

০৩/১/১০, ১৭/২/১০, ১৭/২/১০, ০৫/৪/১০, ০৫/৪/১০

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 6911 OF 2005.

An application under article 102 of the Constitution of the People's Republic of Bangladesh.

AND

IN THE MATTER OF:

Bangladesh Environmental Lawyers Association (BELA), Road No.3, House No. 15A, Dhanmondi R/A, Dhaka, represented by its Director (Programs) S. Rizwana Hasan and others.

.....Petitioners

Versus

Bangladesh represented by the Secretary Energy Division, Ministry of Power, Energy and Mineral Resources, Bangladesh Secretariat, Dhaka and others.

.....Respondents.

Mr. Mahmudul Islam with
Mr. Tanjib-ul Alam.

.....for the petitioners.

Mr. Rokanuddin Mahmud with
Mr. Mustafizur Rahman Khan and
Mr. Mohammed Mutahar Hossain

....for the respondent No. 10

Mr. Mehdi Hasan Chowdhury

.....for respondent No.4

Mr. M.K. Rahman, Additional Attorney General, with
Mr. Razik-Al-Jalil, Deputy Attorney General
Ms. Syeda Rabia Begum
Ms. Purabi Rani Sharma and
Mr. Kazi Bazlur Rashid, AAG

.....for the respondent



Hearing on 25.2.2009, 4.3.2009,
19.3.2009, 8.4.2009, 9.4.2009,
29.4.2009, 16.7.2009,
22.7.2009, 23.7.2009, 30.7.2009,
5.8.2009, 12.8.2009.

Judgment on 16.11.2009 and 17.11.2009.

Present:

Mr. Justice Syed Mahmud Hossain.

And

Mr. Justice Quamrul Islam Siddiqui.

Quamrul Islam Siddiqui: J.

In this application under Article 102 of the Constitution of the People's Republic of Bangladesh, the petitioners challenged the following and sought for directions as under:-

(1) why the impugned Joint Venture Agreement (shortly JVA) should not be declared to have been made without lawful authority and is of no legal effect (Annexure-A);

(2) why the JVA should not be treated as being nullity having been procured through flawed processes and resorting to fraudulent means and forged documents by Niko (respondent No. 10);

(3) why JVA should not be treated as illegal and came to an end as a result of material breach of the statutory and legal obligations of the Petroleum Act, 1974 and the Environment Conservation Act, 1995 and also the constitution of Bangladesh;

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(4) why respondent Nos. 1-5 should not be directed to take legal measures to protect the public property, that is, subject matter of JVA by respondent No. 10 by discharging its statutory duties to mitigate the damage and loss caused by its failure to discharge its obligations and to refrain from asserting any right under JVA to receive payment thereunder;

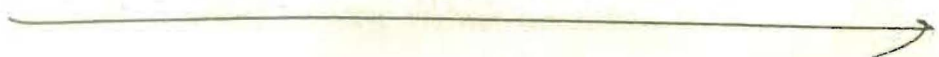
(5) why respondent Nos. 1-5 should not be directed to take immediate effective measures to realize full compensation for destruction of the valuable natural gas resources and the damage to life, property and environment by the blow out and;

(6) why the JVA should not be declared to have been made in violation of Articles 135, 143, 145 and 149 of the constitution?

The facts leading to the issuance of the Rule, in brief are:-

The petitioners are non-governmental organizations registered under the Societies Registration Act and the Companies Act, working in their respective fields to promote environmental and human rights. They are authorized by their respective committees/boards to file the instant public interest litigation. The petitioners' organizations have proven experience and expertise in promoting and protecting human

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environmental and livelihood rights and upholding Rule of law and public interest against violation of legal provisions and abuse of and misuse of power by public agencies in dealing with public properties.

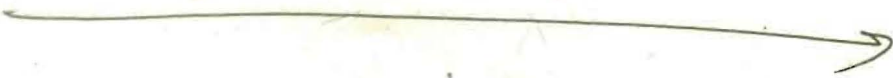
Respondent No. 1 is Bangladesh represented by the Secretary, Energy Division, Ministry of Power, Energy and Mineral Resources responsible for administration of all laws, policies and matters relating to petroleum, natural gas and issues mentioned in the Petroleum Act, 1974 and Oil, Gas and Mineral Corporation Ordinance, 1985. Respondent No. 3 is the Ministry of Environment and Forest represented by its Secretary and is responsible for the overall environmental administration of the country. Respondent No. 4 is Bangladesh Oil, Gas and Mineral Corporation known as Petrobangla (hereinafter referred to as Petrobangla) established under the Bangladesh Oil, Gas and Mineral Corporation Ordinance, 1985 and has been authorized and entrusted with the responsibilities, inter alia, to prepare and implement programs for exploration and development of oil, gas and mineral resources and to implement the Petroleum Act, 1974 providing for exploration and production of petroleum. Respondent No. 5 is Bangladesh Petroleum Exploration and Production Company Ltd. (hereinafter referred to as Bapex), a company incorporated under the Companies Act, wholly responsible for the development and production of Petroleum from Marginal/Abandoned Chhatak and Feni Gas Fields. Respondent No. 6 is

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the Director General, Department of Environment empowered by the Environment Conservation Act, 1997. Respondent No. 7 is responsible for compliance with environmental clearance certificate issued for exploration/mining activities, prevent/stop activities hazardous to environment and realize compensation for injury done to ecology and or people. Respondent No. 10 is Niko Resources Bangladesh Ltd., a private limited company incorporated under the laws of Barbados as a subsidiary of Niko Resources Ltd. and has been operating in Bangladesh on the basis of permission issued by respondent No. 9 on November 30, 2003, vide Memo No. BOI/Branch/24/2003/80 (hereinafter referred to as Niko). Respondent No. 10 is the operator under the impugned JVA and has been held responsible for the successive explosions and fire in the JVA area of Chhatak (West) that took place on January 7, 2005 and June 24, 2005. The petitioners have been aggrieved by the activities of Niko for its failure to perform its functions according to the terms and conditions of JVA. The JVA was executed on October 16, 2003 between respondent No. 5 (Bapex) and respondent No. 10 (Niko) in violation of Article 142 of the Constitution and sections 3 and 4 of the Bangladesh Petroleum Act, 1974. The JVA was signed by respondent No. 5 and 10 by inclusion of Chhatak (East) Exploration Prospect by fraudulent means upon obtaining a written legal opinion from M/s. Moudud Ahmed and Associates. The JVA was procured by fraudulent means on the basis of a





forged written opinion. The inclusion of Chhatak (East) was clearly outside the subject matter of the JVA. The JVA was intended to apply only to developing marginal/abandoned fields and not to give any exploration rights in relation to an Exploration Prospect, Chhatak (East) which was not subject matter of the JVA. The process of executing the JVA started with a letter dated June 28, 1998 submitted by Niko. By this letter the Niko Resources Ltd. gave an unsolicited offer to respondent No. 1 wherein the Niko Resources expressed unsolicited interest for the development and production of gas fields of Chhatak, Fenchuganj, Bianibazar and Kamta under a joint venture describing these fields as Marginal and non-producing gas fields. In this letter Niko did not mention the necessary technical information to fully evaluate the geological, geophysical and engineering aspects of the subject, that is, marginal fields. In the above letter (Annexure-C) Niko Resources expressly guaranteed that development in these fields would be at its own risk and expense. Moreover, the terms and conditions that internationally prevail in the development of marginal fields will also be present here. The Niko will operate in a safe and environmentally responsible manner as it never had a blow out in the past. Clause 6(c)(i) of the draft MOU annexed to the unsolicited offer letter (Annexure-C) states that during the negotiation period, the Government will not encourage, entertain, solicit or engage negotiation or discussions with

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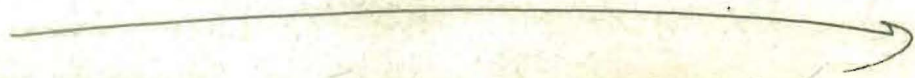


any party other than Niko in respect of this project. The Niko Resources Ltd. also proposed further modality for finalizing the joint venture with respondent No. 5. If Niko remains the only qualified party or receives the highest mark then the contract negotiated with Niko should be executed. If any other party is found to be in the leading position, then Niko shall be asked to match that offer. If Niko agrees to match the leading offer, then the contract will be executed with Niko. If Niko is unable to match the best offer then the contract shall be executed with the technically qualified and commercially successful party. Upon receipt of the unsolicited offer from Niko Resources, Respondent No. 1 vide Memo No. BiJaKhaSho/Prash-4(U:)/Niko.Resou:-22/97/204 dated May 25, 1999 informed Respondent No. 4 the following decisions:-

" (ক) নিকো রিসোর্সের প্রস্তাবের প্রেক্ষিতে নিকো ও বাপেক্সর যৌথ উদ্যোগের মাধ্যমে ছাতক, কামতা ও ফেনী গ্যাস ক্ষেত্রগুলি Marginal Gas Field Development ধারনায় উন্নয়ন ও উৎপাদনের বিষয়টি গ্রহণ করা যায়।

(খ) নিকো রিসোর্সের সঙ্গে সমঝোতা স্মারক (MOU) স্বাক্ষরের পূর্বে বাপেক্স ও নিকোর মধ্যে Joint Venture Agreement চূড়ান্ত করতে হবে।

(গ) অতপর উক্ত গ্যাস ক্ষেত্রগুলি উৎপাদনের ও উন্নয়নের ক্ষেত্রে নিকো ও বাপেক্স কর্তৃক প্রণীত প্রস্তাব, প্রয়োজনে Swiss Challenge পদ্ধতি অবলম্বনে যাচাই করে, বাস্তবায়নের পদক্ষেপ নেয়া যেতে পার। "





From the above decisions, respondent No. 1 directed that 'Swiss Challenge' process may be resorted to for evaluation of the unsolicited offer. On 25.5.1999, respondent No. 1 also directed respondent No. 4 to take further necessary measures to implement the unsolicited offer. Subsequent development suggests that as a part of further necessary measures, a Framework of Understanding for the Study of Development and Production of Hydrocarbon from the Non-producing Marginal Gas Fields of Chhatak, Feni and Kamta was signed between respondent No. 5 and 10 on August 23, 1999 (hereinafter referred to as the FOU), Annexure-A. In February, 2000, the Study Report as Annexure-A titled "Bangladesh Marginal Field Evaluation Chhatak, Feni and Kamta" was finalized by respondent Nos. 5 and 10. This Study Report dealt with Chhatak in two different parts, namely, Chhatak (West), and Chhatak (East). In the study report, the description of Chhatak (West) field was given as "discovered field". On the other hand, Chhatak (East) was described as an "exploration structure" with a proposal to drill an exploratory well only in respect of undiscovered/unexplored areas. Based on the findings of the Study Report, it was concluded that a Joint Venture contract as earlier stipulated might be executed between respondent Nos. 5 and 10. Although Niko Resources earlier submitted a draft JVA on November 7, 1999, the negotiation over the JVA effectively started after the submission of the Study Report. On April 13,

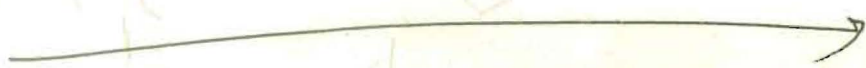
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2000, a committee was formed by respondent No. 5 to finalize the terms and conditions of the JVA submitted by respondent No. 10 without resorting to any 'Swiss Challenge' for evaluation. This matter of JVA was discussed at the 114 and 118 Board Meeting of respondent No. 5 held on June 8, 2000 and August 21, 2000 and also at the 287 Board Meeting of respondent No. 4 held on October 22, 2000. At those Board Meetings the following decisions, amongst others, were taken:

- (১) আলোচ্য Joint Venture এর উদ্দেশ্য হইল ইতিপূর্বে পরিত্যক্ত ছাতক, ফেনী ও কামতা Non-Producing Marginal Gas "Field সমূহকে বানিজ্যিক ভাবে গ্যাস উৎপাদন ক্ষেত্রে উন্নীত করা। আলোচ্য যৌথ উদ্যোগের কার্যক্রম পরিচালনা করিবার জন্য ছাতক গ্যাস ক্ষেত্রের পশ্চিম Block, ফেনী গ্যাস ক্ষেত্র এবং কামতা গ্যাস ক্ষেত্র এলাকা চিহ্নিত করা হইয়াছে এবং ছাতক পূর্ব Block একটি ভিন্ন এক্সপ্রোরেশন Lead বিবেচিত হওয়ায় প্রস্তাবিত কার্যক্রমে উহা ছাতক গ্যাস ক্ষেত্র এলাকার ভিতর অন্তর্ভুক্ত করা হয় নাই।
- (২) আলোচ্য Joint Venture এর আওতায় উৎপাদিত Product Agreement এর সম্পূর্ণ মেয়াদকালীন সময়ে বাপেক্স প্রতি এমসিএফ গ্যাস মার্কিন ডলার ১ ৭৫ হারে ক্রয় করিবে এবং গণপ্রজাতন্ত্রী বাংলাদেশ সরকার কর্তৃক সময়ে সময়ে অনুমোদিত end users price এ বিক্রয়/বাজারজাত করিবে।
- (৩) বিশদ আলোচনার পর বোর্ড মামলায় দিক নির্দেশনা অনুযায়ী এবং বাপেক্স বোর্ড এর ২১-৮-২০০০ ইং তারিখে অনুষ্ঠিত ১১৮ তম সভার

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সিদ্ধান্ত ও সুপারিশ অনুযায়ী প্রণীত ছাতক, ফেনী এবং কামতা Non-Producing Marginal গ্যাস ক্ষেত্র সমূহ সুইস চ্যালেঞ্জ পদ্ধতি অবলম্বনে উন্নয়নের লক্ষ্যে বাপেকস এবং মেসার্স নিকো রিসোর্সেস লিমিটেড এর সঙ্গে সম্পাদিতব্য খসড়া Joint Venture Agreement মন্ত্রণালয়ের সিদ্ধান্ত গ্রহণের নিমিত্তে প্রেরণের অনুমোদন করে।

From the decisions of the 287 Board meeting of respondent No. 4, it appears that respondent No. 10 was declared disqualified at the second round of bidding for the Production Sharing Contract (shortly, PSC). At the said meeting the draft JVA was examined by a 7-member PSC Negotiation Committee which reiterated the decision of respondent No. 5 for excluding the Exploration Prospect of Chhatak (East) from the impugned JVA. Subsequently a series of meetings of the Board of respondent Nos. 4 and 5 took place wherein various clauses of the draft JVA were discussed with special emphasis on issues regarding (i) exclusion of Chhatak (East) Exploration Prospect from the JVA; (ii) inviting of other competitive offers through international competitive bidding adopting the method of "Swiss Challenge" prior to executing the JVA; and (iii) fixing sale price for gas. Meanwhile respondent No. 3 developed a procedure entitled, "Procedure for Development of Marginal/Abandoned Gas field" (hereinafter referred to as the Procedure) and it was submitted to the then Prime Minister on June 6, 2001 for approval. Clause 3 of the Procedure provides that in order

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declare any gas filed as marginal, respondent No. 4 shall constitute a technical committee which will evaluate the status of all gas fields on the basis of geological, geophysical and engineering data production history, costs effectiveness, size of fields, remaining recoverable reserve, well deliverability, costs of production, access to pipeline and market etc. and determine which gas field may be considered as marginal and abandoned. It was decided that for the purpose of this Procedure, Chhatak, Kamta and Feni gas fields should be deemed to have been declared Marginal/Abandoned gas fields. In fact, in the Procedure Chhatak (East) gas field was not included. Though, it has been categorically made clear to respondent No. 10 that the Exploration Prospect of Chhatak (East) shall not be covered by the impugned JVA respondent No. 10 persisted in its attempt to gain undue advantage by including Chhatak (East) in the JVA area. Respondent No. 10 in its letter dated July 3, 2001 (Annexure-G) however, accepted the fact that Chhatak (East) is an undiscovered exploration area and proposed better fiscal terms for the same. In its subsequent letter dated July 8, 2002 (Annexure-G-1) respondent No. 10 requested respondent No. 5 to include Chhatak (East) in the JVA, contending that under clauses 1.2 of the Procedure the same is treated as abandoned. On September 16, 2002, respondent No. 1 again confirmed that the activities under the JVA would be confined to Chhatak (West) gas field (Annexure-I). But in a

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subsequent letter dated November 25, 2002, respondent No. 10 requested respondent No. 5 to include Chhatak (East) in the JVA (Annexure-J). Respondent No. 10 obtained a 'legal opinion' on 27.2.2003 in order to gain an undue advantage by dubious means for inclusion of Chhatak (East) in the JVA. Respondent No. 1 also acted without lawful authority, relying upon the 'legal opinion' procured by respondent No. 10. There is striking similarities between the language of legal opinion obtained by respondent No. 10 and the 'legal opinion' given by respondent No. 2. Based on the legal opinion of respondent No. 2, the JVA was finally approved at the 333 meeting of the Board of respondent No. 4 held on July 22, 2003. At the meeting, the Board included the Chhatak (East) Exploratory Prospect as a marginal/abandoned gas field and the same was signed on October 16, 2003. It is clear that inclusion of Chhatak (East) in the JVA area was collusive and malafide. The requirement of adopting 'Swiss Challenge' to invite competitive offers through international bidding prior to executing the JVA with respondent No. 10 was also overruled on the basis of the erroneous and malafide opinion of respondent No. 2. The approval of the impugned JVA on the basis of such malafide opinion of respondent No.2 was in defiance of, and disregard for, the series of decisions of the Government that favoured 'Swiss Challenge'. The available documents also suggest that despite clear decision that the sale

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price of gas shall be US\$ 1.75 per MCF, the impugned JVA already negotiated and executed failed to guarantee such minimum sale price. After execution of the impugned JVA respondent No. 10 started drilling a well in the Chhatak (west) field on December 31, 2004 at a place called "Tangratila" without approval of the drilling program by the Joint Management Committee as envisaged in Clause 6.2 of the JVA which is a clear violation of the JVA. While respondent No. 10 was continuing with drilling well, a severe explosion/blow out occurred on the night of January 7, 2005 around 9-30 P.M putting the drilling well and its adjoining area on fire. The ferocity, gravity and magnitude of the fire that continued for a long period in various areas was devastating. After breaking out of the fire, several committees were formed by the Government and other statutory agencies to investigate into the causes/reasons for the explosion and fire and the various damages occurred. The committee submitted its report on February 10, 2005 primarily holding respondent No. 10 responsible for the explosion/fire. The aggressive drilling by the Chinese Company appointed by respondent No. 10 on the basis of faulty design of respondent No. 10 and negligence in performing duties by respondent No. 5 were identified as one of the reasons for the explosion/fire. The committee assessed loss of 100 BCF of gas till the date of submission of the report. The committee recommended realization of compensation for the loss and damages. By

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memo No. PaBaMa-4/5/65/2004/184 dated 2.4.2005. another committee was formed by respondent No. 3 to assess the environmental damages caused by the explosion/fire. The Committee submitted its report on April 13, 2005 stating the immediate losses caused by fire in the sectors of air, trees and forest, agriculture and fisheries, water resources, soil ecology, sand, health and social structure system of the local people were calculated at Tk. 35.45 crore. One-member committee of the Chief Reserve Study Cell of respondent No. 4 submitted its report on June 2005 stating that the loss of gas if calculated in monetary terms could be as high as Taka 100 crore. Another committee was formed with respondent No. 7 mainly to assess the loss of the local people. The Committee estimated that because of the blow out and continuing fire the local people have suffered a loss of Tk. 1.19 crore on account of loss of agriculture, crops, plantation, trees, forest, homestead, fisheries etc. After 5(five) months of the first blow out, respondent No. 10 started drilling relief well on May 31, 2005 to stop escaping of gas from the first blow out. On June 24, 2005 around 3 A.M., a second blow out occurred even with higher magnitude than the first one. The expert fear that the second blow out has damaged the gas reserve of Chhatak (West) to the extent that it might have to be declared abandoned. While Professor Mohammad Tamim of the Bangladesh University of Engineering and Technology (hereinafter referred to as BUET) has termed the delayed

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excavation of relief well by respondent No. 10 as "crime". In his expert opinion he mentioned that, it would be near impossible to drill any well in the field to produce gas and that the field might have to be declared abandoned. The reported incident of explosion fire gave rise to genuine concern amongst the local people regarding the safety and security of their lives, property and livelihood. The failure of respondent No. 10 to handle safe and efficient drilling caused colossal damage of the area. A 7-member probe committee was formed by respondent No. 1, vide office order dated June 25, 2005 with the TOR to review: 1) whether respondent No. 10 had adequate preparation (manpower, equipment) to start the new drilling operation after the first blow out; 2) whether the design of respondent No. 10 for drilling the well was proper; and 3) whether respondent Nos. 4 and 5 monitored the drilling activities properly or not. The committee submitted its report on August 13, 2005 with the findings that a systematic study of various events leading to the two blow outs indicates that respondent No. 10 utterly failed to meet the obligations under the JVA. A 5-member committee headed by Professor M. Tamim, Head and Petroleum Engineering Department of BUET submitted its report on August 28, 2005 stating that the daily average amount of gas due to fire has been assessed at 1.48 MMcf. Moreover, till the drilling of the second well (October 25, 2005) another 2 BCF gas would be lost. A 3-member sub-committee of the Parliamentary Standing

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Committee also found serious lapses in the execution of the impugned JVA. Another 3-member committee headed by Shah Alam, Director General-2 of Prime Minister's office was formed on August 16, 2005 to probe the incident. The committee submitted its report on September 3, 2005. Although committees formed by the Government or other statutory agencies have held respondent No. 10 responsible for the explosion/fire, no action as yet been taken to realize compensation from respondent No. 10. The impugned JVA is without lawful authority and is of no legal effect. For the failure of the respondents to secure realization of adequate compensation from respondent No. 10 and the successive explosion/blow out occurred causing colossal loss to Bangladesh as a whole, the petitioner served notice upon the respondents demanding justice on 24.8.2005 calling upon them to take appropriate steps for recovery of damages from respondent No. 10. The respondents gave perfunctory replies to the petitioners in respect of the notice demanding justice. Having received no satisfactory reply from respondent No. 10 in respect of notice demanding justice, the petitioners finding no other equally, efficacious and alternative remedy moved this Court and obtained the instant Rule Nisi.

Respondent Nos. 1, 4, 5 and 10 entered appearance by filing separate affidavit-in-oppositions controverting all the material statements made in the Writ Petition/

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However, the case of respondent No. 1, in short, is that the present Writ Petition is misconceived and misleading and as such not maintainable in its present form. Respondent No. 1 has been performing its duties and responsibilities in compliance with all the relevant laws and regulations of Bangladesh including the Constitution of the country. This respondent has always endeavored to uphold the best interest of the nation. It has not been involved in any fraud or misconduct in entering into execution of the Joint Venture Agreement in question. The legality of the Joint Venture Agreement cannot be determined on the basis of such subjective opinion of the writ petitioners. The Petrobangla and the Ministry have taken appropriate steps with regard to realization of compensation payable for the losses caused by the blow out from respondent No. 10. On 28.06.1998, Niko submitted unsolicited offer to respondent No. 1, to develop Feni, Chhatak, Kamta, Fenchugonj and Beani Bazar gas fields which they called Marginal and non-producing gas fields. On the basis of the offer, a Framework of Understanding (FOU) was signed between Niko and respondent No. 5, Bangladesh Petroleum Exploration and Production Company (Bapex) on 23.08.1999. After long negotiation on 16.10.2003 a Joint Venture Agreement (JVA) was signed between Niko and Bapex with the approval of the concerned authority to produce gas from Feni and Chhatak gas fields. The Chhatak (East) is not a gas field but an exploration target and it was included in

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the JVA based on the legal opinion of the Ministry of Law, Justice and Parliamentary Affairs dated 1.4.2003. The Ministry of Energy and Mineral Resources Division did not follow 'Swiss Challenge' procedure during finalization of JVA. Respondent No. 1 has all along acted in good faith relying on all legitimate directions and instructions of lawful authorities. Respondent Nos. 5 and 10, that is, Bapex and Niko have developed Feni gas field and have been producing gas from Feni gas field since November, 2004. Gas produced from Feni gas field is being supplied to respondent No. 4, Petrobangla. As the execution of Gas Purchase and Sales Agreement (GPSA) and opening of a joint bank account of the joint venture have been pending, no payment could be made by respondent No. 4 to the joint venture against supply of gas. Petrobangla has, however, made two lump-sum payments of US\$ 20(twenty) lac to Niko against the gas supplied. Respondent Nos. 5 and 10 have, in the meantime, opened joint bank accounts in terms of Article 6.2.2 of the JVA with Standard Chartered Bank, Dhaka. On 26.12.2006, a Gas Purchase and Sales Agreement (GPSA) was executed between respondent No. 4 as purchaser and the joint venture of Bapex and Niko as seller. However, because of the interim order passed in the writ petition, no payment could be made by respondent No. 4 against the gas supplied by the joint venture to Petrobangla as per terms of the GPSA. Respondent Nos. 1 and 4 have been taking various steps with regard to

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assessment, determination and realization of compensation for the blow out. In this regard 8 high powered committees were formed to find out the reasons of blow out. Reports of all the enquiry committees show that Niko was obliged in terms of the JVA to conduct all petroleum operations sincerely, diligently, conscientiously and with workmanlike manner. A systematic study of various events leading to two blow outs indicates that Niko failed to meet its obligations. Respondent No. 4 served notice demanding justice upon Niko on 27.5.2008 for payment of an amount of Tk. 746.50 crore. As Niko failed to comply with the notice demanding justice, respondent No. 4 filed Money Suit against Niko in the Court of Joint District Judge, Sylhet and the suit is still pending. Respondent No. 1 conducted all acts in accordance with the Government policies. The appropriate authorities of the Government also approved the acts done by respondent No. 1. The present Writ Petition is misconceived, misleading and is liable to be discharged with costs.

Respondent No. 4, Petrobangla in its affidavit-in-opposition denied the statements made in the Writ Petition. However, the case of respondent No. 4, in short, is that respondent No. 4 has all along been performing its duties and responsibilities in compliance with all the laws and regulations of Bangladesh including the constitution of the country. In doing so, Petrobangla has always been careful in upholding the best interest of the country. Petrobangla has not been involved in any fraud or

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misconduct in entering into execution of the Joint Venture Agreement. From affidavit-in-opposition filed by respondent No. 4, we find that Petrobangla took identical stand in respect of JVA and blow out as that of respondent No. 1.

Respondent No. 5, the Bapex also denied the statements made in the Writ Petition in its affidavit-in-opposition. It, however, stated that Bapex always diligently discharged its duties lawfully and according to the directions of the lawful authorities of the Government. In doing so Bapex has always been very serious in upholding the best interest of the country. In fact, in its affidavit-in-opposition Bapex also took identical stand as that of respondent Nos. 1 and 4.

Respondent No. 10, Niko has filed a separate affidavit-in-opposition controverting all the material statements made in the Writ Petition. However, the case of respondent No. 10, in short, is that Niko is one of the largest Canadian investors in Bangladesh. Respondent No. 10 entered into the Joint Venture Agreement dated 16.10.2003 with respondent No. 5 for the development and production of petroleum from the marginal/abandoned Chhatak and Feni gas fields. Respondent No. 10 successfully and safely, drilled 3 wells, designed and installed a gas processing plant and started producing gas from Feni gas field. This is the fastest development of any gas field in Bangladesh. The Feni gas field currently producing and supplying 3 million cubic feet gas per day.

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The supply of gas supplied from Feni gas field made possible only because of the untiring efforts made by respondent No. 10. Swift implementation of the JVA has mitigated greatly the severe shortage of gas since late 2004. In this manner, respondent No. 10 has been substantially contributing to the economy of Bangladesh and its development. Niko has been operating in the Indian Sub-continent for over 14 (fourteen) years. Respondent No. 10 has established its branch office in Bangladesh in compliance with all applicable laws and upon obtaining due approvals, licenses, authorizations and permits from the authorities. Upon establishing its branch office in Bangladesh, respondent No. 10 has delivered to the Registrar of Joint Stocks Companies (RJSC) necessary documents, accounts, etc. under sections 379 and 380 of the Companies Act, 1994. As to the allegations in respect of the successive explosions and fires at Chhatak, Niko is not at fault. Explosions occurred accidentally and in such kind of exploration, such accidental blow out is not unusual. The JVA has not been executed in violation of Article 142 of the Constitution or sections 3 and 4 of the Bangladesh Petroleum Act, 1974. Respondent No. 5 Bangladesh Petroleum Exploration and Production Company Ltd. (Bapex) has already been vested with the rights of exploration and production of the gas fields. "Chhatak (East) Exploration Prospect" is within the coordinates of the Chhatak gas fields as defined in Exhibit-A of the

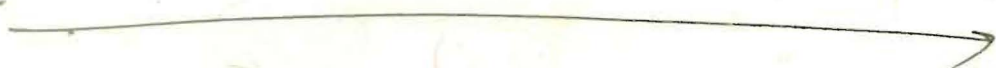
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Framework of Understanding (FOU) executed between Bapex and respondent No. 10 on 23.8.1999. The legal opinion dated 27.02.2003 obtained by respondent No. 10 in this regard is a valid and authentic document issued by Mr. Azizul Haq, Advocate, Supreme Court of Bangladesh who is an associate of M/s. Moudud Ahmed and Associates. The procedure for Development of Marginal/Abandoned gas field was approved by the Hon'ble Prime Minister on 14.6.2001 and was again ratified by the successive Hon'ble Prime Minister on 18.03.2003. There is no legal basis for treating JVA as a nullity in the eye of law. Respondent No. 10 performed its obligations faithfully. In 2005, there were more than 300 reported incidents of blow outs throughout the world. There was blow out in Magurchara area under Block 14 and this area was operated by Chevron. A lesser known blow out occurred in the offshore South Sangu gas field in Block 16 in 2000. The blow out in issue was brought under control by October, 2005. The primary loss has been confined to burning of approximately 3 BCF of gas and a little over 200 trees, which have since been replanted. No loss of life or livestock and major and permanent damage to property has been reported. Though respondent No. 10 does not admit responsibility or liability for the accidental blow out, it has made gratuitous payments of Tk. 3.45 crore to the people living in the area, who were affected by the blow out. In fact, respondent No. 10 took immediate and effective measures in order to

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control the blow out. Respondent No. 1 engaged Safety Boss Ltd. and GSM Inc., specialists to control blow outs. The loss of 3 BCF gas is undoubtedly regrettable and the blow out was an accident. However, without prejudice to the foregoing, respondent No. 10 is ready and willing to pay compensation to those entitled to on determination of liability and quantum of damages caused. Respondent No. 10 contends that any such claim for damages would be properly adjudicated by arbitration. Assessment of the alleged damage is within the scope of the arbitration process. Respondent No. 10 is willing to proceed with arbitration as per the provision of international convention of the settlement of international disputes. Some of the gas fields have been abandoned in the past as economically marginal or non-productive. At one stage, Bapex had started operation in the three gas fields, but it found them marginal and non-productive. At one point of time, Bapex had ceased operations in these three gas fields. Thereafter, Bapex entered into the JVA with respondent No. 10 in order to resume development and production from these fields. As a matter of fact, production sharing contracts (PSC's) with respect to Block Nos. 12, 13, 14, 15, 16, 17, 18 and 22 were awarded by the Government upon negotiated terms without considering competitive cost and as such no bidding was held. The reasons why Petrobangla was unable to invite the process of international competitive tender and bidding in awarding

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production sharing contracts also has to be understood. The industrial infrastructure in Bangladesh cannot sustain purchase of large quantities of gas supplied to at international prices or even at prices prevailing elsewhere in South Asia. In India, gas is purchased from PSC contractors at US\$ 4.00 per Mcf after deduction of taxes etc. In Bangladesh the Government has fixed the price of gas at US\$ 1.5 per Mcf or less. Therefore, international oil companies (IOCs) have shown reluctance to participate in international bidding in the manner in which it was initially contemplated with respect to development of petroleum resources in Bangladesh. Instead a system of part bidding and part negotiations has been used. As stated earlier, Chhatak gas field has always been excluded from Block 12, since its exploration and development already vested in respondent No. 5. Further, "Chhatak (East) Exploration Prospect" is within the co-ordinates of the Chhatak gas field as defined in the FOU (Exhibit-A) executed between Bapex and respondent No. 10 on 23.8.1999. Niko's involvement with the development of Chhatak gas field began with the offer letter dated 28.6.1998 (Annexure-C). The JVA was executed pursuant to Article 9.01 of the FOU. However, it is stated that the draft MOU annexed to the letter dated 28.6.1998 was never executed by the Government. Therefore, the terms and conditions of the draft MOU never governed the negotiations and developments of gas field. In the letter dated 28.6.1998, Niko proposed a modality commonly

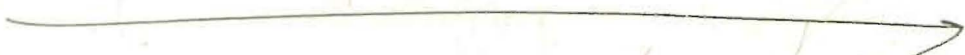
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known as "Swiss Challenge" procedure, for executing a Joint Venture Agreement between respondent Nos. 5 and 10. However, the proposed modality was made the subject matter of the draft MOU enclosed with the letter. This draft MOU was never finalized and executed between the Government and Niko. After receipt of Niko's letter dated 28.6.1998 respondent No. 1 forwarded it to respondent No. 4, Petrobangla, for its comments. Petrobangla, in its turn, asked Bapex to review the Niko's proposal, vide Memo No 46.01.163/21 dated 16.8.1998. Bapex forwarded its recommendation to Petrobangla, vide Memo No. 117.05.75 dated 22.9.1998. Thereafter, Petrobangla forwarded a report with its detailed justification for approval of the Niko's proposal under cover of a Memo No. 46.01.163 dated 20.10.1998. However, certain changes were made to the Niko's proposal. Originally Niko proposed development of Chattak, Beanibazar, Fenchugonj and Kamta Gas fields and Petrobangla excluded Beanibazar and Fenchugonj Gas field and included Feni Gas field. On 31.12.1998, vide memo No. 46.01.163/585 Petrobangla forwarded its recommendation to respondent No. 1. Finally about 11 months later the Niko's proposal was accepted by Petrobangla and Bapex, with the conditions as contained in the letter dated 25.5.1999 (Annexure-D). Pursuant to the letter dated 25.5.1999, the then President of Niko, the late Robert Ohlson, came to Dhaka in June, 1999 to execute the MOU and commence negotiations on the draft JVA. But at this

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stage, Bapex came back from its earlier stand to execute the MOU, took the position that an in-depth feasibility study was required prior to negotiation of the draft JVA and informed Petrobangla accordingly. Bapex, however, insisted that the expenditure for feasibility study would be borne by Niko. Niko agreed to invest and participate in the feasibility study under the terms of a Framework of Understanding that would provide that if the development of the gas fields was proved feasible, then the JVA would be executed with Niko. On 23.8.1999, upon approval of the Government, a Framework of Understanding (FOU) was executed between Bapex and Niko with the purpose of estimating recoverable reserves in Kamta, Feni and Chhatak gas fields and predicting the production characteristics of the proven and potential reserves. From the background of the FOU and its contents, it is clear that Petrobangla and Bapex, with the approval of the Government, made an agreed decision not to pursue the "Swiss Challenge" modality contemplated in Niko's first letter dated 28.6.1998. The procedure as approved by the Hon'ble Prime Minister provides in the explanatory note in Clause 10 that Chhatak, Kamta and Feni Gas fields are deemed to have been declared marginal/abandoned gas fields and that the negotiations/discussions conducted so far with the Government shall be deemed to have been in compliance with the Procedure. Pursuant to the terms of the JVA, the Joint Venture has been producing and supplying

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gas from Feni gas field without having any guarantee as yet as to the amount of payment. The Joint Management Committee of Bapex, Niko Joint Venture at a meeting dated 4.4.2007 resolved to open a joint account having Bangladeshi Taka and US\$, denominated components to be operated by the joint signatures of Bapex and Niko. Accordingly, an account, named, BAPEX-NIKO Joint Venture has been opened with Standard Chartered Bank being A/C Numbers 01-3642534-01 (BDT) and 01-3642534-02 (USD). However, because of the interim order dated 12.9.2005 passed by this Court no payments could be made to Niko-Bapex. The gas supplied to Petrobangla by Bapex-Niko Joint Venture under the GPSA is being distributed in Bangladesh by Petrobangla. Niko has done everything according to agreement and in accordance with law. The exploration and blow out occurred accidentally. Niko had no hand in it. For the reasons stated the Rule is liable to be discharged with costs.

Respondent No. 10 also filed a supplementary affidavit-in-opposition wherein it annexed annexures 22, 23 and 24, the summary signed by the then two successive Prime Ministers.

The petitioners filed as many as 5 affidavits-in-reply against the affidavits-in-opposition filed by the respondents. In those 5 affidavit-in-replies the petitioners reiterated its earlier stand.

Mr. Mahmudul Islam, learned Advocate appearing on behalf of the petitioners, submits that respondent No. 10 obtained the impugned

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JVA relying on the erroneous, collusive and mala fide opinion of the Ministry of Law Justice and Parliamentary Affairs by over ruling the lawful decisions of the Government. He further submits that respondent No. 10 has included Chhatak (East) in the JVA with mala fide intention for its illegal personal gain. He also submits that the respondents by-passing the condition of "Swiss Challenge" obtained the JVA from the Government most illegally. He then submits that Niko always claimed to have operated in a safe and eco-friendly environmental manner but the blow outs caused colossal loss to the ecology, water resources, fisheries etc. of the country. He lastly submits that without signing MOU, the FOU was signed most illegally and that respondent No. 10 is legally bound to give full compensation for the loss caused by the blow outs.

Mr. Khalilur Rahman, learned Additional Attorney General appearing on behalf of respondent No. 1, on the other hand, submits that respondent No. 1 has all along acted diligently in accordance with law and in compliance with the laws of the country. He further submits that the Ministry of Energy has always been careful to uphold the best interest of the country and that it has never been involved in any fraud in executing the Joint Venture Agreement. He lastly submits that in order to assess the loss caused by blow outs, several committees were formed by the Government and that Petrobangla also filed money suit against

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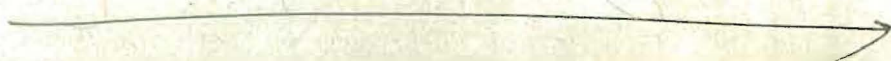
respondent No. 10 to realize the compensation payable for the losses caused by the blow out.

Mr. Mehdi Hassan Chowdhury, learned Advocate appearing on behalf of respondent No. 4, also took the similar stand as that of respondent No. 1. He however, adds that respondent No. 4 has all along been performing its duties and responsibilities stickly in accordance with law.

Respondent No. 5 adopted the submissions of the learned Advocate appearing on behalf of respondent No. 4.

Mr. Rokanduddin Mahmud, learned Advocate appearing on behalf of respondent No. 10, on the other hand, submits that the JVA was not obtained through flawed process by resorting to fraudulent and forged documents. He further submits that the Ministry of Energy at a series of meetings took the decision to develop marginal gas fields of Chhatak, Kamta and Feni and communicated the same to respondent No. 10. He again submits that according to the decision of the Ministry, a "Framework of Understanding" FOU was executed and that according to Article 5 of the FOU, the entire costs and expenses for feasibility study was borne by respondent No. 10 and that Niko at its own expenses successfully carried out its obligations under FOU.

He then submits that on 18.3.2003, the summary was approved by the then Prime Minister and that after the approval of the two successive





Prime Ministers, the JVA was signed with Niko. He submits that Niko has done everything in accordance with law of the country. He lastly submits that in respect of compensation Niko has already given a quantum of money amounting to Tk 3.45 crore for the affected persons.

We have perused the voluminous Writ Petition, its annexures, affidavits-in-opposition filed by respondent Nos. 1, 4, 5, and 10 and their annexures, supplementary affidavit-in-opposition, its annexures, and affidavits-in-reply on behalf of the petitioner against the affidavit-in-opposition filed by the respondents and their annexures.

According to Article 143(1) the Constitution of the Peoples Republic of Bangladesh is the owner of all minerals and other things of value underlying the land of Bangladesh ocean within the territorial waters, or the ocean over the continental shelf, of Bangladesh. Article 143(1) of the Constitution of Bangladesh is quoted below:-

143(1) there shall vest in the Republic, in addition to any other land or property lawfully vested-

- (a) all minerals and other things of value underlying any land of Bangladesh;
- (b) all lands, minerals and other things of value underlying the ocean within the territorial waters, or the ocean over the continental shelf, of Bangladesh; and
- (c) any property located in Bangladesh that has no rightful owner.



The Niko Resources (Bangladesh) Ltd., is a public limited company incorporated under the laws of Barbados. Niko is an international gas and petroleum exploration and production company of Canada, having world wide operations including Indian Sub-continent. The Niko submitted an unsolicited offer to exploration of gas in Bangladesh. It has been operating in Bangladesh on the basis of permission issued by respondent No. 9 on November 30, 2003, vide Memo No. BOI/Branch/24/2003/80. Niko is the operator under the impugned JVA. The rights to explorations were granted to Niko by the Joint Venture Agreement dated October 16, 2003 executed between respondent Nos. 5 and 10. The process of executing the impugned JVA started with a letter dated June 28, 1998 from Niko. Niko submitted the letter dated June 28, 1998 addressed to respondent No.1 wherein Niko resources expressed its interest in the development and production of the gas fields of Chhatak, Fenchuganj, Bianibazar and Kamta under a joint venture describing these fields as marginal and non-producing gas fields. At the time of submission of the offer, Niko Resources expressly guaranteed that development in these fields would be (i) at its sole risk and expense; (ii) under terms and conditions that internationally prevail in the development of marginal fields; (iii) in a safe and environmentally responsible manner as it never had a blow out and (iv) no sacrifices to be

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made from an economic stand point that could ever in any way endanger the project from either a safety or environmental stand point.

At the initial stage the offer of Niko did not rule out the condition of "Swiss Challenge". But by the subsequent series of meetings held in the Ministry, the condition of "Swiss Challenge" was excluded by the Government and as such the modality of "Swiss Challenge" was dropped. Bapex and Petrobangla initially favoured the proposal of "Swiss Challenge" but ultimately dropped the modality of "Swiss Challenge".

Respondent No. 1 directed by its letter dated 25.5.1999 to respondent No. 4 to take "further necessary measures" to implement the offer of respondent No. 10. As a part of "further necessary measures" a "Framework of Understanding" (FOU) for the study of development and production of Hydrocarbon from the Non-producing Marginal Gas fields of Chhatak, Feni and Kamta was signed between respondent Nos. 5 and 10 on August 23, 1999. The purpose of FOU (Annexure-A) was to estimate recoverable reserves within structure in the Study Area (S.A). In February, 2000, the Study Report, titled "Bangladesh Marginal Field Evaluation Chhatak, Feni and Kamta" was finalized by respondent Nos. 5 and 10. The Study Report dealt with Chhatak in two parts, namely, Chhatak (West) and Chhatak (East). Based on the findings of the study report, it was concluded that a joint venture contract might be executed

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between respondent Nos. 5 and 10. Though Niko Resources submitted draft JVA on November 7, 1999, the negotiation over the JVA effectively started after the submission of the study report. Respondent No. 5 formed a committee on April 13, 2000 to finalize the terms and conditions of JVA submitted by respondent No. 10 without resorting to "Swiss challenge" for evaluation. The report and the JVA was discussed at the Board Meetings of respondent No. 5 held on June 8, 2000 and August 21, 2000 and also at the 287 Board Meeting of respondent No. 4 held on October 22, 2000.

As per decision taken at the 287 meeting of the Board of respondent No.4, the draft JVA was examined by a 7-member PSC Negotiation Committee that reiterated the decision of respondent No. 5 for excluding the Exploration Prospect of Chhatak (East) from the impugned JVA and also directed that "Swiss Challenge" method to be reflected. But subsequently at series of meetings of the Board of respondent Nos. 4 and 5 various clauses of the draft JVA were discussed with special emphasis on issues regarding (i) exclusion of Chhatak (East) Exploration Prospect from JVA; (ii) inviting of other competitive offers through international competitive bidding by adopting the method of Swiss Challenge prior to executing the JVA; and (iii) fixing sale price of gas.

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Meanwhile respondent No. 1 developed a Procedure entitled "Procedure for Development of Marginal/Abandoned Gas Field" (shortly, Procedure). This Procedure was submitted before the then Prime Minister on June 6, 2001 for approval. The exploratory note mentioned in clause 10 of the Procedure stated that for the purposes of this Procedure, Chhatak, Kamta and Feni gas fields should be deemed to have been declared marginal/abandoned gas fields, and the negotiations/discussions conducted so far with the approval accorded by the Government in 1999, should be deemed to have been in compliance with the approved Procedure. Respondent No. 10 by its letter dated July 8, 2002 (Annexure-G-1), requested respondent No. 5 to include Chhatak (East) in the JVA. On November 25, 2002, respondent No. 10 again requested respondent No. 5 for inclusion of Chhatak (East) in the JVA.

Based on the opinion of respondent No. 2, the JVA was finally approved at the 333 meeting of the Board of respondent No. 4 held on July 22, 2003 including therein the Chhatak (East) Exploratory Prospect as a marginal/abandoned gas field and the same was signed on October 16, 2003.

The respondents also dropped the modality of "Swiss Challenge" on the basis of the opinion of respondent No. 2. The then State Minister for the Ministry of Power, Energy and Mineral Resources ruled out the option for Swiss Challenge in the summary sent to the Prime Minister on



September 7, 2003 (Annexure-z) referring again to the legal opinion of respondent No. 2. Respondent No. 2 opined that Article 5.05 of the FOUJ barred tender or negotiation with third party and that the Article had discarded clause (c) of the letter dated May 25, 1999 (Annexure-D).

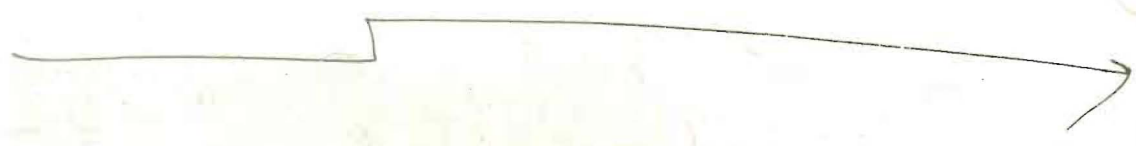
By an office order dated January 9, 2005 under Memo No. BiJaKhaSha/Pro-1/Bibid-7/2004 respondent No. 1 formed a 6-member committee to identify the causes behind the fire. The committee submitted its report on January 19, 2005 in which the committee held (i) respondent No. 10 was primarily responsible for the explosion/fire, (ii) aggressive drilling by the Chinese Company appointed by respondent No. 10 on the basis of faulty design of respondent No. 10;

(iii) Negligence in performing duties by respondent No. 5 was also identified as the cause of explosion/fire.

The committee assessed the loss of 10 BCF of gas till the date of submission of the report. The committee recommended realization of compensation for the loss caused because of the blow outs.

On April 2, 2005, another Committee was formed by respondent No. 3 to assess the environmental damage. The Committee submitted its report on April 13, 2005 and stated that there was loss of Tk. 35.45 crore. However, the Committee could not assess the long term loss and damage

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One member Committee of the Chief Reserve Study Cell of respondent No. 4 submitted its report on June 4, 2005 stating that the loss of gas if calculated in monetary term could be as high as Tk. 100 crore.

The co-ordinations of Chhatak Gas field were defined in FOU. In fact, accordingly to the terms of FOU exclusion of Chhatak (East) from JVA and adoption of Swiss Challenge would be illegal as it would breach the terms and conditions of FOU. With respect to "Chhatak (East) Explanatory Prospect" respondent No. 10 reiterates that it falls within the coordinates of Chhatak gas field as defined in the FOU. The JVA was executed pursuant to the terms and conditions of the FOU. The inclusion of Chhatak (East) in the JVA is can not be said mala fide as the FOU was approved by the highest authority.

Pursuant to the terms of JVA, the Joint Venture has been producing and supplying Gas without having any guarantee of payment. At the conclusion of negotiation, GSPA was ultimately signed in December, 2006 for a gas price of US\$ 1.75 per MCF. On the other hand, respondent No. 4 is paying US\$ 2.75 per MCF for gas purchased from Moulvi Bazar and Jalalabad Gas fields, and US\$ 2.9 per MCF for gas produced from Moulvibazar and Jalalabad fields by other International Oil Companies (IOCS). The total gas supplied by the Joint Venture till June, 2008 is 21.28 BCF, but full payment has not been

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made. The work program of Chhatak Gas Field including drilling program was approved by the Joint Management Committee at its meeting held on February 28, 2004. The decision taken at the meeting was in conformity with the Article 6.2 of the JVA.

In fact, in this Writ Petition the moot questions are whether the impugned Joint Venture Agreement should be declared to have been obtained without lawful authority and whether JVA should be treated as a nullity and whether dropping of the modality of Swiss Challenge was done with arbitrary and malafide manner.

We have seen that exhaustive discussions took place at the several meetings of the Board of Petrobangla and Bapex before JVA was approved and signed. We have seen also that JVA was approved by the highest authority also.

The summary dated 6.6.2001 prepared for the Procedure for development of marginal/abandoned gas fields was approved by the then Prime Minister on 14.6.2001. The summary of the Prime Minister dated 14.6.2001 has been annexed as annexure 27 to the writ petition. The extract of the summary (Annexure-27) dated 14.6.2001 is quoted below:-

ছাতক, কামতা ও ফেনী গ্যাস ফিল্ড সংক্রান্ত বাখ্যাঃ-

ছাতক, কামতা ও ফেনী গ্যাস ফিল্ডকে প্রাথমিক/পরিত্যক্ত গ্যাস ফিল্ড হিসাবে চিহ্নিত করে ১৯৯৯ সালে সরকারের অনুমোদন ক্রমে যৌথ কার্পাসী সম্ভাব্যতা যাচাই পর্বক একটি খসড়া জয়েন্ট ভেঞ্চার এগ্রিমেন্ট প্রণয়ন করা হয়েছে।

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খসড়া জয়েন্ট ভেঞ্চার এগ্রিমেন্ট এ খসড়া প্রস্তাবিত পদ্ধতিতে লিপিবদ্ধ সকল শর্তাবলী অনুসরণ করা হচ্ছে। সকল পক্ষ কর্তৃক চূড়ান্ত করার পর এ জয়েন্ট ভেঞ্চার এগ্রিমেন্ট সরকারের অনুমোদনের জন্য পেট্রোবাংলা কর্তৃক উপস্থাপন করা হবে।

উপরোক্ত কার্য প্রণালী সম্বলিত প্রান্তিক এবং পরিত্যক্ত গ্যাস ফিল্ড উন্নয়ন সংক্রান্ত পদ্ধতি জাতীয় স্বার্থ সংরক্ষন করবে বলে আশা করা যাচ্ছে। বর্নিত অবস্থায় প্রান্তিক এবং পরিত্যক্ত গ্যাস ফিল্ড উন্নয়ন সংক্রান্ত পদ্ধতিটি মাননীয় প্রধান মন্ত্রীর সানুগ্রহ বিবেচনা ও অনুমোদনের জন্য উপস্থাপন করা হইল।

From the above extract of the summary, it is clear that the then Prime Minister approved the summary on 14.6.2001 (Annexure-2). Thereafter, on 18.3.2003, the successor Prime Minister also approved the summary in almost identical terms, directing that the JVA be signed with Niko and as per FOU. The Prime Minister, while approving the summary reconfirmed the decision of the previous Prime Minister taken on 14.6.2001. Summary dated 18.3.2003 approved by the then the Prime Minister has also been annexed as Annexure-10. For proper appreciation, extract of Annexure-10 is also quoted below:-

উপর্যুক্ত অবস্থায় বাপেক্স এবং নাইকোর Chattak Gas field এর বিরোধ নিরসনকল্পে বিময়টির উপর আইন, বিচার ও সংসদ বিষয়ক মন্ত্রনালয় এর মতামত কামনা করা হয়। আইন মন্ত্রনালয় অভিমত ব্যক্ত করে যে -



(ক) Marginal/Abandoned গ্যাস ফিল্ড নির্ধারণের জন্য
[procedure for Development of Marginal/Abandoned
Gas Fields এর আর্টিকেল ৩ এ সুনির্দিষ্ট পদ্ধতির উল্লেখ রয়েছে।
Frame Work of Understanding ভুক্ত গ্যাস ফিল্ড গুলি
Marginal/Abandoned কিনা তা নির্ধারণে উক্ত পদ্ধতি অনুসরণ করা

তবে ছাতক (পূর্ব), ছাতক গ্যাস ফিল্ডের অন্তর্ভুক্ত কিনা তা
নির্ধারণে পক্ষগণের মধ্যে সম্পাদিত Frame Work of
Understanding এর Exhibit-A এর প্রতি দৃষ্টি দেয়া যেতে
পারে। Exhibit-A-তে কামতা, ফেনী ও ছাতক গ্যাস ফিল্ডের কো-
অর্ডিনেটস, আয়তন ও গভীরতা সুনির্দিষ্ট ভাবে উল্লেখ রয়েছে। নাইকো
রিসোর্সেস (বাংলাদেশ) এবং বাংলাদেশ পেট্রোলিয়াম এক্সপ্লোরেশন
কোম্পানী লিঃ (ব্যাপেক্স) এর মধ্যে FOU (Frame Work of
Understanding) সম্পাদিত হয়। Exhibit-A-তে যেহেতু ছাতক
গ্যাস ফিল্ডের সুনির্দিষ্ট বিবরণ রয়েছে সেহেতু এই বিবরণভুক্ত এলাকাই
ছাতক গ্যাস ফিল্ডভুক্ত হবে।

This summary was approved by the then Prime Minister.
According to the above summary, the Chhatak gas field cannot be
confined to Chhatak (West) alone. Now, on the other hand, Petrobangla,
in its turn, asked Bapex to review the Niko's proposal, vide Memo No.
46.01.163/21 dated 16.8.1998. Bapex forwarded its recommendation to

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Petrobangla, vide Memo No. 1-17.05.75 dated 22.9.1998. Thereafter, Petrobangla forwarded a report with its detailed justification for approval of the Niko's proposal under cover of a Memo No. 46.01.163 dated 20.10.1998.

From the above, we do find that the JVA was not obtained by flawed process by resorting to fraudulent means. There is no denial of the fact that two severe blow outs occurred at the time of exploration and those blow outs caused colossal loss and damage to life and property of the people living in the area. The first blow out took place on January 7, 2005 and the second one on June 24, 2005. In order to assess the reasons for such blow outs and to assess the damages caused, several committees were formed by the Government. The committee No. 1 submitted its report and recommended as follows:-

“টেংরাছিলা গ্যাস ফিল্ডের আগ্নেয়াস্তে ক্ষতি গ্রস্তদের ক্ষতিপূরণ ব্যয়ন
আপাতত ১,১৩,২৭,০০০/- (এক কোটি তের লক্ষ সাতাস হাজার) টাকা
পরিশোধের জন্য নাইকো রিসোর্সের (বাংলাদেশ) লিমিটেডকে নির্দেশ
দেয়া যেতে পারে”।

All the committees submitted their reports recommending realization of compensation money from Niko for the loss and damage caused by the blow outs. All the Committees held Niko responsible for the blow outs. The Committees even expressed if Niko was diligent, such blow out could have been avoided. However, there is no denial of the facts that the successive blow outs caused heavy loss to life



property, cattle, trees and fisheries etc. of the JVA area. Niko must adequately compensate the loss caused. The Government so far has taken some positive steps for realization of compensation from Niko. Lastly respondent No. 4 filed a money suit claiming Tk. 746,50,83,973/- (Seven hundred forty six crore fifty lac eighty three thousand nine hundred seventy three) only from Niko. The suit is still pending. The amount to be paid as compensation money should be decided by the Court below after taking proper evidence or by mutual agreement amongst the parties involved. But Niko cannot avoid its responsibility of giving adequate compensation for the losses caused by two successive blow outs.

In the light of the discussions made hereinbefore, the Rule succeeds in-part. Niko is directed to pay the compensation money as per the decisions to be taken in the money suit now pending in the Court of the Joint District Judge or as per the mutual agreement among the parties. The respondents are restrained by an order of injunction from making any payment to respondent No. 10. This order of injunction shall remain in force till disposal of the money suit or till amicable settlement amongst the parties, whichever is earlier.

There is no order as to costs.

Syed Mahmud Hossain, J:

I agree.

Quamrul Islam Siddiqui

Syed Mahmud Hossain

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Type by: Nurun Nahar

01.08.2010

Read by: *[Signature]*
Exd. by: *[Signature]*