

\$~25 & 26

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

Date of decision: 20.12.2018

+ ARB. A. (COMM.) 3/2018 & IA NO. 1065/2018

+ O.M.P. (COMM) 31/2018 & IA NO. 1063/2018

GAIL (INDIA) LIMITED

..... Petitioner

Through: Mr.Sanjay Jain, Sr. Adv. with
Ms.Gunjan Arora, Mr.Sumit Arora
& Ms.Rhea Verma, Advs.

versus

DEEPAK FERTILIZERS
CORPORATION LIMITED

& PETROCHEMICALS

..... Respondent

Through: Mr.Vivek Kholi, Ms.Perna Kohli,
Ms.Pankhuri Jain, Ms.Divyya
Kapur & Ms.Neetika Bajaj, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. The present Arbitration Appeal has been filed by GAIL (INDIA) Limited (hereinafter referred to as the 'petitioner') challenging the order dated 05.09.2017 passed by the Sole Arbitrator, holding therein that the claims of the petitioner insofar as they relate to the Gas Sales and Transportation Contract dated 10.05.2006 (hereinafter referred to as the 'GSTC, 2006') executed between the parties are non-arbitrable and in any case barred by Law of Limitation.

2. The Arbitrator has further, vide the Award dated 13.12.2017 held that the claims of the petitioner under the Gas Sales and Transmission Agreement dated 31.12.2010 (hereinafter referred to as the 'GSTA, 2010') insofar as they relate to the period between 01.01.2011 to 15.09.2013 are also barred by limitation as the petitioner had invoked the Arbitration Agreement only vide its notice dated 15.09.2016. Even on merits, the Sole Arbitrator has held that the entire claim of the petitioner, being based on the communication dated 02.07.2014 of Ministry of Petroleum and Natural Gas (MOP&NG), Government of India, directions of which cannot be applied retrospectively, cannot be sustained. The Arbitrator has held that the price of the APM Gas was governed by the contractual terms between the parties and therefore, unless there is an amendment made in the Contract, a new basis for raising the demand against the respondent cannot be sustained. The petitioner is also challenging the said Award dated 13.12.2017 vide OMP (COMM) 31/2018.

3. The learned senior counsel for the petitioner submits that the order dated 05.09.2017 is liable to be set aside as the Arbitrator has failed to consider the communications exchanged between the parties before the reference of the disputes under the GSTC, 2006 to arbitration.

4. The learned senior counsel for the petitioner, making reference to the letter dated 28.01.2006 addressed by the respondent to the petitioner, submits that by the said letter the

respondent, making reference *inter alia* to the GSTC, 2006, had sought reference of the disputes even in relation to GSTC, 2006 to conciliation under Article 15 of the Agreement. The parties had thereafter, conducted conciliation proceedings including for the period covered under GSTC, 2006.

5. The learned senior counsel for the petitioner further draws my attention to the petitioner's letter dated 15.09.2016 invoking arbitration qua disputes including under GSTC, 2006. The respondent in its response dated 12.10.2016 did not dispute the existence of the Arbitration Agreement, on the other hand, sought time to elect one out of the three names suggested by the petitioner as an Arbitrator. The respondent thereafter, by its letter dated 28.10.2016, gave its consent to the appointment of the present Arbitrator. The petitioner, in turn, vide letter dated 17.01.2017 appointed the Sole Arbitrator making reference to the GSTC, 2006 as well. The Arbitrator thereafter, entered upon reference on 19.01.2017 and therefore, an Arbitration Agreement between the parties, atleast in accordance with Section 7(4)(b) of the Act, came into being.

6. The learned counsel for the respondent submits that, without prejudice to his submission that the dispute was not arbitrable as there was no Arbitration Agreement in existence between the parties under GSTC, 2006, as the Arbitrator has rejected the claim of the petitioner on the ground of full and final discharge of the

Agreement as well on the question of limitation, he would not join issue with the petitioner on this account at this stage.

7. As far as limitation is concerned, the learned senior counsel for the petitioner submits that under Article 10 of the GSTC, 2006 and GSTA, 2010, which are both identically worded, the price for the gas could be determined “at any time” as per directive, instruction, order, etc. of the Government of India issued from “time to time”. He places reliance on the communication dated 16.12.2015 addressed by the MoP&NG to the petitioner modifying the modalities for raising of the demand on the entities using the gas supplied by the petitioner. He submits that the demand being raised in accordance with the said instructions, cannot be faulted by the Arbitral Tribunal. Incase the respondent had any grievance against the instructions issued by the Government of India, the remedy, if any, of the respondent could be only by way of a challenge to the said instructions and not through arbitration proceedings.

8. He further submits that the Government by its letter dated 02.07.2014, has directed the petitioner to issue a notice to all units to submit the utilization certificate indicating the usage of supplied gas for production of urea and incase of failure of the unit to supply such certificate issued by Fertilizer Industry Coordination Committee (FICC), the petitioner to raise invoices for the differential amount between the non APM and APM Gas price for the entire period and quantity of past supply. He submits that

pursuant to this instruction, the petitioner had called upon the respondent to submit the certificate, which the respondent refused and the invocation being within three years of such refusal, the entire claim of the petitioner was within the period of limitation. He submits that the Sole Arbitrator has erred in not appreciating that the petitioner has acted strictly in accordance with the instructions issued by the Government of India, which are binding even on the respondent. The question of amendment to the Contract was, therefore, irrelevant as both the parties were bound by the directive issued by the Government of India. He further submits that the Arbitrator has wrongly held that there was a change in the method of charge by the Government of India in its Circular dated 02.07.2014 and therefore, it could not have been applied retrospectively. He submits that this could not be a question to be determined by the Arbitrator.

9. On the other hand, the learned counsel for the respondent submits that under Article 10 of the GSTC, 2006 and/or GSTA, 2010, the petitioner, based on the instructions received from the Government of India, could have modified the price only prospectively. In any case, it requires a positive act on part of the petitioner in the form of making an amendment to the Contract. By mere receipt of the direction from the Government of India, the Contract between the parties could not stand amended on its own. Admittedly the petitioner did not make any amendment in the Contract and infact, before the communication of the circular

issued by the Government of India to the petitioner, the petitioner had already stopped making supplies of APM Gas to the respondent in May, 2014. Therefore, there was no occasion for the petitioner to have applied the said circular to the respondent. He submits that in Circular dated 02.07.2014, MoP&NG had brought about a major shift in the pricing of the APM gas as, earlier APM gas used for production of fertilizer was entitled to subsidized price, whereas, in terms of Circular dated 02.07.2014, APM gas used for production of Urea alone was entitled to avail the subsidized price. He submits that the Circular dated 02.07.2014, therefore, could not have been applied retrospectively. In any case, to give effect to this shift the Contract between the parties had to be amended. The claims were even otherwise barred by limitation.

10. The learned counsel for the respondent further submits that all claims under GSTC, 2006 stood settled between the parties and could not have been reopened on basis of Circular dated 02.07.2014.

11. I have considered the submissions made by the learned counsels for the parties. Clause 10 of the GSTC, 2006 is reproduced hereinunder:-

***“ARTICLE-10
PRICE*”**

10.0 Commencing from the contractual date and during the Contractual Period, BUYER shall pay the Price which shall be arrived in the following manner-

10.1 (a) Gas Price

For the supply of Gas against the quantity mentioned at Article 5.1, the price of Rs.3200 / 1000 (One Thousand) Standard Cubic Meters of Gas w.e.f 01.07.2005 is applicable as per Government Pricing Order No. L-12015/5/04-GP (1) dated 20.06.2005 (Annexure 2). The price is linked to a calorific value of 10000kcal/Standard Cubic Meters on Net Calorific Value (NCV) basis.

(b) Notwithstanding Article 10.1 (a), the SELLER shall have right to fix the Gas Price at any time in future as per directive, instruction, order, etc. of the Government of India issued from time to time and the BUYER shall pay to the SELLER such price of Gas fixed by the SELLER

10.2 In addition to Gas Price as mentioned under Article 10.1 above the BUYER shall pay to the SELLER the following charges (as applicable):

(a) The transmission / service charges at the unit rate of Rs 56 per thousand standard cubic meters to be escalated @ Rs. 3 (Three) per annum w.e.f. 01.04.2007.

(b) Monthly SCADA charges of Rs.99597 shall be paid and shall be escalated @ 3% per annum w.e.f. 01.04.2007.

(c) Other charges like Marketing Charges, Compression Charges (as applicable)

The above monthly/unit rate transmission charges are exclusive of replacement/modifications of the existing pipeline and associated facilities (including Compression facility) wholly/partly for supply of Gas to the BUYER at the Delivery Point. Cost of such additional facility shall be

applicable from the date of notice/agreement of such replacement / modification.

- 10.3** *To maintain safe, uninterrupted/continuous Gas supply to the BUYER, the SELLER shall be required to instal and operate an such apparatus/equipments including, but not limited to Telemetry and Telecom system. For such facilities created or to be created, the BUYER shall be required to pay all such charges after prior intimation and discussions.*
- 10.4** *As notified by Govt. of India / MoPNG, the BUYER shall pay an additional Marketing Charge, to the SELLER for the procurement, trading and selling of Gas. This will be determined and notified to the BUYER from time to time.*
- 10.5** *In case the BUYER agrees to take Gas under Article 5.5 (Substitute Gas), the BUYER shall pay to the SELLER for the Gas delivered as mentioned in the terms and conditions of the offer of the SELLER including additional transmission charges for such additional pipeline and allied facilities as may be required to provide such Substitute Gas.*
- 10.6** *The above Price is exclusive of Royalty, Taxes, Duties, service tax, education cess and all other statutory levies as applicable at present or to be levied in future by the Central or State Government or Municipality or any other local body or bodies payable on purchase of Gas from ONGCL/Other sources (s) by the SELLER or on sale from SELLER to the BUYER and these shall be borne by the BUYER over and above the aforesaid price.”*

12. Clause 10 of the GSTA, 2010 is reproduced hereinunder:-

“ARTICLE-10
PRICE”

- 10.0** *Commencing from the Effective Date and during the Agreement Period, BUYER shall pay the Price which shall be arrived in the following manner-*

10.1 Gas Price

(a) For the supply of Gas against the quantity mentioned at Article 5.1, the price equivalent to US\$ **4.2/MMBTU** on Net Calorific Value (NCV) basis (inclusive of Royalty) is applicable as per Government Pricing Order No. L-12015/8/10-GP dated 31.05.2010, and clarification issued vide letter No. L-12015/8/2010-GP dated 23.06.2010. The price is linked to a calorific value of 10000 Kcal/SCM on Net Calorific Value (NCV) basis. The above price shall be converted to Rs./MSCM (at 10000 Kcal/SCM) at RBI reference exchange rate of the month previous to the month during which supply of APM gas is made. The RBI exchange rate of the month would be calculated by taking the average of the RBI reference exchange rates for all days in the relevant month for which the rate is available on the RBI website.

(b) Notwithstanding Article 10.1(a), the SELLER shall have right to fix the Gas Price at any time in future as per directive, instruction, order, etc. of the MoP&NG/Government of India issued from time to time and the BUYER shall pay to the SELLER such price of Gas fixed by the SELLER.

10.2 In addition to Gas Price as mentioned under Article 10.1 above the BUYER shall pay to the SELLER the following charges (as applicable):

(a) The transmission charges at the rate of Rs. 63.03 per thousand standard cubic meter.

Provided further that the above transmission charges are subject to revision/variation in line with the directives, instructions, orders, etc. of MoPNG/PNGRB/Government Agency and

accordingly shall be governed by the provisions of such directives, instructions, orders etc.

(b) The fixed monthly transmission charges of Rs NIL (Rupees NIL only) per month plus additional transmission charges at the unit rate of Rs. NIL/per thousand standard cubic meter.

Provided further that the above transmission charges are subject to revision/variation in line with the directive, instructions, orders etc. of MoP&NG/PNGRB/Government Agency and accordingly shall be governed by the provisions of such directive, instructions, orders etc.”

13. A reading of the above Clauses would clearly show that the price for the APM Gas is prescribed in Clause 10.1(a), albeit in accordance with the Government Pricing Order. Clause 10.1(b) of the agreements further empower the petitioner to fix the gas price “at any time in future” as per directives, instructions, orders, etc. of the MoP&NG, Government of India issued from “time to time” and the respondent is obliged to pay such price of gas “fixed by the SELLER”. A reading of the Clauses would show that it is the petitioner, as a SELLER, who has to fix the price, albeit as per directions issued by the MoP&NG, Government of India from time to time. Such act can only be prospective in nature and in any case, would require an amendment in Clause 10.1(a) of the Agreements.

14. The disputes, however, arose out of various circulars issued by the MoP&NG from time to time. By the circular dated 20.06.2005, the MoP&NG had directed that the APM gas would be

supplied only to the Power and fertilizer sector consumers at the revised rate, which were subsidized. For other users, except for the transport sector (CNG), Agra – Ferozabad small industries, and other small scale consumers having allocations upto 0.05 MMSCMD, the price was to be charged at market retail price. On 10.07.2006, MoP&NG issued a policy decision that AMP gas being used at fertilizer units for manufacturing products other than fertilizers should be charged at the market price. Circular dated 10.07.2006 is reproduced hereinbelow:-

“It has come to the notice of this Ministry that some of the fertilizers units like RCR 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.

Accordingly, I am directed to clarify that the APM gas being used by such fertilizers units for manufacturing of products other than fertilizers should be charged at market price. Details about such quantities being used for non-fertilizers purpose may be procured from consumers concerned.

This order may be implemented with immediate effect.”

15. The petitioner, by its letter dated 13.07.2006 called upon the respondent to bifurcate the uses of gas for production of fertilizers and for other purposes. The respondent, in turn vide letter dated 19.06.2007 expressed its inability to do so. The cause of action, therefore, arose in favour of the petitioner on 13.07.2006 or on 19.06.2007.

16. MoP&NG by the letter dated 20.10.2009 directed that for the period after 01.01.2009, APM gas being used by fertilizer unit for manufacturing of products other than fertilizers should be charged at market price, whereas for the period prior to 01.01.2009, it called upon the petitioner to workout the revenue forgone, as well as Government subsidies and losses to the concerned companies and send a report to the Ministry. The petitioner again called upon the respondent to give such details and the respondent in turn expressed its inability to do so. Therefore, cause of action for making demand for the period post 01.01.2009 arose in favour of the petitioner on 20.10.2009. Circular dated 20.10.2009 is reproduced hereinbelow:-

“Please refer Ministry's letter of even No. dated 10th July, 2006 clarifying that APM gas being used by fertilizers units for manufacturing of products other than fertilizers should be charged at market price.

2. It has been informed that GAIL communicated the said direction to the concerned units, viz., Rashtriya Chemicals & Fertilizers Ltd (DFPL), and Deepak Fertilizers & Petrochemicals ltd. (DFPL), and asked them to furnish Information regarding quantity of APM gas consumed by them for manufacturing non-fertilizer products, so that they could be charged non-APM price for that quantity. However, the two Companies did not furnish the said information. Accordingly, in absence of information regarding the quantities consumed for manufacture of products other than fertilizers, MoP&NG's direction to charge market price for such quantities of gas could not be implemented.

3. Subsequently, DoF in its letter No.12014/8/2006-FPP dated 13th April, 2009 has mentioned that RCF uses 0.2 mmscmd APM gas for production of chemicals, viz., methanol & its derivatives, and it has been requested that non-APM price be applied to this quantity only from 1.1.2009.

4. In view of the above, it has been decided that the two time periods, i.e., before & after 1.1.2009, should be treated separately as follows:-

- (i) As regards the period from 1.1.2009, APM gas being used by such fertilizers units for manufacturing of products other than fertilizers should be charged at market price.
- ii) As regards the period before 1.1.2009, financial implication of charging APM rates for chemicals, both for Gas Pool Account/ GAIL in terms of revenue foregone, as well as for Government subsidy and losses to the concerned Companies, needs to be worked out. GAIL should examine the issue and send its report in the matter.”

17. The GSTC, 2006 expired on 31.12.2010 due to efflux of time. It is not disputed that all bills raised by the petitioner on the respondent for the said period were duly paid by the respondent. A fresh Agreement being GSTA, 2010 was thereafter executed between the parties on 31.12.2010.

18. In the above facts, the Sole Arbitrator found that there was a full and final discharge of the respective obligations between the parties in relation to the GSTC, 2006. The Arbitrator further held that as far as the claims under GSTC, 2006 were concerned, the

disputes between the parties had crystallized with the refusal of the respondent to provide a bifurcation of APM gas being used by it for fertilizers and non fertilizer products. As the petitioner did not take steps to recover the amount, it cannot revive the dead contract and dead claims only because of the Circular dated 02.07.2014 being issued by the MOP&NG.

19. I am in full agreement with the observation made by the learned Arbitrator. The petitioner raised a demand on the respondent for the period covered under the GSTC, 2006 only on 10.12.2015. The said claim was, therefore, clearly barred by limitation and has been rightly rejected by the Sole Arbitrator.

20. As far as the Claim of the petitioner for the period between 01.01.2011 to 15.09.2013 is concerned, the Arbitrator, rightly relying upon Article 12 of the GSTA, 2010 has held the same to be barred by limitation. Article 12 of the GSTA, 2010 is reproduced hereinunder:-

ARTICLE – 12

BILLING AND PAYMENT

12. Fortnightly Invoice

The BUYER shall open and maintain at its cost an irrevocable, Standby, Revolving, Letter of Credit without recourse to the Buyer, as per the format at Annexure 4, with any nationalized / scheduled bank (acceptable to SELLER) covering the value of 16 (Sixteen) days supply of Gas at Contracted Quantity as per Article 5.1 plus transmission / service charges payable as per Article 10.2 in favour of the SELLER during currency of the Agreement. Provided

further that L/C shall provide coverage of the value of supply of Gas for a period of three Fortnights and the validity of L/C shall invariably be renewed before the expiry of the current L/C. Provided further that the letter of credit should stipulate that all charges including negotiations and interest, if any, shall be borne by the BUYER.

12.2 The SELLER shall raise invoice for the Fortnight covering the following-

- 1. Gas Quantity actually supplied.*
- 2. DNQ*
- 3. Gas Price as mentioned at Article 10.1 for the quantity supplied*
- 4. Fixed Monthly Charges as per Article 10.2 (b)*
- 5. Transmission charges for the quantity supplied as per Article 10.2 (a)*
- 6. Compression Charges as per Article 10.2 (c) (ii)*
- 7 SCADA charges as per Article 10.2 (d)*
- 8. Unauthorized Overdrawl Charges*
- 9. Other charges, taxes and duties as applicable*

12.3 The invoice and payment for Substitute Gas supplied by the SELLER shall be as per the terms and conditions for such Gas.

12.4 The invoice for Take or Pay Quantity, if applicable, as mentioned at Article 5.4 shall be raised at the end of the month/quarter/financial year (as applicable).

12.5 The SELLER will raise the invoices for each Fortnight and the BUYER agrees to pay the invoices so raised in full within 3 (Three) Business Days of presentation of the said invoice. Provided if the BUYER pays the invoces by transfer of funds to the designated account of the SELLER through electronic mode (e-banking) then the payment shall be made within 4 (four) Business Days of presentation of the said invoice through any of the banks (HDFC / ICICI / SBI / as designated by SELLER from time to time). If for any

reasons, the payment is delayed or any disallowance is made from the invoice, the SELLER will present the invoice for the amount or for the amount not paid as the case may be to the Bank against the letter of credit and draw the amount. The BUYER shall make arrangements with the bank in a manner that in such an eventuality 3 (Three) Fortnights' value of supply of Gas is fully reinstated / replenished. In case of delay, SELLER shall have unrestricted right to stop/regulate the supplies.

12.6 In case of any discrepancy I dispute, regarding the invoices, the BUYER shall not return the bills or withhold or disallow part or full payment. After making the full payment the BUYER shall lodge a quantified claim with the SELLER within the period of 14 (Fourteen) days from the date of receipt of the related invoice. To the extent the claim is admitted by the SELLER, the SELLER shall issue a credit note in favour of the BUYER and adjust the same in the next invoice to be raised. The SELLER undertakes to consider the claim of the BUYER within a period of 30 (Thirty) days from the receipt of such claim, if found acceptable. Failure of the BUYER to put forward any claim within the time above specified shall be an absolute waiver of any claim.

12.7 The BUYER shall always, during validity of the Agreement, keep an Irrevocable Standby Revolving Letter of Credit (L/C) operative as stipulated in Article 12.1 and 12.2 above. In case payment is made after the due date, an interest at the rate of SBI Standard PLR applicable to working capital will be taken as a base and an additional 2% be charged over and above PLR as applicable for the period of delay. For calculating interest for any delayed payment SBI PLR shall be the highest one during the delay period. Delayed payment means any payment not received within the period provided in Article 12.2 above. In case of default in making payments by the BUYER or failure of BUYER to keep L/C operative, without prejudice to other rights under the Agreement the SELLER shall be at liberty

to stop/regulate supply of Gas without any further notice and such supplies may not be resumed till all payments are made and L/C restored. The provisions of Article 5.2 would be applicable for billing and payment for the period during which the supply of Gas is stopped on account of delayed payment or L/C not being reinstated by the BUYER.

12.8 In case of any doubt or clarification by the BUYER whether a particular Cess or Tax or Fee(s) or Duty or Levy or Assessment etc. or any change is effective or imposed, as the case may be, the BUYER shall take-up the matter directly with the concerned Central and/or State Governments or local authority or any such other body and/or bodies without withholding the payments thereto due to the SELLER under this Agreement and shall inform the SELLER regarding the decision of such authorities with documentary evidence.”

21. The Arbitrator has, as a matter of fact, found that the petitioner had raised bills in accordance with the certificates submitted by the respondent from time to time in accordance with the Agreement. Wherever any discrepancy arose with regard to the quantum of gas supply viz-a-viz the price paid , the same was supplied between the parties and the petitioner used to raise the supplementary bill, if required. The Arbitrator further rightly held that for the purposes of limitation, the provision of Sales and Goods Act, 1930 would be applicable read alongwith Article 14 of the Schedule appended to the Limitation Act, 1963. The plea of the learned senior counsel for the petitioner that the cause of action arose from the circular dated 02.07.2014 issued by the MoP&NG was also rightly rejected by the Arbitrator. As noted above, the MoP&NG by its circular dated 10.07.2006 had directed that the

APM gas used by the fertilizer units for manufacturing products other than fertilizers should be charged at market price. By the Circular dated 20.10.2009, MoP&NG had directed that from 01.01.2009, APM gas being used by fertilizer units for manufacturing products other than fertilizers should be charged at market price. The claim of the petitioner based on these Circulars, was, therefore, clearly barred by limitation.

22. By the circular dated 02.07.2014 MoP&NG further directed as under:-

“I am directed to invite your attention to the meeting taken by Joint Secretary (JC/GP), MoP&NG on 05.11.2013 to decide the further course of action for settlement of the above mentioned audit Para keeping in view of non-receipt of end use certificate from the concerned 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 as 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 supplies.

ii) For past period, GAIL may issue a notice to all the units to submit the utilization certificate indicating the usage of supplied gas within a period of three months, duly certified by FICC, failing 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. By this date the petitioner had already stopped supply of APM gas to the respondent. The Arbitrator had rightly held that though the policy decision made by the MoP&NG is binding on the petitioner, however, the relationship between the petitioner and the respondent has to be governed by the Contract between the two. The Arbitral Tribunal has further held that though Clause 10 empowers the MoP&NG to issue directions/orders fixing the price of the gas from “time to time”, such fixation can take effect only from the date of issuance of the same and not retrospectively. In any case, the parties would have to amend the Agreement between them in accordance with Section 62 of the Indian Contract Act, 1872 in light of such instructions. Therefore, the petitioner could not have changed the procedure for self certification for determining the APM gas from “fertilizers” to “urea” for purposes of charges retrospectively based on the Circular dated 02.07.2014 and without amending the Agreement between the parties.

24. I find no reason to differ with the above findings of the learned Arbitrator.

25. In view of the above, I find no merit in the present petition and the appeal. The same are accordingly dismissed, with no order as to cost.

NAVIN CHAWLA, J

DECEMBER 20, 2018/rv