

Gas Saga

# Blood is Thicker than Gas

Zafrus Salam

The Supreme Court ruling closes a chapter on a high profile feud between two Ambani brothers Mukesh Ambani and Anil Ambani that could set the tone for the country's policy on gas pricing and allocation.

When two brothers are involved in the same business, there is a tendency of the older sibling overshadowing the younger but the recent development occurred between the two brothers proved that 'Blood is Thicker than Gas'. Following the Supreme Court order, Ambani brothers have buried their hatchet and come up with a fresh non compete agreement to replace the earlier one. The peace came after a four-year court battle over supply of gas to Anil Ambani-run RNRL by Mukesh Ambani-led RIL. On May 7, 2010 the Supreme Court rejected Anil group's plea for cheap gas from RIL on the basis of a family agreement reached in 2005.

The apex court in a crucial verdict in the case between the two Ambani brothers Mukesh and Anil on gas supply and pricing ruled, "In a constitutional democracy like ours, the national assets belong to the people. The Government holds such natural resources in trust." The apex court verdict in the natural gas row indeed weighed heavily in favour of Mukesh Ambani and Reliance Industries, but riding as it did on the Public Trust Doctrine, it provided a ringing endorsement of the Government's contention that it has the right to decide how the country's natural gas resources are to be utilised and the terms on which they would be sold. It means that, the Government is a sole owner of natural assets like oil and gas and the only authority that can determine price and allocation. The recent apex court ruling on the key issues such as government

role in pricing and sales prevented the global majors like ExxonMobil and Chevron, the two companies which have been waiting in the wings to test the water in India, stayed away from the last round of New Exploration Licensing Policy (NELP). Interestingly, Justice Sathasivam went on to say, "It would have been ideal for the Public Sector Undertaking (PSU) to handle such projects exclusively." He further observed, as the Constitution envisaged exploration of natural assets like gas to be within the domain of government functions, it was the duty of the centre to make sure these resources were used for the benefit of people of India.

Now, it is clear that the government will persist to control the price and sale of gas as determined by the Empowered Group

of Ministers (EgoM). S Sundareshan, petroleum secretary clarified after the judgment that the government would continue to decide the allocation and price of gas in future also.

Presently, there are only eight out of the Pats' 250 companies, which are operating in India. Pats' is the index that lists energy companies with a net worth of US 2 billion.

As a matter of fact, due to lack of clarity on issues like ownership, freedom and fiscal package and marketing, the global companies are unenthusiastic into the growing Exploration and Production (E&P) sectors in India and Oil and National Gas Corporation (ONGC) is losing out to its partners such as Petrobras, Statoil, and BG, in a various exploration blocks.



[From Right to Left] Mukesh Ambani and Anil Ambani

Analysts have raised concerns the dispute is putting off foreign investors, with government interference in the pricing and marketing of gas raising investment risk in a politically sensitive resource. Ashu Sagar, Secretary General, Association of Oil and Gas Operators (AOGO) said, "What we are worried about is the court's interpretation of the PSC. We feel the government has the right to approve the price and not determine the price as said in the judgment. The government must clarify on this before the next round of NELP is launched." Added a senior analyst, "Although the judgment has removed ambiguity about ownership, pricing and allocation is a good thing; but making the government owner and regulator of the gas may not get very well with international investors. In such a scenario, they will prefer to invest in proven geographies like Brazil or West African countries instead of India."

#### Will Supreme Court Verdict have Impact on NTPC – RIL case?

The verdict of the apex court in favour of Reliance Industries in a gas pricing dispute with younger brother Anil's Reliance Natural Resources, making the price fixed by the government as binding, clearly raises the question of the impact of on the NTPC – RIL case which is currently going on in Bombay High Court.

The Bone of contention between the two Ambani brothers lies in NTPC's International tender and the price of USD 2.37 percent metric million British thermal unit (mmBtu) quoted by the RIL to obtain the contract. Their differences had emerged out of the scheme of demerger of the Reliance Empire. At the time of split both brothers signed a MoU, which said that RNRL would get gas at the price quoted by RIL to NTPC. Sushilkumar Shinde, Power Minister, who has been perusing the centre to allow RIL to sell gas at the tendered price said, "The judgment of the apex court upholding the government's right to decide price of gas and its use as fair and it does not concern NTPC case." Added



NTPC

Mohan Parasaran, Additional Solicitor General of India, "I had been saying that NTPC case stands on a different footing. This is because, NTPC is a government arm and the government can apply a different yardstick for NTPC. NTPC is going to utilise gas for public good and its profits go to government and not to private hands." Having a bit different view, S C Tripathi, Former Secretary, Petroleum Ministry, observed, "It has brought more clarity as far as policy is concerned that the government is the owner of the gas and has the power to decide prices. This makes government's role more predominant, but votaries of economic liberalisation may consider this as a step backward."

Some oil sector analysts sing a different tune and believe that NTML will also lose the case against RIL. DD Sharma, Head Research and Anand Rathi Securities, said, "As far as this ruling is concerned, definitely as the supremacy of the production sharing contract has been established and supremacy of the government to price the gas is established and therefore, NTPC also will lose the case even if it pursues it." They further added "the NTPC is also a loser in this game but the NTPC stock is right now at a level wherefrom it can fall significantly from the current levels. Whatever levels it is ruling right now, close to those levels bottom for NTPC." Some leading

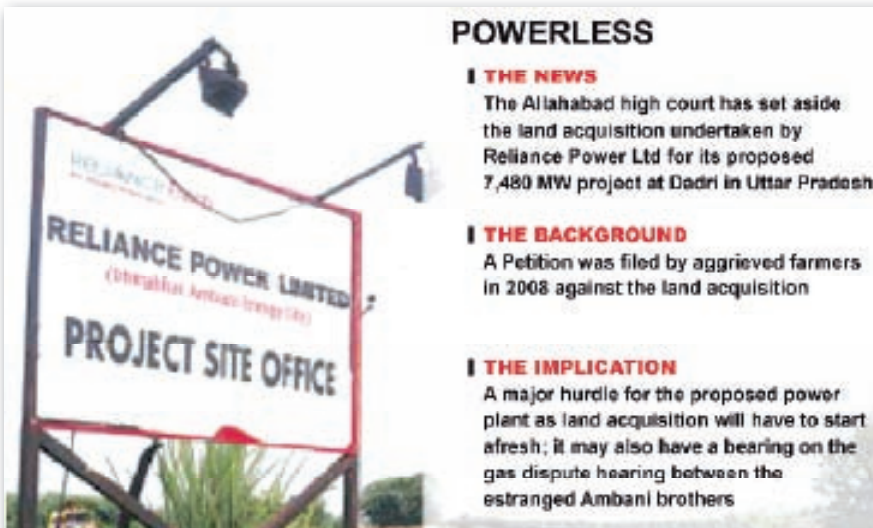
lawyers also say, since NTPC is also a company incorporated under law like any private company, the government will not be able to enforce differential pricing for its benefit. Further, according to competition law experts, such differential pricing could also be at odds with the competition policy.

It is believed that in the case of NTPS the government may evoke 21.6 (2) of the PSC, which allow the government to nominate an agency to buy oil or gas on its behalf at a price determined by the government.

In case, if the government takes such a decision, giving special treatment to NTPS then it will be another restriction that will keep away global investors from the Indian Energy and Power (E&P) sector, observed a senior analyst.

#### Impact of Court Verdict on RNRL

As per the calculations, Reliance (RIL) will earn a profit of Rs. 37,755 crore over the next 17 years by selling 28 mmscmd gas at USD 4.2 mmBtu. Nevertheless, had RIL been forced to sell at USD 2.37 to RNRL, then its profit would have been restricted at Rs. 14,940 crore and the government will also earn Rs. 28,575 crore by way of profit petroleum and royalty. In this context, the apex court verdict will have immense impact on RNRL and Group Company Reliance power. RNRL will lose out on income of Rs.



Dadri Project

## POWERLESS

### THE NEWS

The Allahabad high court has set aside the land acquisition undertaken by Reliance Power Ltd for its proposed 7,480 MW project at Dadri in Uttar Pradesh

### THE BACKGROUND

A Petition was filed by aggrieved farmers in 2008 against the land acquisition

### THE IMPLICATION

A major hurdle for the proposed power plant as land acquisition will have to start afresh; it may also have a bearing on the gas dispute hearing between the estranged Ambani brothers

3,000 crore a year from gas sales. R K Gupta, Managing Director, Taurus Mutual Fund, Mumbai said, "There will be a severe impact on RNRL profit in the June quarter as they are only in the business of gas distribution. Anil Ambani will have to think of other business proposition." Added Neeraj Dewan, Director, Quantum Securities, New Delhi, "It looks very bad for RNRL on the face of this. They were taking USD 2.3 as the gas price for their projections, which will go up to USD 4-4.2. This is a major hit and even their power company that was dependent on this gas for their projects, their costs will have to be

repriced tremendously."

While the court battle is over, now it depends on Ambani brothers how they renegotiate their deals and find themselves in a win - win situation. As per the court ruling, price and quantity will be decided by the government, the two brothers can negotiate on issues like suppliers liability or pay clause etc. opined an analyst.

Nevertheless, even if Ambani brothers reach a settlement, for RNRL getting gas will be a bit difficult as Greenfield Projects are at the bottom of the government's priority list. But it does not mean that RNRL will lose its hope to get gas for its projects.

## Overviews

The Supreme Court Verdict is seen very significant in two ways.

1. While the apex court has confirmed that the government has the power to determine both the valuation and pricing of the gas, now the government without having any prejudice and partition will act fairly at the time of pricing and allocation in the national interest.

2. The apex court ruling caused two Ambani warring brothers to bury their differences and create an environment where they renegotiate the terms of the Gas Sales and Master Agreement (GSMA) between them.

As a result of the truce, younger sibling Anil Ambani led group can enter into oil, gas, retail and petrochemical businesses while elder Mukesh-led RIL could make forays into telecom, power and financial sector arena. Also, The cancellation of the existing non-compete agreement will provide enhanced operational and financial flexibility to both groups and greater ability to participate in high growth sectors such as oil and gas, petrochemical, telecom, power and financial services.

It is believed that the agreement has been signed to help the younger brother's business to grow. As a goodwill gesture, Mukesh Ambani led - RIL said it would not enter the gas-based power generation arena till 2022. After all Blood is Thicker than Gas. ■

### Important Dates

June 2004:

NTPC confirms the deal with RIL through, a letter of intent.

June 2004:

RIL enters into agreement with UP government to make arrangements for land, water and other facilities for the Dadri Power project

October 2004:

A Reliance Energy Ltd. Board meeting after records that gas from the KG basin would be supplied for the power projects of REL.

June 2005:

Media reports an amicable resolution of all dispute between the brothers

December 2005:

RIL unilaterally modified the agreement and forwarded it to NTPC for execution.

April 2006:

RIL applies to the petroleum ministry for approval of gas price at which the sale of 28 mmscmd of was agreed with RNRL

May 2006:

RNRL write to the petroleum ministry to accord approval to the RIL application

July 2006:

petroleum ministry refuses to approve the price of gas agreed between RNRL and RIL

November 2006:

RNRL moves the Bombay High Court against RIL

September 2007:

Empowerd Group of Ministers approves RIL's gas pricing formula and fixes price at USD 4.2 mmBtu for the first five years

15 June, 2009:

Bombay High Court rules in favour of RNRL. Asks RIL to supply 28 mmscmd gas to RNRL at USD 2.34 mmBtu for 17 years

1 July, 2009:

RIL moves to Suprem Court challenging the Bombay High Court order

7 May, 2010:

Suprem Court delivers judgement in favour of RIL, says government owns gas