IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 10.10.2019

\+ **W.P.(C) 2079/2018**

SHRI SAURABH TRIPATHY ..... Petitioner

versus

COMPETITION COMMISSION OF INDIA & ANR. .... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr Gourab Banerji, Senior Advocate with Mr Saurav Agrawal, Mr Anirudha Agarwala, Mr Anshuman Chowdhury, Ms Raka Chatterjee and Mr S.P. Mukherjee, Advocates.

For the Respondents: Ms Purnima Singh and Ms Shibani Khuntia, Advocates for R-1.
Mr Rajshekhar Rao, Mr Ram Kumar, Mr Vinayak Mehrotra and Mr Dhruv Dikshit, Advocates for R-2.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning an order dated 16.02.2017 passed by the Competition Commission of India (hereafter 'CCI') in Case No.63/2014, whereby CCI had concluded that a case of contravention of the provisions of Section 4 of the Competition Act, 2002 (hereafter 'the Act') was established against respondent no.2 (Great Eastern Energy Corporation Ltd. – hereafter

'GEECL'). The petitioner contends that the said decision is *ex facie* erroneous, as CCI had rejected the report submitted by the Director General, Competition of Commission of India (hereafter 'DG') establishing that the provisions of Section 4 of the Act had been contravened. It is earnestly contended that CCI was required to direct further inquiry as contemplated under Section 26(8) of the Act and it was not open for CCI to summarily reject the DG report which, after investigation, had found contravention of provisions of Section 4 of the Act. It is contended that the impugned order is also violative of the principles of natural justice as no further opportunity was granted to the petitioner to contest the premise on which CCI rejected the DG's report. The petitioner claims that CCI was required to indicate the reasons on the basis of which it proposed to reject the DG's report before proceeding further, in order to enable the petitioner to contest the same and thus, the failure on the part of CCI to do so has resulted in violation of the principles of natural justice. It is also contended that CCI has rejected the DG's report, which stated that certain clauses of the agreement in question were unfair, on the ground that the said agreement was arrived at after negotiation between the concerned parties. It is submitted that the said reasoning is manifestly erroneous as having found that the GEECL was in a dominant position, the finding that the clauses of the agreement in question were unfair could not have been rejected on the ground that the agreement had been negotiated between the parties.

2. The respondents countered the aforesaid submissions. In addition, it is also submitted on behalf of the respondents that the present petition is not maintainable because the petitioner cannot be considered as a person aggrieved. It is submitted that the petitioner has no interest and has no locus to challenge the order passed by CCI. It is also contended that the present proceedings are an abuse of process of court, considering that none of the parties to the agreement in question – SRMB Srijan Limited (hereafter 'SRMB') and GEECL – have contended that the agreement entered into by them is unfair as contravening Section 4 of the Act.

Factual Background

3. The petitioner is an employee of M/s SRMB Srijan Ltd. (SRMB), a company incorporated under the Companies Act, 1956. SRMB is a rolling mill comprising two rolling units based out of Sagar Bhanga, Durgapur, West Bengal. SRMB is an energy intensive industrial unit, which primarily used coal for such needs. However, due to the polluting nature of coal and other problems associated with its use, it shifted to a comparatively cleaner fuel – Coalbed Methane Gas (hereafter 'CBM').

4. GEECL, a company incorporated under the Companies Act, 1956, is engaged in the business of exploration, development, production, distribution and sale of CBM. It holds 100% stake in two CBM gas blocks in Raniganj (South), West Bengal and Mannargudi, Tamil Nadu. GEECL admittedly delivers CBM to more than thirty-

one industrial consumers through its pipeline network in the Asansol-Durgapur industrial belt.

5. GEECL started producing CBM from the year 2007 and it is admitted that it was the sole supplier of CBM in the region until 2011-2012.

6. On 11.05.2011, GEECL entered into a Gas Sale Purchase Agreement (hereafter 'GSPA') with SRMB.

7. On 16.09.2019, the petitioner, who is an employee of SRMB, filed an information under Section 19(1)(a) of the Act before CCI alleging that GEECL had violated the provisions of Section 4(1) of the Act by imposing unfair and discriminatory conditions for supply of CBM in terms of the GSPA.

8. CCI considered the information furnished by the petitioner under Section 19(1)(a) of the Act and formed a *prima facie* view that GEECL was in a dominant position in the relevant geographical market of Asansol-Raniganj-Durgapur Region in the State of West Bengal. CCI was also of the *prima facie* view that the terms of the GSPA appeared to be in favour of the seller (GEECL) and against the buyer and therefore, it appeared that GEECL had contravened the provisions of Section 4 of the Act.

9. In view of the above, CCI by its order dated 29.12.2014, passed under Section 26(1) of the Act, directed the DG to investigate into the matter and complete the same within a period of sixty days from the

receipt of the order. The DG conducted the investigation as directed by CCI and submitted a confidential version of its report on 28.12.2015. The DG reported its finding that Clause 2, Clause 4.4, Clause 5.2, Clause 6.1, Clause 9.2, Clause 11.2 and Clause 15 of the GSPA were in contravention of Section 4(1) of the Act read with Section 4(2)(a)(i) of the Act.

10. CCI considered the DG's investigation report on 29.03.2016 and directed GEECL to furnish its balance sheet and profit and loss accounts for the three previous years. Thereafter, on 16.05.2016, CCI sent an electronic copy of the investigation report to the petitioner along with a copy of its order dated 29.03.2016. The petitioner was called upon to file his replies/objection to the said report. He was also informed that CCI had scheduled a hearing on 14.07.2016 to hear oral submissions in the matter.

11. The petitioner filed the response to the DG's report. Essentially, the petitioner supported the findings as reported. Thereafter, on 22.07.2016, GEECL filed its objections to the DG's report. The petitioner filed its response to the said objections under the cover of a letter. On 16.08.2018, the petitioner filed his response countering the objections raised by GEECL. CCI heard both the parties – the petitioner and GEECL – on 12.12.2016 and thereafter, passed the impugned order dated 16.02.2017.

12. Aggrieved by the same, the petitioner filed an appeal before the Competition Appellate Tribunal (COMPAT). The said appeal was

dismissed by an order dated 15.05.2017. Although COMPAT also considered some of the contentions advanced on behalf of the petitioner, it rejected the appeal on the ground that it found that the appeal was not maintainable and accordingly rejected the same by an order dated 15.05.2017.

13. The petitioner has, therefore, filed the present petition on 28.02.2018.

Submissions

14. Mr Gourab Banerji, learned senior counsel appearing for the petitioner submitted that CCI passed the impugned order under Section 26(8) of the Act. In terms of the said Section, it was incumbent upon CCI to have issued directions for further investigation by the DG to inquire into the contraventions of the provisions of the Act as pointed out by the DG and if necessary, to direct the DG to conduct further inquiry. He submitted that CCI could not reject the DG's report without further inquiry.

15. He earnestly contended that it was not open for CCI to close the case in the manner that it has done.

16. Mr Banerji further contended that CCI had the power under Section 27(d) of the Act to modify any agreements to the manner and extent it deems fit, if it finds that an enterprise had directly or indirectly imposed unfair or discriminatory conditions in the purchase

and sales of goods or services. He submitted that the findings of the DG were required to be examined in the aforesaid context.

17. Next, he contended that CCI had abruptly closed the matter without addressing all the issues. He submitted that CCI has provided no reasoning in finding as to why Clauses 4.4, 6.0, 11.0 and 15.0 of the GSPA were either unfair or discriminatory. He submitted that the DG has found the aforesaid clauses discriminatory. In addition, the DG report found that not linking the gas price to calorific value was discriminatory. He submitted that this was also not considered by CCI. He stated that CCI had merely rejected the findings on the ground that there were negotiations between the parties (GEECL and SRMB). He submitted CCI could not ascertain any ground to reject the finding that the specified clauses of GSPA were discriminatory as a result of abuse of GEECL's dominant position. Mr Banerji had referred to Clause 5 of the GSPA and submitted that minimum guarantee offtake (MGO) liability imposed by GEECL on SRMB, in terms of Clause 5.2 of the GSPA, was one sided and unfair. He submitted that whereas GEECL had an option to terminate the GSPA in terms of Clause 5.1, no such exit option was provided for SRMB. He stated that GEECL could create the aforesaid situation by unilaterally stopping the gas supply and thus enabling it to invoke Clause 5.1 of the GSPA and exit the said agreement. He submitted that CCI had premised its decision on the assumptions that once CBM was produced, it could not be stored. If the same was not off-took, GEECL would have no option but to flare up the gas as there was no

provision to stock CBM. He submitted that these assumptions are without any basis. He also referred to the additional affidavit and submitted that the details as provided therein indicated that GEECL's market was expanding and the quantity of gas being flared was being reduced constantly. He submitted that this indicated that after termination of the GSPA, the total quantity of gas flared by GEECL was less than the contracted quantity of CBM.

18. According to Mr Banerji, the same indicated that the quantity contracted to be sold to SRMB was not flared but was sold to some other buyer. He submitted that in the event the gas was flared on account of SRMB not accepting the contracted quantity, GEECL would not have to pay either royalty (at the rate of 10%) to the State Government or the production level payment at the rate of 12.25% of the Government of India. However, there was no corresponding reduction in the MGO liability. Next, he submitted that GEECL had clearly mentioned that it had secured aggregate commitments to purchase up to 412 SCM of CBM as against 88 SCM. He submitted that the demand for CBM cost was thus, much in excess of the quantity produced by SRMB.

19. Next, he submitted that CCI had erred in observing that MGO liability was a standard clause across most long-term supply contracts and negotiated to cover the risk of the seller in committing to sell a fix quantity on long term basis and to assure the buyer a firm supply of gas. He submitted that this finding was not correct, as CBM gas could be produced from several small wells where CBM could be extracted

by boring into the wells. He further submitted that CCI's conclusions was based on facts which were not available from the DG's report. He stated that CCI had accepted the objections raised by GEECL without any further inquiry. He also referred to the decision of CCI in ***Shri Rathi Steel (Dakshin) Ltd. v. GAIL (India) Ltd.: 2017 CompLR 0706 (CCI)***, whereby CCI had in a similar situation, found it relevant to inquire into several aspects of different sources of gas procurement, the nature of arrangement with each supplier including price and takeover pay liability etc. He submitted that a similar inquiry was also warranted in the present case, however, CCI had decided to close the matter without any such inquiry. Next, he referred to certain specific clauses and submitted that CCI had found no fault with the said clauses simply on the basis that SRMB and GEECL had negotiated on the GSPA. He submitted that the said reasoning was perverse and unsustainable.

20. Lastly, he also countered the preliminary objections raised on behalf of GEECL that the petitioner had no locus to prefer the appeal or assail the order of CCI.

21. He submitted that the petitioner was an informant and therefore, would qualify an aggrieved person to file an appeal in case the orders were passed under Section 26(2) or 26(6) of the Act closing the case. He submitted that a *certiorari* would stand for the reason that the petitioner would continue to be a person aggrieved, if CCI had closed its case notwithstanding that DG's report was in his favour. He also referred to the decision of the Supreme Court in ***Municipal***

Corporation for Greater Bombay v. Lala Pancham of Bombay and Ors.: AIR 1965 SC 1008, in support of his contention that the expression '*any aggrieved person is required to be given widest amplitude*'. He submitted that since the object of the Act was to provide for regulation of markets, even members of general public would have sufficient interest to maintain a complaint.

22. Mr Rao, learned counsel appearing for GEECL countered the submissions made on behalf of the petitioner. Mr Rao contended that the petitioner had elected to file an appeal before COMPAT, which was rejected by an order dated 16.05.2017. He submitted that COMPAT had rejected the appeal as not maintainable but also noticed that violations of principles of natural justice was an afterthought, as the same had not been canvassed before the CCI. COMPAT had also observed that CCI had examined the GSPA at length even though it may not have commented on specific clauses. He submitted that the said findings had become final. The petitioner could not be heard to contend to the contrary. Next, he submitted that the impugned order did not suffer from any patent illegality or perversity and therefore, CCI's decision could not be interfered with in these proceedings. Next, he referred to the impugned order and submitted that CCI had given sufficient reason for rejecting the DG's report with regard to specific clauses.

Reasons and Conclusion

23. The first and foremost question to be addressed is whether it was incumbent upon CCI to pass an order directing further inquiry under Section 26(8) of the Act in the event it did not agree with the report submitted by the DG. Before proceeding to address this question, it would be necessary to refer to Section 26 of the Act, which is set out below:-

> "**26. Procedure for inquiry under section 19.**—(1) On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter:
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> Provided that if the subject matter of an information received is, in the opinion of the Commission, substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.
>
> (2) Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under section 19, the Commission is of the opinion that there exists no prima facie case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.
>
> (3) The Director General shall, on receipt of direction under sub-section (1), submit a report on his findings within such period as may be specified by the Commission.

(4) The Commission may forward a copy of the report referred to in sub-section (3) to the parties concerned:

Provided that in case the investigation is caused to be made based on reference received from the Central Government or the State Government or the statutory authority, the Commission shall forward a copy of the report referred to in sub-section (3) to the Central Government or the State Government or the statutory authority, as the case may be.

(5) If the report of the Director General referred to in sub-section (3) recommends that there is no contravention of the provisions of this Act, the Commission shall invite objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be, on such report of the Director General.

(6) If, after consideration of the objections or suggestions referred to in sub-section (5), if any, the Commission agrees with the recommendation of the Director General, it shall close the matter forthwith and pass such orders as it deems fit and communicate its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

(7) If, after consideration of the objections or suggestions referred to in sub-section (5), if any, the Commission is of the opinion that further investigation is called for, it may direct further investigation in the matter by the Director General or cause further inquiry to be made in the matter or itself proceed with further inquiry in the matter in accordance with the provisions of this Act.

(8) If the report of the Director General referred to in sub-section (3) recommends that there is contravention of any of the provisions of this Act, and the Commission

is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act."

24. A plain reading of sub-section (1) and (2) of Section 26 of the Act indicates that on receipt of a reference or on its own knowledge or information received under Section 19, the CCI is required to form an opinion as to whether there exists a *prima facie* case. If CCI is of the opinion that such a case exists, it is required to direct the DG to cause an investigation to be made in the matter. However, if CCI is of the opinion that no *prima facie* case exists, it is required to close the case and pass such orders as it deems fit under Section 26(2) of the Act.

25. In the event directions to conduct an investigation are issued under Section 26(1) of the Act, the DG is required to submit a report on its findings, within the period as may be specified. In terms of Section 26(4) of the Act, CCI is required to forward a copy of the DG's report to the concerned parties, the concerned government or the concerned statutory authority as the case may be.

26. Sub-section (5) of Section 26 of the Act mandates that the CCI invite objections and suggestions from the concerned parties or the concerned government or the statutory authority as the case may be, if the DG recommends that there is no contravention of the provisions of the Act. If CCI agrees with the recommendation of the DG to close the matter after considering the objections/suggestions as invited under Sub-section (5) of Section 26 of the Act, it shall do so and pass such orders as it deems fit. However, if it is of the view that further

investigation is called for, it may proceed with further inquiry by itself or direct that further investigation be conducted by the DG.

27. However, if the DG's report indicates that there is a contravention of the provisions of the Act, CCI is required to return a finding after completion of the inquiry. If it finds that the action of an enterprise, that is in a dominant position, to be in contravention of the provisions of Section 3 and Section 4 of the Act, it may pass any or all orders as specified under Section 27 of the Act. This is clear from the opening sentence of Section 27 of the Act, which reads as under:-

> "**27. Orders by Commission after inquiry into agreements or abuse of dominant position** – Where after inquiry the Commission finds that any agreement referred to in section 3 or action of an enterprise in a dominant position, is in contravention of section 3 or section 4, as the case may be, it may pass all or any of the following orders, namely:—
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> (a) direct any enterprise or association of enterprises or person or association of persons, as the case may be, involved in such agreement, or abuse of dominant position, to discontinue and not to re-enter such agreement or discontinue such abuse of dominant position, as the case may be;
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> (b) impose such penalty, as it may deem fit which shall be not more than ten percent of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse:
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> Provided that in case any agreement referred to in section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that

cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten percent. of its turnover for each year of the continuance of such agreement, whichever is higher.]

(c) [Omitted by Competition (Amendment) Act, 2007]

(d) direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission;

(e) direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any;

(f) [Omitted by Competition (Amendment) Act, 2007]

(g) pass such other [order or issue such directions] as it may deem fit.

Provided that while passing orders under this section, if the Commission comes to a finding, that an enterprise in contravention to section 3 or section 4 of the Act is a member of a group as defined in clause (b) of the Explanation to section 5 of the Act, and other members of such a group are also responsible for, or have contributed to, such a contravention, then it may pass orders, under this section, against such members of the group.

28. Insofar as Sub-section (8) of Section 26 of the Act is concerned, it expressly mandates that CCI shall inquire into the contraventions of the Act in case where (a) the DG's report recommends that there are contraventions, and (b) CCI is of the opinion that further inquiry is called for. If both the aforesaid conditions must be satisfied; further inquiry may be conducted by CCI by itself or by issuing appropriate directions to the DG for such enquiry.

29. In the event CCI is of the view that no further inquiry is required, it would not be necessary for CCI to conduct any further inquiry or issue any such directions for the DG to conduct the same. Such directions can only be issued if CCI is of the opinion that further inquiry is necessary.

30. The contention that if the DG's report recommends that there are contraventions of the Act, CCI cannot close the case straightway, is without any merit. There is no provision in the Act which mandates that CCI must accept the DG's report recommending that there are contraventions of the provisions of the Act. The DG's report is not binding on CCI and it can differ with the DG's findings and reject the same. If on examination of the DG's investigation report indicating contraventions of the Act and CCI finds that there are no such contraventions; it is required to close the case, as has been done in the present case.

31. If the petitioner's contention that it is mandatory for CCI to direct further investigation in the event it disagrees with the DG's recommendation is accepted, it would imply that CCI can never disagree with the report submitted by the DG. This, clearly, is not the scheme of Sections 26 and 27 of the Act. The report submitted by the DG under Section 26(3) of the Act is merely recommendatory. CCI is required to examine the same and take a view after hearing the concerned parties. The provisions of further investigation / inquiry, as contemplated under sub-section (7) and (8) of Section 26 of the Act, are only enabling provisions which enable CCI to direct further

investigation or conduct further inquiry if it is of the opinion that such further inquiry is necessary. If CCI is of the opinion that no further inquiry is necessary, it is required to form an opinion after hearing the concerned parties. If in its opinion the provisions of Section 3 and 4 of the Act have not been violated, CCI must close the case. However, if in its opinion such contraventions have been established, it may pass any or all of the orders under Section 27 of the Act.

32. In the present case, CCI has not accepted the DG's report and after hearing the parties has decided to close the case. The contention that this is contrary to the scheme of Sections 26 and 27 of the Act, is bereft of any merit and is, accordingly, rejected.

33. Undisputedly, the impugned order passed by CCI is final and no appeal is provided under the Act against such an order. The contention that the impugned order is an order under Section 27 of the Act was rejected by COMPAT vide its order dated 15.05.2017. The petitioner has accepted the said order and the issue whether the impugned order is appealable or not, does not arise for any further consideration.

34. The next question to be examined is whether the impugned order suffers from any infirmity, which warrants interference by this Court under Article 226 of the Constitution of India. It is the petitioner's case that GEECL has abused its dominant position by imposing unfair and/or discriminatory conditions for purchase and sale of CBM. According to the petitioner, the same constituted an abuse of

its dominant position as contemplated under Section 4(2)(a)(i) of the Act.

35. It was earnestly contended on behalf of SMRB that CCI was required to view the matter in the light of Section 27(d) of the Act, which empowered CCI to modify an agreement – in this case the GSPA – to the extent it deems fit. Thus, according to the petitioner, CCI ought to have amended the GSPA to the extent it deems fit.

36. This Court finds the said aforesaid contentions to the unmerited for two reasons. First, neither GEECL nor SRMB had approached CCI seeking such relief. Admittedly, the GSPA embodied an agreement which was negotiated between the said parties and neither of them had complained against the same to CCI. It is difficult to accept that CCI ought to have exercised powers to modify the GSPA at the instance of a third party, who clearly has no interest in the said agreement. Secondly, the substratal premise that GEECL had violated Sections 3 and 4 of the Act, is unmerited.

37. It was contended on behalf of the petitioner that CCI had erred in rejecting the contention that certain clauses of GSPA were discriminatory and/or unfair on the ground that the same were negotiated between the parties. It was contended that once a condition imposed for the purchase and sale of goods and services has been found to be unfair or discriminatory, it would not cease to exist because it was negotiated between the concerned parties. This Court is not persuaded to accept the aforesaid contention, *inter alia*, for the

reason that it presumes that the finding whether an unfair and/or discriminatory condition has been imposed by a dominant enterprise, can be returned without considering whether the said condition was agreed to as a result of free and fair negotiations. The fact that a commercial contract has been negotiated between two parties is certainly a vital factor to be considered while determining whether an enterprise has abused its dominant position by imposing unfair and discriminatory terms for the supply of goods and services. This is particularly more so where none of the parties have lodged any complaint against the said contract.

38. It is relevant to note that it was not the petitioner's contention that GEECL was, as the matter of regular course, imposing unfair terms and conditions for supply of CBM. The allegations made by the petitioner was specific to the GSPA entered into between GEECL and SRMB. In this context, the fact that the parties had entered into a protracted negotiation for closing the GSPA would certainly be a relevant factor in considering whether GEECL had imposed unfair terms and conditions. Thus, the contention that the fact that the contract has been negotiated can, under no circumstances, be taken into account while considering whether the terms and conditions of a contract are unfair or discriminatory, is without merit. There may be cases where it is established by one of the parties that certain unfair terms and conditions were unilaterally imposed by a dominant enterprise and the concerned party was commercially coerced to accept the same. In such cases, the fact that the parties had entered

into the negotiations may be of little relevance. However, in cases where the parties to the contract have not made any such allegations, the fact that the contract had been freely negotiated would be of vital importance in determining whether Section 3 or 4 of the Act were violated.

39. In the present case, CCI had noticed that the parties had exchanged drafts of the GSPA before finalising the same. More importantly, some of the clauses which the petitioner claimed were unfair and discriminatory, had not been objected to by SRMB during contractual negotiations. Clearly, in these circumstances, the decision of CCI to take into account that the GSPA was a negotiated contract, cannot be faulted.

40. The petitioner had alleged that Clauses 4.2, 4.3, 4.4, 5.1, 5.2, 6.1, 9.2, 10, 11.2 and 15 of the GSPA were unfair and discriminatory and, thus, fell foul of Section 4(2)(a)(i) of the Act.

41. The DG had found that Clauses 2, 4.4, 5.2, 6.1, 8.2, 9.2, 11.2 and 15 to be imposing conditions constituting an abuse of dominant position under Section 4(1)(a)(i) of the Act. CCI had, after examining the DG's report in this regard as well as considering the submissions made by SRMB and GEECL, rejected the allegations that the said clauses of the GSPA embodied terms and conditions which fell foul of Section 4(2)(a)(i) of the Act.

42. Before proceeding further, it would be apposite to refer to the relevant clauses of the GSPA, including the ones that were concluded

by the DG to be unfair and/or discriminatory. The same are reproduced below:-

"2.0 PERIOD OF CONTRACT

This CONTRACT shall come into force from the date it is signed. The SELLER will use its best endeavour to lay down the pipeline to the BUYERS premises within 45 days post signing of agreement and submission of the Bank Guarantee and clearance of ROU's from statutory authority thus enabling the SELLER to commence the work for the supply from the day all requisite permissions are received as applicable and usage of CBM at Buyer's system. During the course, the BUYER shall install all facilities to commission CBM gas.

This CONTRACT shall remain in force till recently twenty five (25) years subject to revision of terms and conditions including price as mentioned in clause 10.1 The SELLER reserves the right to review and may revise the terms and conditions contained herein including price of the GAS after expiry of fixed price period as defined in clause 10.2.

4.0 DELIVERY AND PRESSURE OF GAS

4.1 XXXXXXXXXXXX

4.2 The BUYER shall make all proper and adequate arrangements for receiving GAS at the outlet of Gas Metering cum Regulating

Station at his own risk and cost. Should any defect in the BUYER'S Intake Arrangements or gas using equipments arise, the same shall be rectified by the BUYER. The SELLER shall have an option to stop supply of GAS to the BUYER without any notice to the BUYER when an emergency and for safety issue arises otherwise a week notice shall be given by SELLER to BUYER when an emergency and for safety issue arises otherwise a week notice shall be given by SELLER to BUYER to rectify the defects in arrangement or gas using equipments; the decision with respect to which shall be that of the SELLER alone and the same shall be absolute and binding upon the BUYER The BUYER shall also make provision of DUAL FUEL intake arrangements at his own risk an cost.

Notwithstanding the stoppage of supply as aforesaid the BUYER shall continue to be liable to pay for the Minimum Guaranteed Offtake (MGO) of GAS in accordance with Clause 5.2 hereof irrespective of the fact of stopping of supply of GAS by the SELLER on account of defect or unsafe operation in the BUYER'S intake arrangements or gas using equipment.

4.3 The BUYER under no circumstances shall sublet/lease/sell/create a change over on part or whole with the gas-related property at any

given time, without the prior written consent of the SELLER.

Any production losses or any kind of losses whatsoever attributable to the functioning of the equipments/installations mentioned in in 4.2 for any reason whatsoever shall, in no way, be the SELLER's responsibility and accordingly the SELLER shall not be held responsible for any such losses or damages in any circumstances.

4.4 Notwithstanding anything contained in any of the clauses of this contract, in case the BUYER is found to have tampered with the gas metering equipment, the gas supply to the BUYER will be immediately discontinued by the SELLER at his absolute discretion. An Inspection of the metering system & related pipeline shall be carried out by SELLER and his decision in this regard shall be final. However, if BUYER does not agree with the decision of SELLER, the BUYER may ask in writing for a third party inspection. SELLER will then appoint a third party to do inspection and ascertain the cause of tempering and decision of such third party will be binding on both the parties. All expenses of such third party will be borne by BUYER. The BUYER shall pay the penalty and losses occurred or occurring to die SELLER before resumption of the supply. If the amount is not paid by the BUYER within 7 (seven) days from the receipt of Debit Note

from the SELLER, this Contract shall be liable to be terminated at the absolute discretion of the SELLER and the equivalent amount shall be deducted from the deposit given to the SELLER by the BUYER.

5.0 QUANTITY OF GAS

5.1 Subject always to the availability of GAS and SELLER's ability to supply the same to the BUYER, the SELLER agrees to sell the GAS on FIRM BASIS to the BUYER, to be used by the BUYER as Fuel solely for its own business purposes subject to the maximum of 35000 (Thirty Five Thousand Only) STANDARD CUBIC METERS per day (SCMD) and a total monthly of 910000 SCM (Nine lakh ten thousand Only) STANDARD CUBIC METERS per month (considering 26 working days in a month) hereinafter called as Contracted Quantity. The supply of gas shall be at an even flow rate spread over a period of 24 hours and the BUYER agrees to use at the same rate. However, supply of GAS may be reduced due to technical, production, interruption or other reasons.

In case the period of reduction in supply or stoppage in gas supply from the SELLER side lasts for continuous period of more than 3 (three) months then cither party (BUYER or SELLER) shall be free to terminate the

contract by a written notice of (fifteen) days to the other party.

5.2 Subject to clause 8.3 & 9, in case the SELLER is ready an able to supply the Contracted Quantity of GAS but BUYER purchases GAS less than the k% of the Contracted Quantity or on account of stoppage of supply by the SELER as prescribed under clause 4.2 results in purchase of Gas less than k%, then BUYER shall have to pay to the SELLER for his quarterly minimum quantity (hereinafter termed as 'Minimum Guaranteed Offtake i.e. MGO') of k% of contracted quantity. The MGO will be applicable after 45 days from the commencement of supply of CBM gas, will be known as 'Reading Period'. At the end of Reading period, buyer may amend the Contracted quantity, based on the actual consumption of CBM gas during such period. In case of stoppage or interruption or reduction in gas supply from the SELLER's side as mentioned in clause 5.1, 8.0 and other clauses, the Minimum Guaranteed Offtake will be reduced on pro-rata basis, considering no. of days in a quarter when the supply to the BUYER was less than k% of the daily quantity mentioned in 5.1 due to reduction or stoppage of supply the SELLER. For e.g. in a quarter if the quantity of gas supplied to the BUYER is less than k% of daily requirement mentioned in 5.1 for N days due to reduction or stoppage of supply by the SELLER.

Minimum Guaranteed Offtake for die quarter will be as under:

MGO – Daily Contracted Quantity x (no. of days in a Quarter -N) xk

Where;

K=80%

No. of days in a quarter 75 days

The BUYER undertakes to pay for such Minimum Guaranteed Offtake or for actual quantity used during the quarter, whichever is higher.

In the event of shortfall in supply of gas less than MGO level and due to this the BUYER has to use alternate fuel, the SELLER agrees to compensate the BUYER with the differential cost, which BUYER had to actually incur over and above the agreed gas price (with proof of purchase). The SELLER'S liability in case of differential cost will be maximum to the agreed price of gas and the differential cost will be calculated on the basis of quarterly reconciliation. This will be settled through credit note by the SELLER to the BUYER in subsequent invoices.

5.3 Provided in any case, if there is any STRIKE (due to labour or any other reason) at BUYER and SELLERS works and, such STRIKE continuous for more than fourteen (14) consecutive days, in such a case

provisions related to MGO as mentioned in clause 5.2 shall not be applicable to either party for a period of such strike continues beyond 14 days.

6.0 QUALITY OF GAS

6.1 The quality of Gas to be delivered to the BUYER will conform to, the specification laid down in Annexure-I hereto, which shall form part of this CONTRACT.

6.2 If Gas delivered by the SELLER to the BUYER fails at any time to conform to the quality specifications provided in Annexure-I hereto, the BUYER shall notify the SELLER or its authorized representative of such deficiency in writing and the SELLER shall take steps to remedy such deficiency within a reasonable time as mutually agreed by the representatives of SELLER & BUYER.

8.0 SHUTDOWN AND STOPPAGE OF SUPPLY:

8.1 BUYER shall be entitled for partial shutdown for 30 days in each Financial Year. The BUYER desiring to take partial shutdown will give one (1) week prior written, notice to the SELLER intimating for the proposed partial shutdown and number of days of shutdown. The shutdown period at the rate mentioned above cannot be accumulated, and if not availed will be treated as lapsed.

During such partial shutdown the provisions: related to the Minimum Guaranteed Offtake in Clause 5.2 shall be applied. The new DCQ during the partial shutdown days will be Half (1/2) of the agreed DCQ and MGO during partial shutdown period will be calculated in accordance with the so revised DCQ. However, the scheduled shutdown from SELLER side shall be 15 days in a Financial Year. Shutdown from SELLER shall be termed as 'full shutdown' and will be intimated to BUYER One (1) week prior to the proposed date of shutdown. However, during such full shutdown, provision relate to the MGO in clause 5.2 shall not be applicable.

8.2 The BUYER shall inform the SELLER immediately about any defects in the GAS intake Arrangement of the BUYER calling for the complete or partial stoppage of the supply of GAS. Provided that, in all such cases, the provisions relating to the payment of Minimum Guaranteed Offtake by the buyer in Clause 5.2 shall supply.

8.3 The SELLER shall, likewise inform the BUYER immediately about accidents and/or defects in GAS installations and GAS pipeline of the SELLER calling for

discontinuation or complete or partial stoppage of supply of GAS.

The SELLER shall not be liable for failure to perform or for the delay is condoned performing any provision(s) of the contract by the BUYER in such conditions and shall not be held responsible for any losses or damages to the BUYER due to partial or complete stoppage of gas supply. The provisions related to the payment of Minimum Guaranteed Offtake by the BUYER in Clause 5.2 shall not apply.

8.4 The SELLER has to check their equipment at BUYER'S premises once in a fortnight to avoid accident and for safety. In case of any problem of equipment arises, the SELLER has to depute his representative for proper rectification for safety and to avoid accidents.

9.0 FORCE MAJEURE

9.1 Neither parties hereto shall be liable for failure to perform nor for the reasons stated in the application, the delay is condoned in performing any provision(s) of the CONTRACT other than those providing for payment for GAS supplied, sold and purchased hereunder, if such failure or For the reasons stated in the application, the delay

is condoned is caused or results from a FORCE MAJEURE.

9.2 The term FORCE MAJEURE in this CONTRACT means act or God, war, revolt, riot, fire, tempest, flood, earthquake, lightening, direct or indirect consequences of war (declared/undeclared), sabotage, hostilities, national emergencies, civil disturbances, commotion, embargo or any law or promulgation, regulation or ordinance whether Central or State or Municipal, breakage, bursting or freezing of pipeline Upon occurrence of such cause and on its termination, the parties rendered unable as aforesaid shall notify the other party in writing within twenty four (24) hours of the beginning and the ending, giving full particulars and reasonable evidence thereof. Any action of labour employed by the BUYER shall not be considered as FORCE MAJEURE.

9.3 Provided that in case such period of FORCE MAJEURE lasts for more than six (6) MONTHS either party hereto shall be free to terminate the CONTRACT by a written notice of fifteen (15) DAYS to the other party.

10.2 The above price shall be valid May 11, 2012 [i.e. one year only] from the date of start of supply as per clause 10.1 as above. After fixed price period i.e. increment in Floor Price shall be finalized at least forty five (45) days before the expiry of the fixed price period. In case of disagreement beyond the above stipulated period either party may exit the contract.

11.0 BILLING AND PAYMENT

11.1 The SELLER shall issue and raise invoice to the BUYER considering the actual consumption of the BUYER as per (a), (b) & (C), given below along with supporting documents either by way of E-mail, Fax, hand delivered or courier.

a) SELLER to raise fortnightly invoice foe gas supplied during first fortnight by 18th day of the same month and for gas supplied during second fortnight by 3rd day of immediately next/following month.

b) The due date of the payment shall be:

- Six days from the delivery made in 1st fortnight of particular month.
- Six days from the delivery made during 2nd fortnight of month.

c) Reconciliation of the meter reading:

On a quarterly basis for conciliation purpose a Joint Measurement Sheet will be signed by nominated representatives of the SELLER & BUYER

In addition to above, SELLER shall issue and raise quarterly invoice to the BUYER considering the actual consumption of the BUYER for that quartr or Minimum Guaranteed Offtake (MGO) as per Clause no. 5.2, whichever is higher. The BUYER shall make the balance payment in full within 7 working days of receipt of such invoice.

In case there is any dispute regarding billing, the BUYER shall not withhold payment. After making full payment of such invoices, the BUYER shall lodge the claims to the SELLER giving full particulars within a period of fourteen (14) DAYS from the date of making the payment, and such claims if found correct, the SELLER shall adjust the same against the next invoice of supply of GAS. The decision of the SELLER in this connection will be final and binding upon the BUYER.

11.2 The BUYER shall pay interest in all delayed payments @ 15% Delayed payment means any payment not received within the stipulated due date of any invoice raised against the BUYER by the SELLER. The SELLER reserves the right to stop supply of

CBM Gas on account of non-payment, till payment is received against the said invoice.

11.3 The BUYER shall nominate the authority who shall receive the invoice(s) and make payments. The BUYER shall make payments at par in the SELLER's bank account with its Bankers at Asansol, W.B., or at any other office to be specified in this behalf by the SELLER in writing.

11.4 In case of default/dishonour in payment and subsequent settlement of outstanding dues, the SELLER shall reinstate supply of GAS to the BUYER on receipt of pay-order of the said amount within 24 hours. In the event of disconnection of supply of gas because of non-payment of dues in time or for reasons attributable to the BUYER. The BUYER shall make payment of Rs.5000/- as reconnection charges.

11.5 SECURITY DEPOSIT:

The BUYER shall submit a revolving confirmed Bank Guarantee (BG) which will always remain in place for the amount of the contracted quantity for one month. In case of default in payment the seller shall have the right to encash in part or full BG to recover all its dues at any point of time. In case there is a shortfall the buyer will have to pay the

same to the seller immediately on demand. Format of the BG is attached.

BG Amount = Daily Contracted Qty. of Gas (Clause no.5.1) x 31 days x Contracted Gas Price (including VAT).

15.0 TERMINATION

This contract shall stand terminated automatically on April 30, 2034. The SELLER has unrestricted right to deduct its all pending claims from the Bank Guarantee submitted by the BUYER. Notwithstanding anything contrary contained herein, in the event GAS supply of the BUYER is suspended due to non-payment of duos under this CONTRACT, the SELLER shall have the right to terminate this CONTRACT, effective from date of suspension.

19.0 INDEMNITIES

The delivery of GAS being a continuous process, once GAS passes the point of delivery as herein provided, the BUYER shall be deemed to be in exclusive possession and control of the said GAS and fully liable and responsible for its arrangements, appurtenances and properties. Accordingly,

> the BUYER covenants and agrees to fully protect, indemnify and hold the SELLER, it's employees, agents and successors and assigns harmless against any & all claims, demands, actions, suits, proceedings and judgments and any and all liabilities cost, expenses, incidental to or in connection therewith which may be made or brought against the SELLER, whether by the BUYER, it's employees, agents or successors and assigns or by third parties on account of damages or injury to property or person or loss of life resulting from or arising out of the installation, presence, maintenance or operation of the intake arrangements, appurtenances, and properties of the BUYER or others relating to die possession and handling of any GAS supplied and further defend the SELLER at BUYER's sole expense in any litigation involving the SELLER."

43. Insofar as Clause 2 of the GSPA is concerned, the DG had reported that the said clause appeared to be onerous and one sided since it provided extensive powers to GEECL to alter the terms of the contract without concurrence of the buyer (SRMB). The DG had, therefore, opined that the said clause appeared to be unfair.

44. The said interpretation is, *ex facie*, erroneous. The clause merely enabled GEECL to revise the terms and conditions, including the prices after the fixed price period as defined under Clause 10.2 of

the GSPA, had expired. A plain reading of Clause 10.2 of the GSPA also indicates that any revision of the price after the specified period would be subject to SRMB consenting to the same. The said clause cannot be read to mean that SRMB would be bound by any unilateral revision of the GSPA after the expiry of the initial period. It is material to note that GEECL did not understand the contract in this manner and there was no reason for the DG to assume the same. In fact, no such revision was made by GEECL and the DG had returned his finding/opinion on a mere unfounded surmise.

45. The DG had further opined that the Clause 4.4 appeared to be unfair as it empowered GEECL to appoint a third-party inspector. According to the DG, the third party may not be independent and could be a proxy for GEECL. He had also noted that the said clause was a standard feature in all agreements entered into by GEECL except one where the clause provided for appointment of a third-party inspector in consultation with the buyer. The DG found that the said clause was unfair as well as discriminatory. CCI did not accept the same, as it noted that the said clauses are commonplace in commercial contracts of this nature. It also noted that SRMB had a recourse to dispute mechanism in case of any dispute regarding the independence of the third-party inspector. It is relevant to note that metering equipment was placed in effective control of SRMB and thus, GEECL had retained the power to inspect the same and in case of any dispute, refer to it for third party inspection. CCI had not found the same to be unfair and this Court finds no infirmity with the said view.

46. It is important to note that neither the DG nor CCI were required to substitute the commercial wisdom of the contracting parties and evaluate clauses in the manner as suggested by the petitioner. In order for any term or condition of a contract to be considered as unfair, as contemplated under Section 4(2)(a)(i) of the Act, it must be established to be patently unfair and one that no party, who has any negotiating ability, would accept the same. Thus, plainly, clauses which are commonly used and are found in various commercial contracts, would not fall within the scope of Section 4(2)(a)(i) of the Act. There is no material on record to indicate that Clause 4.4 is, in any manner, commercially unconscionable and had found its place in the GSPA on account of unilateral imposition by GEECL by virtue of its dominant position.

47. The petitioner's principal grievance is with regard to Clause 5 of the GSPA, inasmuch as, it obliges SRMB to pay for the minimum guaranteed off-take (MGO). In terms of Clause 5.1, SRMB and GEECL were entitled to terminate the GSPA, in the event GEECL failed to supply gas for a period of three months. DG reasoned that this enabled GEECL to unilaterally stop the supply in order to terminate the GSPA at will. A plain reading of Clause 5.1 does not support this view. GEECL could reduce the gas only due to technical, production, interruption and other reasons. Plainly, this clause did not enable GEECL to withhold supply of gas without good reason. Furthermore, SRMB would be well within its rights to raise disputes if GEECL withheld the supply of CBM without sufficient cause. There

is nothing unfair in enabling parties to terminate their agreement if the performance of the contract is adversely affected due to certain specified reasons. The expression 'other reasons' is required to be interpreted applying the rule of *noscitur a sociis*.

48. Insofar as the MGO liability is concerned, the DG had recognised that MGO clauses were standard in gas supply agreements. However, it had sought to distinguish other agreements on the ground that the said agreements were between distributors and purchasers whereas GEECL was a producer.

49. The DG had considered the aforesaid reasoning and had held as under:-

> "67. On a careful consideration of the matter, it may be observed that production of CBM gas production is a continuous process standard clause across most long term supply contracts of producers and is intended to cover the risk of the seller in committing to sell a fixed quantity on a long term basis and to assure the buyer of a firm supply of gas. Correspondingly, GEECL is liable for differential fuel cost under SRMB's agreement if its supply falls below the MGO level and therefore, the clause is equitable. The DG's reasoning suffers from a flaw as in the gas contracts of other gas suppliers, upstream suppliers who impose MGO liability are producers themselves. There is no question of discrimination if one considers that GEECL's contracts are negotiated with each individual customer and that SRMB did not raise the issue regarding the MGO liability at the time of signing GSPA. It was only after SRMB had signed an agreement with Essar, it requested for a waiver of the MGO liability. GEECL was willing to accept this but subject to a reasonable revision of

> price. The Informant's argument regarding GEECL not incurring any financial liability for the gas which is flared, is flawed, as royalty payable to the government is only one component of the cost involved. There are other production costs incurred which cannot be recovered in case gas is flared up. Further, GEECL cannot divert gas which is not consumed by one customer to another customer as this would depend on the requirement of other customers. In case of stoppage of supply, both GEECL and SRMB can terminate the contract."

50. It is contended on behalf of the petitioner that the aforesaid reasoning is flawed since there was no material on record, which would lead CCI to believe that GEECL could not divert gas to other consumers and the same would have to be flared. It is also pointed out that GEECL's market was expanding and the amount of gas being flared was reducing progressively. The aforesaid contentions are unpersuasive. Undisputedly, clauses providing for MGO liability are common in gas supply agreements and it makes little difference that the DG had found them in agreements between distributors of gas and consumers. The rationale for including such clauses is to mitigate risks resulting from non-acceptance of gas supply. This would apply equally, irrespective of whether the supplier is a producer or a distributor. There is also no evidence to suggest that such clauses are not included in agreements between gas producers and distributors.

51. It is important to note that a certain amount of gas was being flared. Obviously, if the same could be supplied to consumers, there would be no reason to flare the same. This may be for various reasons,

including mismatch of demand and supply at a given point of time; inability of GEECL to supply the same; inefficient management of production/distribution; inability to store CBM; and other technical reasons. Nonetheless, it is undeniable that MGO liability would mitigate the risk of loss due to non-acceptance of gas.

52. Mr Banerji had also referred to the additional affidavit to point out that the total gas, which was flared up after the GSPA had been terminated, was less than the contracted quantity. According to him, this implied that the gas earlier being supplied to SRMB was being sold to some other buyer and was not flared. According to him, this established that MGO liability clause was unfair. The said contention is unsubstantial.

53. It is nobody's case that gas could not be supplied to other consumers. It is not SRMB's case that if the customers are available requiring gas at the particular point of time, gas available to GEECL would not be supplied to them. As noted earlier, the MGO liability was only mitigate the risks in committing to a long-term supply. Thus, the fact that quantity of gas which was earlier supplied to SRMB was, after termination of the contract, being supplied to other purchasers does not, in any manner, render Clause 5.2 of the GSPA either unfair or discriminatory.

54. The DG found Clause 6 of the GSPA to be discriminatory as well. He found that the price of gas was not fixed to calorific value, which was so fixed as far as other customers are concerned. CCI did

not accept the aforesaid view, since it found that terms of the GSPA had been negotiated individually with various customers. It is also relevant to note that the DG had not found the price charged as discriminatory or violative of Section 4(2)(a)(i) of the Act on the ground that the different prices had been fixed for various customers depending upon respective terms and conditions. Clearly, in this view, the finding of the DG that Clause 6 was discriminatory on the ground that prices had been fixed on the basis of calorific value of the gas supplied in other cases, is unmerited and was rightly rejected by CCI. The DG had also noted that SRMB had not raised any complaint regarding quality of gas and further, GEECL's assertion that it had provided the specifications of the gas supplied on the request of customers was also not disputed. CCI held that such clauses are common to the relevant trade.

55. It is relevant to note that in most parts, the DG's report does not report facts; the DG has merely expressed his subjective opinion about the given clauses. This includes his opinion that Clause 8.3 of the GSPA appears onerous and one sided, inasmuch as, the GSPA does not provide for any payment of any compensation to the buyer if GEECL stops the supply of CBM. However, SRMB would continue to be liable for the MGO if it fails to offtake the CBM supplied. As noticed above, CCI did not agree with the DG's view. It noted that such MGO clauses were common in gas supply contracts.

56. Similarly, the DG had also expressed an opinion that clauses 9.2, 11 and 15 of the GSPA were unfair. A plain reading of the DG's

report indicate that the said finding was mainly on the basis of its opinion and was not founded on any empirical investigation regarding the usual practice in the trade. CCI had differed from the said opinion. The DG had found that the *force majeure* clause was unfair on the ground that it did not accept certain events like labour action as *force majeure* events. Plainly, limiting the scope of *force majeure* clause to certain events and not others cannot be termed as unfair. CCI had also noticed that labour action at GEECL's end would also not fall within the scope of *force majeure*. Similarly, the DG had expressed its opinion that Clause 11, which provides for payment of interest in case of delay in payments by SRMB, was unfair as no such corresponding liability was placed on GEECL's failure to refund the overcharged amount. CCI had noted that no such concerns had been raised by SRMB and the said clause did not appear to be unfair. Moreover, there was no allegation that GEECL had overcharged SRMB nor had SRMB complained the same. Clauses limiting the interest liability on certain payments are well accepted. It is not necessary that contracts must provide for payment of interest on all amounts payable by either party.

57. Lastly, the DG had also found Clause 15 to be unfair, as it enabled GEECL to terminate the agreement on account of non-payment of dues. Plainly, the DG's view is manifestly erroneous. Providing for termination of a contract on the failure of the other party performing its material obligations cannot, by any stretch, be termed as unfair.

58. This Court finds that the entire approach of the DG in expressing its subjective opinion on various clauses is flawed. The DG is required to submit an investigation report after investigating facts and making recommendations on the basis of a factual foundation. In the present case, the DG has considered various clauses of the GSPA and has expressed its subjective opinion regarding the same. This, clearly, is not the only scope of investigation as contemplated under Section 26(3) of the Act.

59. It was contended on behalf of the petitioner that CCI ought to have remanded the matter back to the DG for further inquiry instead of relying on the submissions made on behalf of SRMB. This contention is unmerited, as most of the recommendations made by the DG with regard to various specific clauses of GSPA were based on its subjective opinion and therefore, there was no necessity for remanding the matter back for further inquiry. CCI was well within its jurisdiction to examine the DG's subjective opinion and take an informed view after considering the submissions made by the concerned parties.

60. This Court finds the present petition unmerited. This Court is also of the view that the proceedings instituting by the petitioner are an abuse of the process of law. The petitioner is an employee of SRMB and SRMB had issued no authority in favour of the petitioner to espouse its cause.

61. It is relevant to note that GEECL and SRMB had entered into the GSPA on 11.05.2011. At the material time, no grievance has been raised by SRMB regarding the GSPA.

62. The DG's report indicates that SRMB commenced negotiation with ESSAR for supply of CBM in 2013. Thereafter, on 22.04.2014, it requested GEECL to waive the MGO clause. GEECL responded on 24.04.2014 accepting the request on a condition that the gas price be increased by a sum of ₹5/- per SCM. On 25.04.2014, SRMB entered into an agreement with ESSAR for supply of CBM. Thereafter, on 16.05.2014, SRMB declined GEECL's offer to waive the MGO liability subject to increase in the price by ₹5/- per SCM. It instead called upon GEECL for reduction of the price of CBM by ₹5/- per SCM. This was declined by GEECL on 23.05.2014. However, GEECL agreed to reduce the MGO from 80% to 75% of the contracted quantity. SRMB stopped taking gas supply from GEECL on 01.05.2014 and thereafter, in June 2014, moved the Calcutta High Court and the Court referred the parties to arbitration.

63. Thereafter, in August 2014, SRMB sought to agitate the matter before the Ministry of Petroleum and Natural Gas. However, it is noted that the matter was closed by the Government after seeking a reply from GEECL.

64. The complaint before CCI was filed in September 2014. It, plainly, appears that the petitioner had been put up by SRMB in view of the disputes that had arisen between SRMB and GEECL.

65. It is also material to note that the petitioner had appealed against the impugned order before COMPAT, which was rejected by an order dated 15.05.2017. The petitioner has, thereafter, waited for almost nine months to file the present petition. Considering that an appeal against an order passed by CCI has to be filed within a period of sixty days, the present petition has been filed after a considerable delay. Bearing the aforesaid in mind, this Court is of the view that the present proceedings are an abuse of the process of law, whereby the petitioner has been put up by SRMB to pursue the present proceedings.

66. In view of the above, the present petition is dismissed with costs quantified at ₹50,000/- to be paid to each of the respondents.

VIBHU BAKHRU, J

OCTOBER 10, 2019
MK/RK