNG and/or the Contracts in question. He states that the price of gas should have been arrived at as per New Domestic Natural Gas Pricing Guidelines, 2014 dated 25.10.2014, irrespective of the end-use. He states that the demands in dispute, are in the nature of penalty which has been imposed without any basis.

l. Learned Senior Counsel for the Petitioner further states that as far as the Contract dated 29.12.2011, which is covered in O.M.P. (COMM) 305/2023 is concerned, he would adopt the arguments raised in O.M.P. (COMM) 301/2023 and O.M.P. (COMM) 302/2023. He further states that counter-claims of the Respondent could not have been awarded at all as the demands have been made after a period of 3 years of the supply of gas and thus, the counter claims of the Respondent are time barred. He states that the learned Sole Arbitrator could not have applied Article 112 of the Constitution of India. He states that the period for which the gas is claimed i.e., 2014-15, 2015-16, 2016-2017 and April, 2017 to July, 2017 and last of the demand letter is dated 26.02.2019, the same is beyond period of 3 years.

7. *Per contra*, learned Senior Counsel appearing for the Respondent has submitted as follows:

a. It is stated that the Impugned Award is a well-reasoned, covers each

and every argument advanced as well as the evidence led by the parties and leaves limited scope of interference by this Court under Article 34 of the A&C Act. He states that the Impugned Award is neither perverse, in violation of the fundamental policy of India nor is there any patent illegality contained therein. He states that the learned Sole Arbitrator has considered every material and every argument and after considering all the aspects, the Arbitrator has come to the conclusion. He states that it cannot be said that no fair minded person would have taken such a view as taken by the learned Sole Arbitrator it is in a nature which shocks the conscience of the Court. He states that the Impugned Award is also not in violation of the public policy of India.

b. Learned Senior Counsel for the Respondent further states that both the parties are *ad idem* on the condition that the pricing of the gas in every contract in question was subject to the Government orders from time to time and that this fact has been stated in the by the Petitioner Statement of Claims itself. He draws attention of this Court towards Paragraph No. 6 of the Statement of Claims wherein the Petitioner had agreed that the pricing of the gas was subject to the Government pricing order from time to time and MoPNG being the administer of pricing of natural gas, the price for particular period of the contract in question was determined for the quantity of gas supplied under the contracts in question.

c. He states that APM gas is subsidised gas which is not correlated to market pricing as such prices and usage of APM gas is the prerogative of the Government in terms of its policies. He states that there cannot

be any right accrued to the Petitioner for using the APM gas in a manner as desired by the it and only the Government has the power to regulate the user(s) of APM gas. He states that MoPNG *vide* its Gas Allocation and Pricing Policy dated 20.06.2005 as well as the directives contained in the Letter dated 10.07.2006, has specified that all APM gas supplied should be utilized for the production of urea only. He states that the Department of Fertilizers had also directed that APM gas should be used for production of urea. He states that at that relevant point of time, all the fertilizer units had to give a certificate regarding usage of this gas and since it was found by the Government that user certificate was not being received and no information was forthcoming, the Government decided to issue the letter dated 02.07.2014.

d. Learned Senior Counsel for the Respondent further states that the Petitioner's contention of the contracts in question not containing any regulation on the usage of gas, is misplaced. He states that Article 16.1 contained in the Contracts dated 05.07.2008 specifically states that the usage of gas has to be approved by the Government of India. He states that similar stipulations are there in all the contracts in question. He states that Clause 17.1 also specifies that the rights and obligations of each party under the Contract is subject to and governed by all the applicable laws in India. He states that this clearly means that the Petitioner is bound by the directives of the MoPNG issued from time to time. It is further stated that it cannot be said that the Petitioner was not aware of the developments and the directives of the Government of India in this regard. He states that by virtue of

Article 73 read with Entry 53 of List-I of the Seventh Schedule of the Constitution of India, the Union of India has the power to legislate and take policy decisions in the matters *inter alia* relating to petroleum and petroleum products. He states that both the Petitioner and the Respondent are bound by the directives of the Union of India. He states that the Respondent is merely acting for and in accordance with the direction of the Government of India and the amounts so collected on account of sale of gas is deposited with the Public Exchequer which is neither the Respondent's income nor profit.

e. Learned Senior Counsel for the Respondent further states that the contention of the Petitioner that the Arbitrator has conducted the proceedings as a writ petition cannot be accepted, as the Petitioner has not challenged the existence or contents of the MoPNG's directives and as such, what was already admitted by the Petitioner need not be proved by the Respondent.

f. Learned Senior Counsel for the Respondent further states that the contention of the Petitioner that the mechanism as stipulated in the MoPNG's Letters dated 02.07.2014 and 16.12.2015 has not been followed and, therefore, claims raised by the Respondent is in variance of the directives prescribed by the MoPNG, also cannot be accepted. He states that the fixation of price is governed by Paragraphs (iii) and (iv) of MoPNG's Letter dated 16.12.2015. He states that the argument of the Petitioner that no evidence has been adduced for proving the veracity of highest rate of RLNG for production of urea, is incorrect. He states that work sheets have been annexed with the demand/claim letters raised by the Respondent,

giving the exact methodology adopted to calculate such claims. He states that the Petitioner has not disputed the methodology along with the work sheets, other than a vague denial that the work sheets do not give the highest rate of RLNG for production of urea and, therefore, there was no reason for the learned Sole Arbitrator to disbelieve the work sheets given by the Respondent. He states that the marginal notes in the work sheets attached to the claim letters clearly explains the methodology, including the calculation of the highest rate of RLNG, applied for the determination of differential amount payable and that there cannot be any dispute regarding the same.

g. Learned Senior Counsel for the Respondent further states that the Petitioner's contention regarding the Respondent's variance in procedure from the manner prescribed in the Letter dated 16.12.2015 is an issue dealt with by the learned Sole Arbitrator quite elaborately. He states that the Respondent was bound by the gas utilization certificate issued by the FICC and demand notices have been raised only on the basis of certificates issued by the FICC. He states that if there was any discrepancy in the nature of usage of gas, it was for the Petitioner to bring the clarification and raise objections, which has not been done by the Petitioner. He states that the delay in getting the FICC certificates is purely on the Petitioner and the Respondent, which has to calculate the amount on behalf of the producers of gas, has raised the claims in accordance with the directives of the Government. He states that the claim letters were very categorical in stating that they were provisional in nature and the Respondent's counter-claims have been made only on the basis of FICC certificates

duly certified. He states that the final demand letter dated 16.06.2020 gives reference of all the claim letters which the Petitioner had challenged before the learned Sole Arbitrator. He states that the Respondent has produced the FICC certificates in support of its counterclaims before the learned Sole Arbitrator. He states that once payment is made on the basis of provisional letters, they are only subject to adjustment, and therefore, it was not open for the Petitioner to raise this argument. He further states that there was no application to make these payments based on the demand letters which are under challenge. He states that the application came first time on 03.04.2019 when recovery notices were sent which were based on FICC certificates. He states that the Petitioner ought to have challenged the provisional demands. He states that the contention of the Petitioner that the Respondent has raised the claims *de hors* the provisions of Contracts is completely erroneous.

h. Learned Senior Counsel for the Respondent further states that the claim letters were issued as and when the certificates were issued by the FICC and, therefore, counter-claims, which are squarely based on FICC certificates on the basis of which final claim is calculated, cannot be said to be beyond the period of limitation.

8. Heard learned Senior Counsels appearing for the parties and perused the material on record.

9. The challenge in these petitions is to the Impugned Award dated 29.07.2023 passed by the learned Sole Arbitrator dismissing the claims of the Petitioner whereunder the Petitioner has challenged the demand notices issued by the Respondent which are stated to be provisional in nature, and

allowing the counter-claims raised by the Respondent. Petitioner's grievance is also that the learned Sole Arbitrator has rejected the argument of limitation put up by the Petitioner.

10. Before this Court renders its findings on the merits of the present petitions, it is apposite to recall the law laid down by the Apex Court through various judgments as to the four corners within which a court may interfere when adjudicating upon an application under Section 34 of the A&C Act.

11. The most recent pronouncement Apex Court explaining the scope for judicial interference in arbitral awards in Section 34 of the A&C Act was rendered in OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd., **(2025) 2 SCC 417** ["**OPG v. Enexio**"] has held as under:

> ***"69.*** *Perversity as a ground for setting aside an arbitral award was recognised in Western Geco [ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] . Therein it was observed that an arbitral decision must not be perverse or so irrational that no reasonable person would have arrived at the same. It was observed that if an award is perverse, it would be against the public policy of India.*
>
> ***70.*** *In Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] certain tests were laid down to determine whether a decision of an Arbitral Tribunal could be considered perverse. In this context, it was observed that where:*
>
> *(i) a finding is based on no evidence; or*

(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or

(iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.

However, by way of a note of caution, it was observed that when a court applies these tests it does not act as a court of appeal and, consequently, errors of fact cannot be corrected. Though, a possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It was also observed that an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on that score.

***71.** In Ssangyong [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , which dealt with the legal position post the 2015 Amendment in Section 34 of the 1996 Act, it was observed that a decision which is perverse, while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. It was pointed out that an award based on no evidence, or which ignores vital evidence, would be perverse and thus patently illegal. It was also observed that a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse [See Ssangyong Engg. case, (2019) 15 SCC 131, para 41 : (2020) 2 SCC (Civ) 213] .*

72. *The tests laid down in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] to determine perversity were followed in Ssangyong [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] and later approved by a three-Judge Bench of this Court in Patel Engg. Ltd. v. North Eastern Electric Power Corpn. Ltd. [Patel Engg. Ltd. v. North Eastern Electric Power Corpn. Ltd., (2020) 7 SCC 167 : (2020) 4 SCC (Civ) 149]*

73. *In a recent three-Judge Bench decision of this Court in DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd. [DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd., (2024) 6 SCC 357 : (2024) 3 SCC (Civ) 112 : 2024 INSC 292] , the ground of patent illegality/perversity was delineated in the following terms : (SCC p. 376, para 39)*

"39. In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view. A finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside under the head of "patent illegality". An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within its jurisdiction or violating a fundamental principle of natural justice."

74. The aforesaid judicial precedents make it clear that while exercising power under Section 34 of the 1996 Act the Court does not sit in appeal over the arbitral award. Interference with an arbitral award is

only on limited grounds as set out in Section 34 of the 1996 Act. A possible view by the arbitrator on facts is to be respected as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It is only when an arbitral award could be categorised as perverse, that on an error of fact an arbitral award may be set aside. Further, a mere erroneous application of the law or wrong appreciation of evidence by itself is not a ground to set aside an award as is clear from the provisions of sub-section (2-A) of Section 34 of the 1996 Act.

75. In Dyna Technologies [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1, paras 27-43] , a three-Judge Bench of this Court held that courts need to be cognizant of the fact that arbitral awards are not to be interfered with in a casual and cavalier manner, unless the court concludes that the perversity of the award goes to the root of the matter and there is no possibility of an alternative interpretation that may sustain the arbitral award. It was observed that jurisdiction under Section 34 cannot be equated with the normal appellate jurisdiction. Rather, the approach ought to be to respect the finality of the arbitral award as well as party's autonomy to get their dispute adjudicated by an alternative forum as provided under the law.

[Emphasis Supplied]

12. Further, in the case of Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd. & Ors., **(2018) 3 SCC 133**, the Apex Court has held that Arbitral Tribunal is the master of evidence and a finding of fact arrived at by an arbitrator is on an appreciation of the evidence on record, and is not to be scrutinized as if the Court was sitting in appeal. At paragraph 51 of the judgment, it is observed and held as under:

"*51. Categorical findings are arrived at by the Arbitral Tribunal to the effect that insofar as Respondent 2 is concerned, it was always ready and willing to perform its contractual obligations, but was prevented by the appellant from such performance. Another specific finding which is returned by the Arbitral Tribunal is that the appellant had not given the list of locations and, therefore, its submissions that Respondent 2 had adequate lists of locations. In fact, on this count, the Arbitral Tribunal has commented upon the working of the appellant itself and expressed its dismay about lack of control by the Head Office of the appellant over the field offices which led to the failure of the contract.* ***These findings of facts which are arrived at by the Arbitral Tribunal after appreciating the evidence and documents on record. From these findings it stands established that there is a fundamental breach on the part of the appellant in carrying out its obligations, with no fault of Respondent which had invested whopping amount of Rs 163 crores in the project****. A perusal of the award reveals that the Tribunal investigated the conduct of the entire transaction between the parties pertaining to the work order, including withholding of DTC locations, allegations and counter-allegations by the parties concerning installed objects. The arbitrators did not focus on a particular breach qua particular number of objects/class of objects. Respondent 2 is right in its submission that the fundamental breach, by its very nature, pervades the entire contract and once committed, the contract as a whole stands abrogated. It is on the aforesaid basis that the Arbitral Tribunal has come to the conclusion that the termination of contract by Respondent 2 was in order and valid.* ***The proposition of law that the Arbitral Tribunal is the master of evidence and the findings of fact which are arrived at by the arbitrators on the basis of evidence on record are not to be scrutinized as if the Court was sitting in appeal now stands settled by a catena of***

judgments pronounced by this Court without any exception thereto."

[Emphasis Added]

13. The aforesaid position has also been discussed by the Apex Court in the case of State of Jharkhand & Ors. v. HSS Integrated Sdn. & Anr., **(2019) 9 SCC 798.**

14. Now, coming to the facts of the present case, the Petitioner is engaged in the manufacturing of various types of fertilizers like Urea, Ammonium Phosphate Sulphate (APS) and Ammonium Sulphate (AS), etc. The Petitioner has manufacturing plants at various places in Gujarat. On the other hand, the Respondent is *inter alia* responsible for procuring and selling domestic gas from the source fields of ONGC, Oil, Tapti, Panna-Mukta and Ravva Agreement area, as well as other sources in India. The Respondent owns and operates pipeline networks and supplies gas to various entities, including the Petitioner.

15. The Petitioner and the Respondent entered into five Contracts for supply of gas from various sources to the plants of the Petitioner. Under Article 73 read with Entry 53 of List-I of the Seventh Schedule of the Constitution of India, the Union of India has the power to legislate and take policy decisions in the matters *inter alia* relating to petroleum and petroleum products. The Government of India issues various notifications in this regard and these notifications are laws within the meaning of Article 12 of the Constitution of India. The Union of India therefore has the power to restrict the utilization of the products which fall under Entry 53, List I of the Seventh Schedule.

16. The contracts in question describe the Respondent as the seller and the Petitioner as the buyer, and the Respondent is described as an entity

engaged *inter-alia* in the business of transporting, trading and marketing of gas and it is doing so pursuant to the decisions taken by the Government of India and has been designated as the nominee of the Government. The terms and agreements contained in the contracts in question evidently stipulate that the Petitioner can use the products purchased by it under the said contracts, unless otherwise approved by the Government and violation thereof attracts termination of the contracts. The contracts in question also stipulate that the rights and obligations of each party is subject to and governed by all applicable laws in India.

17. The Respondent is obliged to take the price of the gas from the users of the gas, which is the Petitioner in the instant case and has to transmit such price to the gas producers like ONGC, etc. As rightly contended by the learned Senior Counsel for the Respondent and observed by the learned Sole Arbitrator, neither the Petitioner nor the Respondent can violate any of the directives issued by the MoPNG. The contracts in question are subject to the directives of the MoPNG and it cannot be said that the Petitioner has got an unrestricted right to use the gas in whatever manner it wants to. The learned Sole Arbitrator has referred to Clauses 16.1 and 17.2 of the Contract which arise in O.M.P. (COMM)-301/2023. The said Clauses read as under:

> *"**ARTICLE – 16***
> ***RESALE AND RESTRICTION ON USE OF GAS***
>
> ***16.1** The BUYER shall not be entitled to sell Gas to any other party nor will use it for any other purpose/application other than those contemplated in this Contract unless and otherwise approved by Govt. of India and/or mutually agreed to in writing by the BUYER and the SELLER.*
>
> *xxx*

17.2 Governing Law

This Contract and the rights and obligations of each Party under this Contract is subject to and governed by all applicable Laws of India."

18. It goes without saying that the above extracted clauses are part of the contracts in question and as such, it is implied that the parties thereto are *ad idem* in respect of all the stipulations therein. It is also the admitted case of the Petitioner that pricing of the gas in every Contract was made subject to the Government pricing orders from time to time.

19. This Court also deems to appropriate to shed light on the concerned CAG Report No. 8 for the year 2012-13, which has been quite critical about the under-realization of the amounts in the Gas Pool Account, for which the Respondent is responsible. The Report is essential for discussion as the same is evidently the basis of several of MoPNG's directives, including the ones referred to in the present petitions. A perusal of the CAG Report indicates that the MoPNG had ever since June 2005, restricted the use of APM gas for fertilizer production and certain power generating companies. However, as undue benefit of APM gas had been previously extended to other consumers as well, the CAG noted an under recovery in the Gas Pool Account as well as deprivation of eligible consumers to APM gas. The CAG Report further underscores that substantial loss has been incurred to the Government on account of undue utilization of APM gas for non-fertilizer products as well as the non-availability of information regarding the usage of gas by fertilizer companies.

20. Admittedly, the Government does subsidize a limited portion of the gas by fixing a set price which is lesser than the market price of the gas. By

such subsidization, the Government regulates the use of the gas which is to be sold at a controlled price called as the APM Price. *Vide* a letter dated 20.06.2005 laying down the 'Allocation and Pricing of Natural Gas', the MoPNG had *inter alia* decided in public interest that all available APM gas would be supplied only to the power and fertilizer sector consumers.

21. Notwithstanding the decision of the MoPNG in the letter dated 20.06.2005, when it was observed that some fertilizer units like the Rashtriya Fertilizer and Chemicals Limited ["**RCF**"] and Deepak Fertilizer & Petrochemical Limited ["**DFPCL**"] were using APM gas for production of fertilizers as well as chemicals like methanol, the MoPNG had directed the Respondent *vide* its letter dated 10.07.2006 to ensure that usage of APM gas for manufacturing of products other than fertilizers should be charged at market price only.

22. It follows from the letters issued by the MoPNG in conjunction with the CAG Report that the among other concerns, the process of self-certification was not yielding results, and as a result, the MoPNG *vide* its Letter dated 02.07.2014 came out with the following modalities:

> "*(i) For all future gas supplies to fertilizer units, GAIL would insist on quarterly returns, duly certified by the Fertilizer Industry Coordination Committee (FICC) (the agency responsible for calculating the eligibility of subsidy for fertilizer plants). In case the quarterly statements, duly certified by FICC, are not received in time, GAIL would charge non-APM rates for the entire gas supplied.*
>
> *(ii) For past period, GAIL may issue a notice to all the units to submit the utilisation certificate indicating the usage of supplied gas within a period of three months, duly certified by FICC, taking which, GAIL would raise invoice for the differential amount between non-*

APM and APM gas price for the entire period and quantity of past supplies."

23. The aforesaid modalities were subsequently taken note of and subscribed to *vide* an Office Memorandum dated 20.10.2014 released by the Department of Fertilizers. In the said Office Memorandum, it was stated that the urea producing units submit their annual claims after the end of financial year, on finalization of their annual accounts. This Office Memorandum, that was addressed to several fertilizer units including the Petitioner herein, also stated that the FICC would provide the data for the quantity of gas utilized for the production of urea annually, after approval of annual concession rates by the Department of Fertilizers. It was also stated that the FICC works out the quantum of energy requirement for actual urea production during the year and allocates the available quantity of APM gas keeping in view the relevant policy of the Government regarding the usage of APM gas. The Government directed that the FICC can provide the date usage of APM gas in urea production for fixing the price after approval of the annual concession rates by the Department of Fertilizers, meaning thereby, the APM gas was to be utilised only for the urea fertilizers and not for the other fertilizers. This was so because if the APM gas is used for other fertilizers, the subsidy of the Government would increase.

24. As such, this Court is of the view that the CAG Report read in conjunction with the various letters issued by the MoPNG were sufficiently clear in conveying APM gas would only be used for production of urea. The learned Sole Arbitrator, therefore, after considering the various directives of MoPNG was correct in holding that all the fertilizers units were aware of the directives of the MoPNG regarding the use of APM gas. The learned Sole

Arbitrator is also correct in coming to the conclusion that if the fertilizer units use the APM gas for manufacturing of products other than urea, they will be liable to pay the market rates.

25. In order to further supplement the aforesaid directives of the MoPNG, even the contracts in question have placed restriction on the usage of gas by the Petitioner. The relevant of the contracts in question are extracted below for ready reference:

a) <u>PMT-PSC Contract dated 05.07.2008 [in OMP (COMM.) 301/2023]</u>

*"**ARTICLE – 16***
RESALE AND RESTRICTION ON USE OF GAS

***16.1** The BUYER shall not be entitled to sell Gas to any other party nor will use it for any other purpose/application other than those contemplated in this Contract unless and otherwise approved by Govt. of India and/or mutually agreed to in writing by the BUYER and the SELLER.*

xxx

17.2 Governing Law

This Contract and the rights and obligations of each Party under this Contract is subject to and governed by all applicable Laws of India."

b) <u>Gandhar Supplies Contract [OMP (COMM.) 302/2023]</u>

"***ARTICLE 10***
<u>PRICE</u>
xxx

10.2 Gas Price
(a) The Gas Price payable by the BUYER to the SELLER shall be in accordance with the

*directives/guidelines/orders etc. of the GoI/MoPNG from time to time. The present gas price is as per the New Domestic Natural Gas Pricing Guidelines, 2014 dated 25th October 2014 notified by the Government (placed at **Annexure 3**). In accordance with para 8 of the said guidelines, Director General of Petroleum Planning and Analysis Cell (DG-PPAC) under the Ministry of Petroleum and Natural Gas shall notify the periodic revision of prices.*

xxx

(b) Notwithstanding Article 10.2(a), any directive, instruction, order clarifications etc. of the MoP&NG/Government of India issued from time to time in respect of gas price shall be applicable and such gas price shall be payable by the BUYER for gas supplies under this Agreement. Any revision in gas price resulting from such directive, instruction, order clarifications, etc. shall be applicable from the date as specified therein, whether retrospective or prospective.

(c) BUYER further agrees that for gas supplies beyond APM allocation, the gas price may be different as per directives/orders of the Government and the BUYER shall undertakes to pay the same.

Xxx

***10.7** The applicability of above Price/Gas Price/Transmission charges/ Marketing Margin etc., under Article 10 is subject to any law or promulgation or directives, regulation or ordinance or executive order of MoP&NG/Government Agency, if any, from time to time.*"

c) <u>PMT-APM Contract [OMP (COMM.) 303/2023]</u>

26. Provisions restricting usage of gas in the abovementioned contract are

similar to those contained in the PMT-PSC Contract.

d) <u>HVJ Contract [OMP (COMM.) 304/2023]</u>

27. Provisions restricting usage of gas in the abovementioned contract are similar to those contained in the Gandhar Supplies Contract.

e) <u>Term Sheet dated 29.12.2011 [OMP (COMM.) 305/2023]</u>

16	*Gas Price*	*<u>Gas Price</u>* *xxx* *4. Above prices shall be revised as per orders from MoPNG from time to time and the same shall be binding on both the parties.*
20	*Declaration use of gas*	*(b) Buyer confirms that the gas supplies under this Term Sheet shall be used for the purpose of production of urea.*
31	*Change in law / Government directives*	*Buyer agrees that any directive from Government/Government agency, change in policy thereof pertaining to any term and condition of this term sheet shall be applicable and binding on Parties to this Term Sheet.*

28. Perusal of the abovementioned articles contained in the contracts in question makes it abundantly clear that the learned Sole Arbitrator has arrived at the conclusion that both the parties knew that the buyer of the gas will not be entitled to sell the gas to any other party and they cannot use the gas for any other purpose other than those contemplated in the contracts in question, unless and otherwise approved by the Government of India. The learned Sole Arbitrator has correctly held that even if the Contracts do not contemplate of any restriction regarding the user of the gas, the parties to the

contracts in question had decided to restrict themselves to the directives of the Union of India regarding the usage of gas. This Court is, therefore, unable to accept the argument of the Petitioner that the learned Sole Arbitrator has gone beyond the scope of the contracts in question. There is no question of any violation of the contracts in question as the parties had willingly decided to follow the directives of the Union of India regarding the usage of APM gas.

29. The second major argument of the Petitioner is that the Respondent did not adhere to the mechanism as stipulated in the Letters dated 02.07.2014 and 16.12.2015 issued by MoPNG. A perusal of the directives of 16.12.2015 stipulates that the highest rate of RLNG will be used for calculating the price of gas for manufacture products other than urea after 01.11.2014. As rightly held by the learned Sole Arbitrator, the worksheets annexed to the respective claim letters, which were a part of the demand notices, provides the methodology adopted for determining the highest rate of RLNG. Practically speaking, the liability to make the payment arises only after final claims are made. Therefore, the view taken by the learned Sole Arbitrator to only reject the demand notices, on the basis that they were provisional in nature, ought to be rejected, as in any case, the mechanism as stipulated in the MoPNG's Letter dated 16.12.2015 had been followed.

30. Similarly, the learned Sole Arbitrator has also correctly held that the Respondent was justified in raising the provisional demand notices based on the highest rate of RLNG and later on adjusting the price on the basis of FICC certificates by putting APM gas price for urea. This observation of the learned Sole Arbitrator is again based on the factum that the Respondent, being the gas pool operator and bound by the directives of the Government

of India, has carried out the necessary adjustments after receiving the certificates from FICC and thereafter raised the demand notices.

31. The learned Sole Arbitrator has also gone into the aforementioned work sheets provided by the Respondent as evidence for calculating the amount due. The contention raised by the learned Counsel for the Petitioner that the work sheets had to be proved does not merit acceptance. As laid down in a catena of judgments of the Apex Court, the Arbitral Tribunal is the master of evidence laid before him/her, as also the ultimate judge of the quantity and quality of such evidence produced him/her. Nothing has been shown by the Petitioner before this Court as to how the work sheets are wrong, and as such, the mere fact that it was not proved by the Respondent would not make the Impugned Award perverse. The Petitioner has not raised any issue before the learned Sole Arbitrator to state that the figures in the work sheets are not correct and solely by stating that the work sheets have not been proved is not sufficient because in arbitration proceedings, strict rules of evidence need not be followed by the Arbitral Tribunal.

32. The learned Arbitrator has deal with the issue of limitation by observing as under:

> "***61***. *The Tribunal has already indicated that the respondent wnicn is a Government Company incorporated under the Indian Companies Act, 1956 is engaged in the business of transporting, trading and marketing of Gas pursuant to the decisions taken by the Government of India, as the designated nominee of the Government. MoPNG has appointed the respondent as the Gas Pool Operator and as a Gas Pool Operator, the respondent merely collects the amount due on account of Gas supplies made to the consumers at both APM and non-APM prices and thereafter the amount collected is handed over to the*

producer and suppliers of APM Gas, such as ONGC, OIL, etc. The respondent it may be noted is merely acting for and in accordance with the direction of the Govt. of India and the amounts collected on account of sale of Gas is deposited in the Public Exchequer which is neither its income nor profit. In the above factual ground we have to examine the plea of limitation.

***62**. The respondent it may be noted can raise the demand only upon receipt of FICC certificates certifying the usage of APM Gas by the Claimant for the production of Gas for urea and non- urea purpose. Details regarding usage of Gas is exclusively within the knowledge of the Claimant. MoPNG directives which are applicable to the parties clearly say that the basis of the demand notices/claims are the certificates issued by FICC. The Claimant is contractually as well as, on the basis of the various directives issued by MoPNG is obliged to provide the details to FICC, and FICC has to examine the same and provide certificates to the respondent upon which only the respondent can raise demand notices or claim letters. Facts would show that it was the Claimant, who had committed delay in furnishing details to FICC and as and when certificates were Issued by FICC the respondent raised the demand notices/claim letters. There is no basis in the contention of the Claimant that the claims raised prior to 14.07.2017 are barred by law of limitation since the counter claim was filed only on 15.07.2020.*

***63**. The Claimant challenged some of the demand notices before the Gujarat High Court and obtained stay, and the matter, as already explained is pending before that Court. When claim letters and demand notices are considered in the above factual background the Tribunal is of the view, that claims raised by the respondent are well within the period of limitation especially when the respondent is acting only as a nominee of the Government of India, in the event of*

which even Article 112 of Limitation Act would apply, then the period of limitation is 30 years.

***64**. The Tribunal is also of the view that the respondent is entitled to the benefit of Section 15 of the Limitation Act, for the period the matter is pending before the Gujarat High Court and later before the Delhi High Court as well and both the Courts have passed interim orders as well. Further non furnishing the essential details by the Claimant to FICC in time also will attract Section 17 of the Limitation Act, the principles of which are well explained by the Supreme Court in Pallav Sheth vs. Custodian (2001) 7 SCC 549."*

33. The learned Arbitrator has held that it was the Petitioner herein who had committed delay in furnishing details to FICC and as and when certificates were issued by FICC, the Respondent raised the demand notices/claim letters. The learned Arbitrator, therefore, rejected the contention of the Petitioner herein that the claims raised prior to 14.07.2017 are barred by limitation. This Court does not find any reason to interfere with this finding. However, the learned Arbitrator has also placed reliance on Sections 15, 17 of the Limitation Act and Article 12 of the Limitation Act, which cannot be sustained. Sections 15, 17 & Article 112 of the Limitation Act do not have application to the facts of the present case. There is no question of fraud or concealment of any material facts and since the Respondent is not a Central or a State Government, Article 112 of the Limitation Act is not applicable. However, that alone will not vitiate the entire finding on limitation. The portion of the award which deals with Sections 15, 17 & Article 112 of the Limitation Act is irrelevant on the finding of limitation. The learned Arbitrator has held that it was only after the certificates are issued by the FICC, the claims were raised by the

Respondents, as such claims could be raised only after the certificates are issued. The period of limitation will start only after certificates issued by the FICC are received and FICC can issue the requisite certificates only if it receives the data from the Petitioner. In the present case, the Petitioner delayed in sending the requisite data. It cannot be said that the claims raised by the Respondent prior to 2017 are time barred as the Petitioner supplied the requisite documents to the FICC only in 2017 after which the certificates were issued by the FICC in 2018-19 and, therefore, the claims raised by the Respondent in 2018-19 are within the period of limitation. These findings by the Arbitrator are based on undisputed facts.

34. The issue as to whether the portion of the award which deals with Sections 15, 17 & Article 112 of the Limitation Act can be severed or not is no longer *res integra* as the same has been dealt with by the Apex Court in Gayatri Balasamy v. ISG Novasoft Technologies Limited, **2025 SCC OnLine SC 986**, wherein a five Judge Bench of the Apex Court was referred the following questions of law:

> *"1. Whether the powers of the Court under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996 will include the power to modify an arbitral award?*
>
> *2. If the power to modify the award is available, whether such power can be exercised only where the award is severable, and a part thereof can be modified?*
>
> *3. Whether the power to set aside an award under Section 34 of the Act, being a larger power, will include the power to modify an arbitral award and if so, to what extent?*

4. Whether the power to modify an award can be read into the power to set aside an award under Section 34 of the Act?

5. Whether the judgment of this Court in Project Director NHAI v. M. Hakeem, (2021) 9 SCC 1., followed in Larsen Air Conditioning and Refrigeration Company v. Union of India, (2023) 15 SCC 472, and SV Samudram v. State of Karnataka (2023) 15 SCC 472, lay down the correct law, as other benches of two Judges (in Vedanta Limited v. Shenzden Shandong Nuclear Power Construction Company Limited(2023) 15 SCC 472, Oriental Structural Engineers Pvt. Ltd. v. State of Kerala, (2021) 6 SCC 150 , and M.P. Power Generation Co. Ltd. v. Ansaldo Energia Spa), (2018) 16 SCC 661 and three Judges (in J.C. Budhraja v. Chairman, Orissa Mining Corporation Ltd., (2008) 2 SCC 444, Tata Hydroelectric Power Supply Co. Ltd. v. Union of India, (2008) 2 SCC 444, and Shakti Nath v. Alpha Tiger Cyprus Investment No. 3 Ltd., (2020) 11 SCC 685.) of this Court have either modified or accepted modification of the arbitral awards under consideration?"

35. After giving due consideration to the existing position of law through various judicial precedents of the Apex Court and several High Courts, the above questions were answered as under:

"***85**. Accordingly, the questions of law referred to by Gayatri Balasamy (supra) are answered by stating that the Court has a limited power under Sections 34 and 37 of the 1996 Act to modify the arbitral award. This limited power may be exercised under the following circumstances:*

I. when the award is severable, by severing the "invalid" portion from the "valid" portion of the award, as held in Part II of our Analysis.

II. by correcting any clerical, computational or typographical errors which appear erroneous on the face of the record, as held in Part IV and V of our Analysis;

III. post award interest may be modified in some circumstances as held in Part IX of our Analysis; and/or

IV. Article 142 of the Constitution applies, albeit, the power must be exercised with great care and caution and within the limits of the constitutional power as outlined in Part XII of our Analysis."

36. The aforesaid conclusions of the Apex Court were arrived at on the basis that the authority to severe the invalid portion of an arbitral award from the valid portion while remaining within the narrow confines of Section 34 of the Arbitration Act is inherent in the Court's jurisdiction when setting aside an award. A caveat was, however, added by the Apex Court to the extent that partial setting aside would only be feasible when these valid and invalid portions are not legally and practically inseparable, which means that these valid and invalid portions must not be interdependent or intrinsically intertwined. The Apex Court was of the opinion that the authority to set aside an arbitral award necessarily encompasses the power to set it aside in part rather than in its entirety.

37. Therefore, this Court is mindful that while exercising its jurisdiction under Section 34 of the Arbitration Act, a separate reasoning for and correction of the award is not permissible unless the parameters as laid down by the Apex Court in the judgment of Gayatri Balasamy (supra) are applicable and partial setting aside of an award is warranted. This Court is also mindful that while exercising jurisdiction under Section 34 of the

Arbitration Act can only see as to whether the award suffers from any patent illegality or not.

38. Applying the aforesaid principles as summarised by the Apex Court as well as the limited contours of Section 34 of the Arbitration Act to the analysis of the issue of limitation by the learned Arbitrator, this Court is of the opinion that the portion of the award placing reliance on Sections 15, 17 & Article 112 of the Limitation Act can be easily severed and the findings on the limitation can be sustained.

39. Accordingly, the Petitions are dismissed, along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J

AUGUST 19, 2025
S. Zakir/AP