

CORPORATISATION OF INDIAN INFRASTRUCTURE: UNDERSTANDING THE ISSUES OF RELIANCE GAS PRICING

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ABSTRACT

Indian Infrastructure has grown in leaps and bounds especially after the LPG phenomenon was seen in India. The different dimensions in which infrastructure has grown in India has forced the government to redefine its role in providing and fulfilling the responsibilities that it has as a sovereign state towards its citizens. In this context the government has delegated many activities in relation to infrastructure development to the private parties. Natural Gas is also such a sector in which the government has sought the intervention of the private parties for which they have entered into various agreements with them. Under Schedule VII² of Indian Constitution the power has been given to the Central Government as well as State Government to regulate petroleum sector which includes natural gas.

Government of India in relation to this opened up hydrocarbon exploration and production to private and foreign players during the time of LPG. Various blocks were opened up in this round which was followed up by giving out bigger blocks in 1999 as per the New Exploration and Licensing Policy (NELP) that was designed by the government and through this Reliance bagged the rights to explore the Dhirubai 6 block in the Krishna-Godavari Basin which has courted huge controversy owing to the Company's decision to price the gas that shall be supplied to the Government. The price though determined by Rangachari committee but has been de-credited by CAG report which has also highlighted other financial anomalies. At one point of time this discovery was considered as epic but at present to resolve this conflicting situation PILs have been filed. This paper aims to understand the Reliance Gas pricing controversy in context of the sovereign power of the Government with respect to infrastructure development in India.

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² Entry 53 List 1 and Entry 25 List 2, Schedule VII.

INTRODUCTION: UNDERSTANDING O&G SECTOR

The potential for growth of the natural gas market in India is tremendous; however, this is a very price sensitive market as the ability of customers to pay differs between sectors. The power generation and fertilizer sectors are the main consumers. Fertilizers producers are subsidized by the government and have limited ability to absorb higher prices. In the power generation sector, gas has to compete against coal for base-load generation. Any change in the power sector or in coal markets will have a huge impact on whether gas is used as a base-load option or for peak purposes, and therefore on future gas demand in the power sector. City gas and industrial users show greater price flexibility, but they are still emerging markets. While the oil market has now been liberalized, even at the level of retail prices, the gas market is still in a state of transition. There are three main factors behind this; (1) the natural sequencing and development of domestic indigenous supply, (2) the more general movement of the economy from socialist planning towards reform and reliance on market forces, and (3) global developments – particularly the increasing availability of LNG, as well as changes in international energy prices, and new policy agendas such as climate change.³

Historically, gas had been allocated in priority to fertilizer and power plants, while city gas, compressed natural gas (CNG) and industrial had the remainder. Furthermore, fertilizer producers and power generators were allocated gas at low Administrative Price Mechanism (APM) prices determined by the government. But the recent pricing reforms that took place mid-2010 mean the end of low APM prices, and that new gas supplies are likely to be more expensive.

The Indian gas sector, like the whole energy sector, is dominated by state-owned companies. Oil and Natural Gas Corporation (ONGC) and Oil India Ltd (OIL) have dominant upstream positions, while until 2006, Gas Authority of India Ltd (GAIL) alone had been responsible for pipeline gas transport.⁴ A relatively ‘young’ fuel in the energy portfolio, gas has in the past been delivered to final consumers at ‘administered’ prices that are far lower than the costs of production, using a system of differential pricing. This is a strategy that has been followed in

³ Anne-Sophie Corbeau, “Natural Gas in India” International Energy Agency, 2010 p. 5

⁴ id. p. 8

most commodity sectors of the economy in which the State has a sizeable presence. These subsidies have often been unsustainably high, borne disproportionately by public sector companies, and often failed to directly benefit those at whom they were targeted. This has led to considerable economic distortions, and the build-up of these over the years has led to a dilemma that is now faced by the Indian government in virtually every economic sector; namely, how to encourage the market-oriented provision of goods and services, whilst ensuring their accessibility to the poorest sections of the population.⁵

Significant policy changes have been carried out during 2010 and the first part of 2011, which point to a potentially greater role for gas in the future. In May 2010, the price of ‘administered’ gas was more than doubled from its previously subsidized level; from US\$ 1.8 per mmbtu to US\$ 4.2 per mmbtu.⁶

Although gas forms a relatively small proportion of primary energy production and consumption, its share has been increasing, particularly with the liberalization of oil and gas exploration in the 1990s, and with the start of LNG imports in 2004. Despite growth and diversification, per capita energy consumption in India is very low as per World Bank indicators⁷. Four factors have contributed to low per capita consumption of energy in India:

First, capacity constraints have restricted demand and diversification despite early signs of an impending shortage (both peaking and overall) in the power sector, one of the largest energy consumers.⁸

Second, significant bottlenecks exist in coal (which still now is the prime source of energy for Indian industries), due to its high ash content, and the lack of technology in

⁵ Anil Jain and Anupama Sen, “Natural Gas in India: An Analysis of Policy”, (Working Paper) Oxford Institute for Energy Studies

⁶ Id. p. 2. The US\$ 4.2 per mmbtu is the ‘market’ price of gas that was arrived at by Reliance Industries Limited (RIL), a private gas producer, for its ‘KG-D6’ production block in the eastern offshore basin. The price was arrived at through a price discovery process under the provisions of the New Exploration Licensing Policy (NELP) of the late 1990s.

⁷ Only 30% of world consumption

⁸ Several large planned power generation projects failed in the mid 1990s (for example, the Enron Dabhol Power Plant). Policymakers failed to put in place alternatives to ensure that these planned additions to power generation capacity took place. This indicated that a deficit would emerge in the near future. Id. p. 5

state-owned companies to mine coal at greater depths. As a consequence, coal imports have been increasing.

The third factor relates to the lack of infrastructure – including grid connectivity and gas pipeline networks – to facilitate the distribution and substitution of energy sources.

The final factor relates to distortions in pricing. There are two points of distortion; first, prices paid by marketing and distribution companies to exploration companies, and second, prices paid by energy users to marketing and distribution companies. The coal sector is under state ownership, and coal has been priced very low at both ends of the chain. Coal prices were partially decontrolled in 2005, and companies permitted to carry out an ‘e-auction’ of 10 per cent of production to obtain a notional market price, which could then be used as a guideline for pricing the remaining 90 per cent. It is unlikely that this has had much impact in practice. In the gas market, a mix of pricing regimes exists for prices paid to exploration companies, depending on the fiscal regime governing the field. Gas to major end-users has been priced at the ‘administered’ level⁹

Several policy changes have been done in the oil and gas sector including partial deregulation of diesel and also transferring the direct benefits to the consumers are some of them to be mentioned but regarding the pricing issue there has been hardly any transparency that has been encouraged not any standard international practices have been adopted to develop this sector.

NATURAL GAS AS A FORM OF INFRASTRUCTURE IN INDIA

Although gas forms a relatively small proportion of primary energy production and consumption, its share has been increasing, particularly with the liberalization of oil and gas exploration in the 1990s, and with the start of LNG imports in 2004.¹⁰ Under the Constitution of India, 1950 (“Constitution”) that has the power to legislate in respect of O&NG, legislative powers are conferred on the Union Govt. by Entry 53, to List I of Schedule VII of the Constitution.¹¹ India

⁹ Id. p. 5

¹⁰ Id. p. 4

¹¹ Nisith Desai and Associates, “Oil and Gas Industry in India: Legal, Regulatory & Tax”, July 2014 available at www.nishithdesai.com

has always been an import dependent nation as far as O&NG is concerned. Historically, Saudi Arabia and Iraq have been the largest crude oil exporters to India.¹² India imports nearly three-fourths of its requirement of crude oil from the Middle East. According to Ministry of Petroleum and Natural Gas, India (“Ministry of PNG”), India has total reserves of 760 million metric tons of crude oil and 1330 billion cubic meters of natural gas as on April 1, 2012.¹³

From an industry perspective, O&NG industry is divided into three major sectors: upstream, midstream and downstream. The upstream sector is a term commonly used to refer to exploration, recovery and production of O&NG. In industry parlance it is simply called Exploration and Production (“E&P”). The downstream sector is a term commonly used to refer to the refining of crude oil and the selling and distribution of natural gas and products derived from crude oil. The midstream industry processes, stores, markets and transports commodities such as crude oil, natural gas, natural gas liquids (liquefied natural gas such as ethane, propane and butane) and sulphur.¹⁴

Discovery of O&NG for the first time, in the offshore region, was made by Oil and Natural Gas Corporation (“ONGC”) in 1974, in Bombay High. This opened up new vistas for O&NG exploration and production in India. Subsequently, more discoveries were made in the Krishna-Godavari, Cauvery and Rajasthan sedimentary basins. The responsibility for carrying out E&P activities in the country was entrusted to the national oil companies (“NOCs”) till the beginning of 1990’s, when they used to be granted the “Petroleum Exploration License on nomination basis.”¹⁵ In 1997 introduced NELP and liberalized the sector by opening up acreages.¹⁶ Realizing that NOC alone cannot solve E&P problems in India, Union Govt. decided that one way of overcoming India’s upstream woes would be by encouraging more participation from the private sector in E&P activity. It was expected that the private sector will bring two critical inputs to the fore - technology and finance. In essence, chances of new discoveries would be greatly enhanced by involving private and foreign players because further oil production from old and depleting

¹² <http://in.reuters.com/article/2012/08/06/india-crude-import-idINL4E8IU4HI20120806> (accessed on November 15, 2014)

¹³ Basic Statistics on Indian Petroleum and Natural Gas, 2011-12, available at <http://petroleum.nic.in/petstat.pdf> (page 8).

¹⁴ <http://www.trencome.com/petroleumindustry.htm> (accessed on November 15, 2014).

¹⁵ The Petroleum and Natural Gas Rules, 1959

¹⁶ An area that has the potential of possessing hydrocarbon reserves in context of Oil and Natural Gas

fields may be sustained over long periods by applying suitable enhanced oil recovery techniques.¹⁷

DEBACLE REGARDING RELIANCE GAS BASIN: ISSUES RANGING FROM PRICING TO MANNER OF SETTLEMENT OF DISPUTE!

When Reliance found gas in 2002 in a block called KGD6, it was the world's biggest gas discovery that year and India's largest since the 1970s. For the country it was wonderful news. Rather than import oil from the Middle East, blowing a hole in the balance of payments, or burn more filthy local coal, India could, it seemed, turn to a cheap and clean source of energy.¹⁸ The discovery also showcased the power of India's private sector. For decades *Soviet-style state-run* oil firms had searched for offshore energy. Only one big field, off the coast of Mumbai, had ever entered production, in the 1970s. After sporadic exploration efforts over the years, the big global energy firms had dismissed India as a barren place.¹⁹ When a new licensing regime came into place in 1999-2000, he piled in. Reliance bought 16 exploration blocks in two auctions, even as the global firms shied away, deterred by a low oil price and India's patchy record. Dhirubhai died in July 2002. Four months later his company struck gold. As late as December 2009 Dhirubhai's dream seemed on track. That month tests at KGD6 yielded production of 80 million standard cubic metres per day (mscmd). Huge capital investments had been made onshore in anticipation of a flood of gas, including at least \$15 billion in gas fired electricity plants built by a variety of power firms (Reliance says it did not make contractual guarantees to supply anyone gas). The Ambanis spent \$4 billion on a new cross- country gas pipeline (owned by them rather than by Reliance at regulators' insistence, they say).²⁰

Production started falling in late 2010 and today stands 80% below the peak. When KGD6 was first being developed Reliance reckoned it might contain 10 trillion cubic feet of gas. Proven and probable reserves today are just 3 trillion. Power plants lie idle. And Reliance is under fierce

¹⁷ Paragraph 3.1(a), 3.3(ii) and 3.4(i), India Hydrocarbon Vision 2025, available at <http://petroleum.nic.in/vision.doc> (accessed on July 15, 2014).

¹⁸ "Deep Controversy" The Economist

¹⁹ *ibid*

²⁰ *ibid*

attack from some officials and politicians. Under the production-sharing contract that governs the block, it can recoup its costs before any profits are split with the state.

India's national auditor has implied that Reliance deliberately inflated its costs, and hinted that it thinks some of the contractors used were secretly related to Reliance. Worse still, Reliance is accused by some of holding India to ransom, deliberately suppressing production of gas until it could get a higher price for it. Under the original contract Reliance receives a "market-based" price, which in reality is set by the government. Until March this was fixed at \$4.20 per million British Thermal Units (BTU) about a quarter of the price India pays for imports of liquefied natural gas. From April a new formula will apply, partly based on global benchmarks, which should see the price rise to about \$8.²¹

IS NATURAL GAS PRICING A MATTER AFFECTING "PUBLIC INTEREST"?

Natural Gas is a natural resource and in case of India it is a nation where this resource at one time was not found in abundance due to which India primarily to run its various sectors had to purchase natural gas from the energy rich countries in Middle-East and Western Countries also.

According to the Indian Supreme Court *natural resources* are a matter of public interest and they cannot be misused by the government under any circumstances. This gives rise to the public trust doctrine which was applied by the Supreme Court in the matter of CAB²².

The Hon'ble Supreme Court of India in 1995 in the case of **Secretary, Ministry of Information and Broadcasting, Govt. of India v. Cricket Association of Bengal**²³ which decided that spectrum is actually public property. This judgment has changed the perception of ownership of spectrum in India and the way the government handles & manages spectrum in today's scenario. In addition the Apex Court has also earlier stated that the role of the government is as a public trustee and they are to take care of the natural resources as trustee²⁴. In the **Kamal Nath case**²⁵

²¹ ibid

²² infra

²³ AIR 1995 SC 1236

²⁴ M.C. Mehta v Kamal Nath

the Supreme Court held that even if there is a separate and a specific law to deal with the issue before the Court, it may still apply public trust doctrine. If there is no suitable legislation to preserve the natural resources, the public authorities should take advantage of this doctrine in addition to the fact that there was a branch of municipal law. In this context natural gas is a resource in respect of which the government should act as a trustee and ensure that this natural resource is not exploited.

INTERVENTION FROM THE JUDICIARY: PILS FILED BUT SOLUTION IS ELUSIVE

Public interest litigation cases that question the rationale for the gas price increase at a time when the company has failed to keep to the spirit of the production-sharing contract in all aspects, be it the work programme, costs or performance. Of course, there are public-sector beneficiaries from the gas price hike. But Reliance's failure to deliver promised supplies, combined with its legendary lobbying power, will ensure that it dominates the proceedings. The PILs had also brought attention to the fact that the gas price hike will inflate household power bills considerably.

Also, the current supplies from the KG-D6 block of Reliance have risen suddenly from below 10 mmscmd (million metric standard cubic meters per day) to around 14 mmscmd, after the Cabinet approval to allow Reliance the new price from April 1, 2014 (under the revised formula that could more than double the rate from \$4.2 per million British thermal unit (mBtu) to around \$8.4 mBtu).²⁶

The May 2010 judgment of apex court pertained to a pricing dispute between the Ambani brothers which had a bearing on the critical issue of ownership of national resources. The assertion of State ownership of the Krishna-Godavari basin natural gas of which Reliance is merely a contractor likely cost Jaipal Reddy his job. Though prima facie a dispute between two brothers, it was known that the decision would impact the public sector NTPC which was buying

²⁵ *ibid*

²⁶ Lola Nayar, "Where Shall We Drill Now?" <http://www.outlookindia.com/article/where-shall-we-drill-now/289601>

gas for its power plants from Mukesh Ambani's Reliance Industries Ltd (RIL), with consequences on the price at which power would reach the common man. The Supreme Court showed callous disrespect for the public sector and the ordinary citizen.²⁷

Public interest in the dispute between RIL and Anil Ambani's Reliance Natural Resources Ltd (RNRL) centres round the cost of natural gas. In the turbulent settlement of late Dhirubhai Ambani's estate in 2005, ICICI managing director KV Kamath negotiated a purchase price for RNRL at US\$2.34 per mmBTU from RIL-operated KG-D6 block. This free market price between two private entities gave RIL a clean profit of thousands of crores per annum, as can be seen from the fact the India is buying gas from Oman as \$0.9 per mmBTU.²⁸

But just two years later, the UPA agreed to purchase gas at nearly double this rate (US\$ 4.20 per mmBTU) for the National Thermal Power Corporation, and buoyed by this bonanza, Mukesh Ambani insisted that RNRL pay the higher price. RIL would thus make almost double the profit (approx. Rs. 23000 cr/pa) on sale of a national resource. The Supreme Court upheld this absurd contract and then Petroleum Minister Murli Deora called it a victory for the Government. Naturally the Centre did not file a review petition, even though the Supreme Court agreed that gas is a natural resource and belongs to the nation, and still let the government pay a private party a higher than market price! In the process, the Supreme Court also damaged corporate ethics by allowing a negotiated agreement between two parties to be set aside cavalierly in favor of one party.²⁹

As public spirited citizens and RTI activists, Arvind Kejriwal and Prashant Bhushan questioned why RIL had virtually stopped production of gas even as it is pressurising the regime to hike gas prices well before the stipulated period. It certainly enhanced their credibility that the Government had no convincing answer for shunting Jaipal Reddy out of the Petroleum Ministry. The activists had alleged that Jaipal Reddy had prepared a note for the EGoM which said that acceptance of RIL's demand would mean an additional profit of Rs. 43,000 crore (\$8.5 billion) to RIL in two years at current levels of low production. As most of the gas is used in fertilizer

²⁷ Sandhya Jain, "Judiciary as Reliance Gift Horse", <http://www.ibtl.in/column/1314/judiciary-as-reliance-gift-horse/>

²⁸ *ibid*

²⁹ *ibid*

and power production, this would also place an additional financial burden of Rs. 53,000 crore (\$10.5 billion) on Central and State Governments.³⁰

A pertinent issue that was allowed to go unchallenged at the time, which has now been raised, is that RIL was allowed by the UPA to sell its stakes to the multinational British Petroleum, though gas is a sovereign resource belonging to the State. Still, the Centre – and the Media – remained silent when RIL as private contractor sold 30 per cent stake in 21 of 20 oil blocks to British Petroleum in July 2011 at \$7.2 billion; the UPA approved the sale.

ARBITRATING A DISPUTE OR *ARBITRATING* THE PROCESS OF ARBITRATION

The matter does not end here as still in context of the pricing of the gas as Reliance has come into a conflict with the present government it sought to invoke the arbitration clause in the agreement. It had taken over two years to finalize the presiding arbitrator of the three-member arbitral panel in an earlier arbitration process initiated by RIL in November 2011. RIL had filed the arbitration petition on 16 April 2012 seeking the appointment of a third presiding arbitrator in its ongoing dispute with the government.³¹

Two former chief justices of India S P Bharucha and V N Khare had earlier been appointed by RIL and the government, respectively, to represent them in the arbitration proceedings. The arbitration petition was argued at length in the Supreme Court before Justice Surinder Singh Nijjar. The Union of India, represented by senior counsels Anil Divan and Dushyant Dave, objected to a foreign national being appointed as the third arbitrator. The government argued that since the British Petroleum (BP) group was a major stakeholder together with RIL in the contract to extract gas from the KG basin and since BP had a presence the world over, the appointment of a foreigner as a third arbitrator could potentially compromise the independence of the panel as a whole.³²

³⁰ *ibid*

³¹ Paranjay Guha Thakurta and Jyotirmoy Chaudhuri, “How Reliance’s Options on Natural Gas Price Hike Narrowed”, *Economic & Political Weekly* May 31, 2014 Vol XLIX No 22 p. 13

³² *id.* p. 14

On 31 March 2014 in a 70-page order, Justice Nijjar decided to appoint the third arbitrator himself. He explained that due to the sharp divergences in opinion between the parties, the court had asked the senior counsel from both sides to suggest names for the third arbitrator. The judge held³³:

Although two lists have been duly supplied by the learned counsel for the parties, I am of the opinion, in the peculiar facts and circumstances of this case, it would be appropriate if an individual not named by any of the parties is appointed as the third arbitrator.

Justice Nijjar rejected Anil Divan's apprehensions about the nationality and thus the integrity of the third arbitrator as "imaginary and illusory" and added³⁴:

Whatever is being said about the influence/presence of British Petroleum in other jurisdictions would apply equally to the Union of India, if the third arbitrator is an Indian national, within the Indian jurisdiction.

The drama though did not end here as Justice McHugh, ex-judge of Australia's highest court was named as the chairman of the Arbitral Tribunal as the Supreme Court had on April 2, 2014 withdrawn the appointment of James Spigelman, ex-Chief Justice and LG of New South Wales, Australia who was earlier appointed but was pointed out by the GoI that his name comes on the list of Independent Arbitrators that was submitted by RIL³⁵. This drama still unfolds further as after the CAG report and based upon fresh issues of mismanagement of the natural resources three PILs (Public Interest Litigations) were filed which are still being heard and at the same time.

PRIVATE PARTICIPATION: A SOLUTION OR A COSTLY AFFAIR?

This present issue shows on one hand the helplessness of the government to rely on the private players as that brings about the issue of arbitration and that at present the private player Reliance

³³ Reliance Industries Ltd. & Ors vs U.O.I <http://indiankanoon.org/doc/28713830/>

³⁴ *ibid*

³⁵ "KG basin: Supreme Court appoints ex-Australian judge as arbitrator" <http://www.thehindu.com/news/national/kg-basin-supreme-court-appoints-exaustralian-judge-as-arbitrator/article5960046.ece>, NEW DELHI, April 29, 2014 (last updated on March 30, 2015)

which also happens to supply natural gas to government companies have literally held the government at ransom. This was never envisaged as the nature of contract followed here is *production sharing contract* which basically has the feature that the government shall share the resource cost and funds, generated from the project, only after due exploration is done. But all this happened here on paper and the terms of contract were reduced to having the power to stir only an academic debate and not any cause of action in the court of law. Mr. Surya Sethi, *formerly Principal Adviser, Power & Energy, Government of India* in this regard has noted in an open letter to the GoI about the crony corporatization that is happening and that he has repeatedly voiced his concern on the Rangarajan formula³⁶ also in this regard as being arbitrary and without context. He has said with reference to CAG report on the Reliance Gas pricing issue as:

*“The Comptroller and Auditor General's findings and other independent reports reveal how crony capitalism benefited RIL. The pre-qualification norms were diluted to ensure RIL qualified. The claimed size of gas discoveries, the field development plans and the investment outlays proposed escaped rigorous due diligence. Above all, RIL's commitments under the PSC and the field development plans were not enforced.”*³⁷

He also has criticized the government's stand on this issue and it seems as if the text is sought to be interpreted without context. The Rangachari Report which recommended increasing the price by so many times fails to consider the proper jurisdictions before hatching this unrealistic formula for calculating the price of the gas which increased suddenly 4 times of the actual price that was sought to be charged. Mr. Sethi while responding on this issue in the Hindu states:

*“..the Rangarajan Committee chose numbers from foreign markets but that it chose numbers that do not reflect prices obtained by natural gas producers in the three markets covered. The absurdity of its formulation is best demonstrated by the inclusion of Japan that has no natural gas producer/supplier...”*³⁸

³⁶ The Rangarajan Committee has suggested a new pricing formula, accepted by the government, that from 2014 could raise the price to \$8.4/unit (though the then Petroleum Minister thought it to be closer to \$ 6.8/unit)

³⁷ Surya P Sethi, “Another scam in the making”, http://www.business-standard.com/article/opinion/surya-p-sethi-another-scam-in-the-making-113122200637_1.html

³⁸ “Surya P. Sethi responds” <http://www.thehindu.com/opinion/op-ed/surya-p-sethi-responds/article4386521.ece>

Coming to the government sides the story gets even worse as there seems to be some hidden hand which just removed any barriers that came in the path of the RIL to get the desired prices for its products. Various ministries objected to the revised high price of gas, saying their sector will be unviable, still the cabinet cleared the file. Even the finance ministry which wanted a ceiling on gas price could not get what it wanted as the cabinet cleared the proposal without any cap on gas prices.³⁹ Various other suggestions like Reliance should get the benefit of new prices only after the promised quantity of gas is produced were overlooked. In the end Reliance Industries got what it wanted. Naturally market and analysts are excited about the deal with the stock closing nearly 5% up at Rs 895.⁴⁰ Just so that the deal does not look one sided, the Union cabinet asked the company to furnish a bank guarantee to cover its liability if gas hoarding charges are proved. This guarantee will be equivalent to the incremental revenue Reliance will get from the new gas price. The guarantee will be enclashed if it is proved that Reliance hoarded gas or deliberately suppressed production.⁴¹

Meanwhile RIL claimed that even after a request was made to the government that the new price of gas be notified and made applicable with effect from the conclusion of the ninth and last phase of the elections on 12 March,⁴² the petroleum ministry acted in an “arbitrary” manner by “completely ignoring” the decision of the cabinet and “indicated” that new prices would be announced only in the second quarter of 2014. The ministry also returned a bank guarantee of Rs 509.55 crore deposited by RIL since the new rate has not been announced. The bank guarantee, which was meant to cover the incremental revenue that RIL would have earned in the April-June quarter if the price of gas were nearly doubled to \$8.30 per unit, had been devised to cover the company’s liability if allegations of gas-hoarding from 2010 to 2011 in the Dhirubhai-1 and 3 (D1&D3) fields in the eastern offshore KG-D6 block were proved. The bank guarantee had been

³⁹ Sishir Asthana, Reliance gets its price, time we got our gas, http://www.business-standard.com/article/companies/reliance-gets-its-price-time-we-got-our-gas-113122000554_1.html

⁴⁰ *ibid*

⁴¹ But the amount of guarantee is far less than the amount of gas the company is charged of hoarding. Further, the bank guarantee is only applicable to D1 and D3 fields. The next round of growth in production is expected from other fields that are not included in the bank guarantee. The company has said that its reserves have fallen by 70 per cent from 10.3 trillion cubic feet to 3.1 trillion cubic feet. Production from KG-D6 was around 0.2 TCF in the previous year. Sishir Asthana, Reliance gets its price, time we got our gas, http://www.business-standard.com/article/companies/reliance-gets-its-price-time-we-got-our-gas-113122000554_1.html

⁴² Election commission had stayed the notification of the increased price of the natural gas that the government had decided to issue on the grounds that it might be prejudicial to the election result and that even after repeated requests from RIL to the Commission to reconsider its decision it did not happen.

provided, even as the Election Commission ordered a stay on the hike in the price of gas on 24 March. The company claimed that this “capricious” situation has put their “future investment plans in jeopardy” with proposed investments worth \$8-10 billion over the next few years being put on hold.

RIL also claimed the government would be incurring a revenue loss of Rs 300 crore per month. The company, in its statement, made no bones about its displeasure given the uncertainty on the price of gas prevailing and had expected that the matter be sorted out at once without further delay.

CONCLUSION AND SUGGESTIONS

The suggestions with regard to finding a solution in this issue primarily relates to reduction of collusion of interest between sovereign bodies and the private entities. It is required for an independent regulatory authority (Infrastructure Regulatory Authority) to intervene and keep a periodical record and check the various approvals that are given to the various private players by the ministries. This body should be a quasi-judicial body that should be entrusted with the power to resolve disputes by using any of the alternative methods of dispute settlement. In case of any disobedience they should be entrusted with power to issue fines or even order for attachment of assets.

Also, there should be a compulsory completion time period for any of these projects failing for which certain incentives which shall be given else shall be denied. The authorities should ensure that timely completion of projects that have been allotted to the private players are done failing which certain penalty needs to be raised against them. In order to prevent any kind of collusion amongst the government officials and undue favoritism shown towards any player a clause should be made in the contract to the effect that there is *disclosure of interest* which should have the rider that in case of any default or non-disclosure found later criminal charges may be brought against the individuals and that strong actions are taken against them in this regard.

As resources such as natural gas require huge expenses at the time of exploration, it should be made mandatory to the effect that large allocation of resources are not done and that the

exploration should be done by the private entities for which they should deposit a security money and clause of forfeiture needs to be added so that this is not misused by the large corporate entities. Also, various small or medium scale companies should be given support by the government rather than siding with the corporate players like Ambanis or Adanis or Brilas or so on.