

**REPORT OF THE COMMITTEE  
ON DISPUTE REGARDING OIL AND GAS BLOCKS IN KG BASIN**

**29 AUGUST 2016**

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## ABBREVIATIONS

BP	BP Exploration (Alpha) Limited
Cairn	Cairn Energy India Pty. Ltd.
D&M	DeGoyler and MacNaughton
DOC	Declaration of Commerciality
DGH	Directorate General of Hydrocarbons
EEZ	Exclusive Economic Zone
FFGM	Full Field Geocellular Model
FFRM	Full Field Reservoir Model
G&G	Geological and Geophysical
GIIP	Gas Initially in Place
GIPIP	Good International Petroleum Industry Practices
IDP	Initial Development Plan
KG	Krishna-Godavari
MDT	Modular Dynamic Tester
MOPNG	Ministry of Petroleum & Natural Gas
NELP	New Exploration and Licensing Policy
Niko	Niko (NECO) Limited
NPV	Net Present Value
NRL	Niko Resources Limited
ONGC	Oil and Natural Gas Commission
PEL	Petroleum Exploration License
PML	Production Mining Lease
PNG Rules	Petroleum and Natural Gas Rules, 1959
PSC	Production Sharing Contract
RIL	Reliance Industries Ltd
TOR	Terms of Reference set out in the Office Memorandum dated 15.12.2015
The Act	Oilfield (Regulation and Development) Act, 1948

## **CHAPTER – 1**

### **INTRODUCTION**

#### ***A. Overview***

1.1.1 The Krishna-Godavari Basin is a deltaic plain formed by two large east coast rivers, namely, the Krishna and the Godavari in the state of Andhra Pradesh, and the adjoining areas of the Bay of Bengal into which these rivers discharge their waters. The Krishna-Godavari Basin, or the KG Basin, as it is also referred to, covers an area of 15,000 square kilometres on land, and an area of 25,000 square kilometres, up to 1000 metres isobath, offshore. Field studies have shown that the KG Basin has good prospects of both oil and gas reserves, and multiple commercial discoveries have been made there. Defined blocks of the KG Basin have been allocated over time to various parties, including the Oil and Natural Gas Corporation Limited ("**ONGC**") and Reliance Industries Limited ("**RIL**"), for pursuing oil and gas discoveries.

1.1.2 The dispute, which this report relates to, pertains to the gas blocks referred to as Godavari PML and KG-DWN-98/2 (both operated by ONGC), as well as KG-DWN-98/3 (operated by RIL, Niko, and BP). In July 2013, ONGC wrote to the Directorate General of Hydrocarbons ("**DGH**") stating that there was evidence of lateral continuity of gas pools of the ONGC blocks with the KG-DWN-98/3 block, operated by RIL. Consequently, ONGC sought data on RIL's block. A series of discussions transpired between ONGC and RIL, which was facilitated by the DGH, and it was agreed that an independent consultant would be jointly appointed to carry out a third party study.

1.1.3 Before a consultant was identified or appointed, however, ONGC filed a writ petition in the Delhi High Court, being WP (C) No. 3054/2014 dated 15.05.2014 against the Government of India, DGH and RIL in the

present matter. In the petition, ONGC, *inter alia*, sought directions to the Government and DGH for the appointment of an independent agency to establish continuity of reservoirs across the two blocks of ONGC and RIL; and for compensation, if continuity was established.

1.1.4 Pending the outcome of the petition in the Delhi High Court, an independent consultant, DeGolyer & MacNaughton ("**D&M**") was mutually identified and appointed by the parties in July 2015 to undertake a study of the question of continuity and migration of gas. The order of the Delhi High Court, which came in September 2015, directed the Government to take appropriate action on the D&M Report, as and when it was submitted.

1.1.5 The D&M Report was submitted in November 2015. It established continuity between the pools in question, and the migration of gas from the ONGC blocks to the RIL block. Pursuant to the directions of the Delhi High Court, the Government, through the Ministry of Petroleum and Natural Gas ("**MOPNG**") decided to constitute the present single-member Committee to examine the D&M Report, and make recommendations on certain issues.

### ***B. The Constitution of the Committee***

1.2.1 The Committee was established by the MOPNG by its office memorandum F. No. O-22013/17/2015-ONG.DV dated 15.12.2015.

1.2.2 The memorandum, *inter alia*, stated that block KG-DWN-98/2 has been operated by ONGC since 2005. ONGC also has a nomination block, Godavari PML, adjacent to block KG-DWN-98/2. These two blocks share a common boundary with block KG-DWN-98/3 (KG D6), which is being operated by RIL, with majority participating interest, along with Niko (NECO) Limited ("**Niko**") and BP Exploration (Alpha) Limited ("**BP**"). (Any reference to RIL's operation of the KG-DWN-98/3 block in this Report should be construed as

including Niko and BP, wherever applicable.) Block KG-DWN-98/3 has been under production since 2009, while the Field Development Plan for block KG-DWN-98/2 is yet to be approved.

1.2.3 On 22.07.2013, ONGC wrote to the DGH stating that there was evidence of lateral continuity of gas pools of the ONGC blocks with the pools in the RIL block. After discussions between ONGC, DGH and RIL, it was agreed to jointly appoint a third-party organisation – D&M – to carry out a third party study. D&M submitted its report on 30.11.2015.

1.2.4 Subsequently, by the order dated 15.12.2015, the MOPNG decided to constitute a single-member Committee comprising Justice (Retd) Ajit Prakash Shah, former Chief Justice of the Delhi High Court and the former Chairperson of the Law Commission of India, to look into the dispute between RIL and ONGC regarding the ONGC blocks (KG-DWN-98/2 and Godavari PML) and RIL block KG-DWN-98/3 in the KG basin.

### ***C. The Committee's Terms of Reference***

1.3.1 According to the Office Memorandum (F. No. O-22013-/17/2015-ONG.DV) of 15.12.2015, the Committee's Terms of Reference ("**TOR**") were stated as follows:

- a) To consider in depth the report submitted by D&M and recommend the action to be taken by the Government thereon considering legal, financial and contractual provisions including those contained in Oilfields (Regulation and Development) Act, Petroleum and Natural Gas Rules and concerned Production Sharing Contracts ("**PSCs**") etc.;
- b) To recommend the future course of action to be taken on this issue in light of the findings contained in the report;
- c) To quantify the unfair enrichment, if any, to the contractors of the adjacent block KG-DWN-98/3 and measures to prevent future unfair enrichment to these contractors on account of gas migration and to recommend action to be taken to make good the loss to

ONGC/Government on account of such unfair enrichment to the contractors;

- d) To consider the acts of omission and commission, if any, on part of the stakeholders including RIL, ONGC, DGH and Government and give recommendations on them.

1.3.2 As per the memorandum, the Committee was expected to submit its report within three months. It was also permitted to formulate its own procedure, call for records and examine witnesses, as it deemed fit. The MOPNG undertook to provide the necessary administrative support to the Committee. The Committee was assisted in its work by two legal consultants, Vrinda Bhandari and Sumathi Chandrashekar. Mr Ananda Raman also operated the Secretariat for the Committee for the first three months.

1.3.3 After a preliminary hearing on 31.12.2015, the Committee called upon the various parties to the dispute to file their written submissions and replies. All written submissions were received by April 2016, after which the Committee held a series of eight hearings in the months of April and May 2016, where all parties made extensive oral submissions on the questions before the Committee and its TOR. The proceedings of the Committee are discussed in greater detail in the next chapter.

**CHAPTER – 2**  
**PROCEEDINGS OF THE COMMITTEE**

2.1 The proceedings of the Committee were spread across 13 hearings held between December 2015 and May 2016. Before, during and after the hearings, several developments took place: certain parties withdrew, joined and again withdrew from participating in the proceedings; clarifications on certain issues were needed; and extensions were sought. A brief overview of the proceedings is relevant to understanding the Committee's procedure as well as the challenges that were faced in the course of arriving at its recommendations. The developments at each of the hearings are discussed in the following paragraphs.

***A. The hearing dated 31.12.2015***

2.2.1 The Committee held its first hearing on 31.12.2015 at Oil India Ltd., NOIDA, Uttar Pradesh. Prior to the hearing, it issued notices to all parties, namely, ONGC, RIL, DGH and MOPNG, to appear before the Committee on the appointed date. In addition, notices were also issued to Niko and BP in their capacity as consortium partners of RIL in the operation of block KG-DWN-98/3.

2.2.2 At the hearing, representatives of both RIL and Niko said that they did not wish to participate in the proceedings of the Committee as they disagreed with the constitution and jurisdiction of the Committee. Communication to this effect had also been circulated to the Committee earlier that day. The Committee noted that it was the participants' prerogative to decide whether to participate in the hearing or not, but that it would proceed to work as per its TOR. After this, the representatives of RIL and Niko left the meeting. The third consortium partner, namely BP, said that it had no instructions about its continued participation in the hearing. The BP

representative was thus asked to submit its views on continued participation in the hearings of the Committee, in writing, within a week.

2.2.3 The Committee directed the remaining parties present, namely MOPNG, ONGC and DGH (and BP, if it chose to participate), to file written submissions in response to each item in the Committee's TOR within four weeks.

2.2.4 Prior to the hearing, the Committee had already been supplied with certain documents by MOPNG, which included the D&M Report; a copy of the writ petition filed by ONGC in the Delhi High Court (WP (C) No. 3054/2014 dated 15.05.2014) against the Government of India, DGH and RIL; a copy of the counter-affidavit filed by MOPNG; the order of the Delhi High Court in the said writ petition dated 10.09.2015; copies of the relevant laws, and copies of the PSCs between MOPNG and the contractors in question. The Committee invited the participants to submit any further documents deemed relevant to their submissions. The Committee also indicated that the stakeholders would be at liberty to nominate representatives to depose before the Committee, if necessary.

### ***B. The hearing dated 09.02.2016***

2.3.1 The next hearing of the Committee was held on 09.02.2016 at Oil India Ltd., NOIDA, Uttar Pradesh.

2.3.2 Prior to the hearing, by its letter dated 14.01.2016, BP had confirmed its participation in the Committee's proceedings, subject to certain reservations. Among other things, BP clarified that it had secured a 30% Participating Interest in block KG-DWN-98/3 operated by RIL in August 2011, and it was not the operator of the block itself. BP further clarified that since it had not participated in the discussions prior to the preparation of the D&M Report nor provided any inputs in the same, it was only privy to the final

report. It also expressed the hope that the Committee would have no preconceived notion of unfair enrichment attributable to the contractors in question. It further clarified that any views expressed by BP in the course of the Committee's proceedings would be its own, and independent of views held by RIL and Niko, and would be without prejudice to its rights available under contract.

2.3.3 The Committee also received written submissions from ONGC, DGH and BP within the time specified.

2.3.4 Three days before the hearing, on 06.02.2016, the Committee received communication from RIL and Niko, indicating that they wished to reassess their participation in the proceedings. According to them, this reassessment was particularly in view of the fact that the operator, i.e. RIL (rather than any other constituent of the contractor), was best placed to provide technical assistance of the development and production of gas from block KG-DWN-98/3. Accordingly, RIL and Niko sought leave to continue participating in the Committee's proceedings, while clarifying that their participation would be limited to assisting the Committee in understanding the findings of the D&M Report. RIL and Niko further clarified that their participation would be entirely without prejudice to the position they had already taken in previous communication regarding the jurisdiction of the Committee. They reiterated that the Committee had no power to adjudicate any matters or issues concerning ONGC's claims, and any recommendations made by it would not be binding on RIL in any manner. RIL further reiterated that as the Government had sought to intervene in the matter, the dispute could be resolved only by arbitration, and any report by the Committee would at best only serve as advice to the Government or ONGC.

2.3.5 In the light of this development, the Committee granted three weeks' time to RIL and Niko to make written submissions in response to its TOR.

2.3.6 All parties were granted additional time up to 15.03.2016 to respond to each others' written submissions and to respond to the concerns and issues raised by Committee during this hearing. Parties were also requested to make their submissions available in electronic format, with copies to all concerned parties.

2.3.7 The Committee informed all parties that its procedure would be transparent, following due process and principles of natural justice.

2.3.8 With regard to the communication received from RIL and Niko, and the concerns expressed by the parties, the Committee clarified that its role was to examine all the issues in its TOR, and to submit its recommendations to the Government of India. It was thus for RIL and Niko to decide the extent of their participation, and whether it should be limited to technical aspects only, or extend to other issues as well.

2.3.9 The Committee sought certain specific clarifications from the DGH on its written submissions, directing it to file specific submissions on certain issues.

2.3.10 The Committee also requested the MOPNG to seek an extension for a period of four months, i.e. up to 31.07.2016, regarding the time for submitting the Report.

### ***C. The hearing dated 28.03.2016***

2.4.1 At the next hearing of the Committee held at Oil India Ltd., NOIDA, Uttar Pradesh on 28.03.2016, a request was made on behalf of ONGC, RIL and BP, to be given an opportunity to file further additional written submissions. Accordingly, it was decided that all parties could file such additional written submissions by 10.04.2016.

2.4.2 At its preliminary hearing, the Committee had suggested that D&M may be invited to make a presentation about their Report during the course of the proceedings to facilitate the Committee's better understanding of their Report. However, at this hearing, the Committee decided to not call upon D&M for any presentation. It is relevant to note that at no point in any of the 13 hearings did any of the parties press for the presence of D&M.

2.4.3 It is further pertinent that no party indicated, at any point of time, that it wanted to lead evidence or examine any witnesses. At this hearing, it was mutually agreed by all parties that only oral submissions would be made, and no oral evidence would be led, nor any witnesses examined.

2.4.4 Consequently, the Committee proposed to fix a series of dates in the months of April and May 2016 for oral submissions by all parties. It was agreed that appropriate arrangements for transcription and recording of the proceedings would be made for all the days.

2.4.5 The MOPNG informed the Committee that it had obtained an extension up to 31.07.2016 regarding the time within which the report of the Committee had to be submitted.

#### ***D. The hearing dated 13.04.2016 and 14.04.2016***

2.5.1 The next two hearings of the Committee were held on 13.04.2016 and 14.04.2016 at GAIL Bhawan, Bhikaji Cama Place, New Delhi. ONGC, RIL, Niko, BP and DGH were represented by legal counsel at the hearing. The counsel for DGH sought time to file additional submissions, and was given till 20.04.2016.

2.5.2 Due to the voluminous records involved, the parties mutually agreed to prepare and exchange convenience volumes between themselves, with three copies being provided to the Committee. Consequently, it was decided to commence the effective hearing of the matter only after the parties had filed their convenience volumes by 20.04.2016.

2.5.3 Further, based on the mutual convenience of all the parties, the following dates were fixed for oral submissions:

25th and 26th April – ONGC

27th April (11 am to 1:30 pm) – ONGC, if necessary

2nd and 4th May – RIL and BP

5th May (11 am to 1:30 pm) – RIL and BP, if necessary

(2 pm to 5 pm) – DGH

9th and 10th May – Rejoinder arguments

***E. The hearings dated 25.04.2016, 26.04.2016, and 27.04.2016***

2.6.1 The remainder of the hearings, beginning with the hearing dated 25.04.2016, were held at the Taj Hotel, Mansingh Road, New Delhi. The transcription for these hearings was arranged through DTI Services. Reservations were expressed by counsel for ONGC and DGH about the transcription on grounds of the confidentiality of certain submissions. However, the Committee noted that at the time of its directing the transcription of these hearings on 14.04.2016, no objections had been received from any party. Moreover, in light of the expressed importance of transparency in proceedings, it was decided to proceed with the transcription.

2.6.2 Nevertheless, in view of the concerns raised regarding confidentiality, the Committee directed that DTI Services would provide the transcription only to the counsel for the parties. Further, the Committee said that the respective parties must ensure that the confidentiality of the transcribed record was maintained, and that the records were to be shared with third parties only with the prior permission of the Committee.

2.6.3 Over the next three days, i.e. from 25.04.2016 to 27.04.2016, Mr Sudipto Sarkar, Senior Advocate, argued on behalf of ONGC.

***F. The hearings dated 02.05.2016 and 04.05.2016***

2.7 At the hearings on 02.05.2016 and 04.05.2016, RIL and Niko, represented by their counsel, including Mr Tom Sprange, Q.C., Mr Reginald P Smith, and Mr L Nageshwara Rao, Senior Advocate, made their oral submissions.

***G. The hearing dated 05.05.2016***

2.8 At the hearing on 05.05.2016, BP, represented by its counsel, including Ms Joanne Cross and Mr Madhur Baya, completed oral arguments. DGH, represented by Mr AK Ganguli, Senior Advocate, also completed its arguments.

***H. The hearing dated 09.05.2016***

2.9.1 At the hearing held on 09.05.2016, RIL and Niko, represented by Mr Sprange, Q.C., addressed the Committee on certain submissions made by Mr AK Ganguli, Senior Advocate, on behalf of DGH, at the previous hearing.

2.9.2 According to the RIL, the Committee's TOR only extended to the dispute between RIL and ONGC, which had been framed as a claim for unfair enrichment by ONGC against RIL. However, RIL argued that during the course of the hearings, a new claim had been advanced by the DGH (which was a technical arm of the Government), seeking reimbursement from RIL. This was effectively an unfair enrichment claim in its own right. According to RIL, the question as to whether ONGC had a claim for unfair enrichment, had been answered by DGH, a representative of the Government, in the negative.

As a corollary, the need for the Committee to provide the Government with advice as to ONGC's claims for unfair enrichment had been superseded, as the Committee had now heard from the Government on this issue. Further, DGH's submissions were tantamount to new claims having been articulated, which were not within the scope of the Committee's TOR. RIL reiterated that the TORs were geared towards ONGC's claims against RIL, and not the Government's possible claims against RIL. In the light of the same, RIL pointed out that any claims made by Government against RIL would need to be resolved in another forum, in particular, arbitration. Accordingly, RIL stated that it would be inappropriate for it to engage with the Committee with respect to DGH's new claims and thus, it could not be of any further assistance to the Committee. Consequently, RIL stated that RIL and Niko proposed to withdraw from this process.

2.9.3           ONGC, represented by Mr Sudipto Sarkar, stated that it was for RIL to decide whether it wished to withdraw or not. However, as per the Committee's TOR and the PSC in question, there was no identity between DGH and the Government, and they were and ought to be treated as different bodies. Mr Sarkar added that the views expressed by Mr Ganguli could not be attributed to Government, either in relation to ONGC or RIL.

2.9.4           Mr Panda, appearing on behalf of DGH, clarified that the submissions made by Mr Ganguli on previous hearings of the Committee were the submissions of DGH as an independent body, and not made on behalf of the Government, regardless of whether these views were expressed with respect to RIL or to ONGC. Mr Panda also drew attention to the proceedings in the Delhi High Court, which had preceded the setting up of this Committee, where the Government and DGH had been separate parties. Further, Mr Panda said that the submissions that Mr Ganguli made were in response to a query raised as to a pure question of law on the interpretation of the PSC.

2.9.5 At the hearing, the Committee clarified that the issue before it was the dispute between ONGC and RIL, which included the question of whether there exists a claim for unjust enrichment by ONGC against RIL. The Committee also clarified that its mandate did not extend to considering claims, if any, between the Government and RIL. If the Government had any claim against RIL, it could resort to appropriate remedy under the PSCs.

2.9.6 However, Mr Sprange maintained that RIL and Niko did not wish to participate any longer in the Committee's proceedings, as the risk for them in terms of prejudicing their rights in any subsequent proceedings was too high.

2.9.7 The representative for BP, Mr Baya, said that he was awaiting instructions with regard to BP's continued participation in the proceedings.

2.9.8 Accordingly, by its order of the same date, i.e. 09.05.2016, the Committee recorded that RIL and Niko would no longer be a party to the proceedings of the Committee. The Committee, however, decided that it would continue to hear the rejoinder arguments made on ONGC's behalf.

2.9.9 After the withdrawal of RIL and Niko, ONGC, represented by Mr Sarkar, commenced arguments in rejoinder.

### ***1. The hearing dated 10.05.2016***

2.10.1 At the beginning of hearing, BP, represented by Mr Siddharth Shetty and Mr Madhur Baya, said that it would continue to participate in the proceedings of the Committee.

2.10.2 Subsequently, all the remaining parties, i.e., ONGC, BP and DGH concluded their arguments in rejoinder.

2.10.3 With these submissions, the Committee's hearings in the matter came to a close.

***J. The letter from RIL dated 28.05.2016***

2.11.1 During the course of the hearings, by a letter dated 03.05.2016, ONGC submitted a document titled "Appraisal Report as of March 31, 2003, on block KG-DWN-98/3 located Offshore India for NIKO (NECO) Ltd" to the Committee. The Committee had requested RIL to respond to the same. Before issuing a response, however, RIL withdrew its participation in the proceedings. Subsequently, after the hearings were closed, RIL submitted its response by its letter dated 28.05.2016.

2.11.2 Parties were asked to respond to the RIL letter by 30.05.2016. Only ONGC responded to the same, on 08.06.2016.

2.11.3 In its letter, ONGC indicated that RIL's response should not be taken on record in view of the fact that RIL had already withdrawn from the proceedings of the Committee. ONGC further said that if the Committee wished to take RIL's letter on the record, it should be construed as RIL's deemed continued participation in the proceedings of the Committee.

***K. The letter from MOPNG dated 07.06.2016***

2.11.4 Meanwhile, MOPNG by its letter dated 07.06.2016 (0-22013/17/2015-ONG-V(FTS 41044)) drew the Committee's attention to the Committee's order of 09.05.2016 stating that "it may not be correct to say that the mandate of the Committee does not include quantification of unfair enrichment, if any, vis-à-vis the Government of the India." All parties, barring RIL and Niko, were requested to respond to this letter. ONGC said it had no comments in response. DGH did not respond. BP responded on 09.07.2016,

stating that MOPNG's contentions raised concerns about the representations made on behalf of the Government before the Committee.

2.11.5 Further clarifications were sought from the Government, while also seeking an extension in the light of these developments. Specifically, the Committee asked the Government if it "adopt[ed] the stand taken by the Directorate General of Hydrocarbons on 05.05.2016 that ONGC has no right to make a claim for unfair enrichment against RIL, and it is only the Government of India that can make such a claim?"

2.11.6 By its office memorandum O-22013/17/2015/ONG.DV dated 29.07.2016, MOPNG, while confirming a further extension to the Committee till 31.08.2016, stated "the Competent Authority has decided that the Committee will look into the case on the basis of contractual provisions and considering the finding brought out in D&M Reports related to migration of Gas. At this stage, Government cannot take stand that whether ONGC or the Government has unfair enrichment claim. The Committee has to look into the case with the fair prospective and should not get restricted by DGH's view or by the view of any other stakeholder. Government will take a final stand in the case after considering the report of the Committee."

2.11.7 Having summarised the procedure followed by the Committee, it is necessary to understand the background of the dispute before it.

## **CHAPTER – 3**

### **BACKGROUND FACTS**

3.1 This chapter is a detailed account of the facts pertaining to the dispute between ONGC and RIL, having discussed the proceedings of the Committee in the previous chapter. The present dispute pertains to three blocks allocated to ONGC and RIL for exploration of gas in the KG Basin. A brief history of the allocation of these blocks, and the manner in which this dispute arose is laid out in the following paragraphs.

#### ***A. ONGC's Block Godavari PML***

3.2.1 In 1997, ONGC applied for an IG Petroleum Exploration License ("**PEL**"), which was granted by MOPNG initially for four years, and subsequently extended up to 31.01.2003. In 2002, ONGC submitted an application for a re-grant of the PEL, which was re-granted by MOPNG for a further period of four years, and extended further on ONGC's request till 31.01.2008.

3.2.2 Based on the results of drilling during the re-grant period, ONGC applied initially for grant of 104.4 sq km area for converting the IG PEL into Godavari Production Mining Lease ("**PML**") on 24.01.2008. Subsequently, it applied for PML for an additional area that had been earlier relinquished. MOPNG finally granted ONGC the PML for an area of 111.5 sq km (which included 18.36 sq km from the earlier relinquished area) as Godavari PML, with effect from 24.01.2008.

3.2.3 No PSC was signed with ONGC for this block. ONGC submitted a Declaration of Commerciality ("**DOC**") for this block clustering with D1 discovery of KG-DWN-98/2 on 26.12.2013, but the DOC was not accepted due to certain missing data. As a result, the DOC is still awaited, and ONGC is yet to start development of this block.

## ***B. ONGC's Block KG-DWN-98/2***

3.3.1 In February 1999, the MOPNG issued the New Exploration Licensing Policy ("**NELP**") inviting companies to bid for 48 exploration blocks in the KG Basin. Cairn Energy India Pty Ltd ("**Cairn**") successfully bid for KG-DWN-98/2 during NELP-1, which was located south of Godavari PML. At the time of entering into a PSC with the Government of India on 12.04.2000, Cairn had 100% participating interest. In 2003, ONGC acquired 90% participating interest in this block from Cairn and applied for the Government's approval for operatorship of the block. In March 2005, the Government of India approved ONGC's application and it became the operator of block KG-DWN-98/2 with a 90% participating interest, with Cairn retaining 10%.

3.3.2 In November 2011, Cairn assigned its 10% participating interest to ONGC, which then became the sole operator with 100% interest, subject to Government approval, given in 2012. Since then, ONGC has been the sole operator of the KG-DWN-98/2 block.

3.3.3 After being handed over operatorship, and concluding that discoveries in the block were not commercially viable on a stand-alone basis, ONGC proposed to develop an integrated cluster along with the discoveries in adjacent nomination block (Godavari PML) for better economic viability.

3.3.4 ONGC submitted a proposal for DOC for some of its discoveries in 2009-10. Later, ONGC sought permission for additional appraisal drilling, after which MOPNG restructured the Exploration Period of the block, and the Exploration Period was extended till 29.12.2013. A revised DOC was submitted by ONGC on 26.12.2013. This included DOCs for three clusters, encompassing the Godavari PML and KG-DWN-98/2 blocks. Of these, only one was approved (cluster II), pertaining to nine discoveries in Northern

Discovery Area of KG-DWN-98/2 block (the others could not be considered due to inadequate data). ONGC has since submitted the field development plan for cluster II on 30.08.2015, which is presently under examination by DGH.

### ***C. RIL's Block KG-DWN-98/3***

3.4.1 Under the NELP, RIL along with Niko Resources Limited ("**NRL**") bid for NELP-1 for the right to enter into a PSC for block KG-DWN-98/3 or KG-D6. This was a contiguous block located directly to the south-east of Godavari-PML block and to the east of KG-DWN-98/2 (KG-D5). At the time of entering into the PSC with the Government of India on 12.04.2000, RIL had participating interest of 90% while NRL had 10%, as specified in Article 2 of the PSC.

3.4.2 On 12.07.2003, NRL assigned its 10% participating interest to Niko. On 21.02.2011, RIL assigned 30% of its participating interest to BP, which was approved by the Government on 08.08.2011. Thus, as on date, RIL has 60%, BP has 30% and Niko has 10% participating interest in block KG-D6.

3.4.3 RIL made Pliocene gas discoveries in 2002, for which the Initial Development Plan ("**IDP**") was approved in November 2004, and an addendum approved in December 2006. RIL drilled four development wells between December 2006 and November 2007, and started commercial gas production on 01.04.2009.

### ***D. Events leading to the Dispute***

3.5.1 The dispute between ONGC and RIL started when, by its letter addressed to DGH dated 22.07.2013, ONGC stated that it had carried out a detailed Geological & Geophysical ("**G&G**") interpretation of the available data

pertaining to the Godavari PML and KG-DWN-98/2 blocks. The results of this study, according to ONGC, indicated that there were “laterally aggrading channel features of G-4 pools [in the ONGC blocks] extending southeast into adjacent D-6 block [i.e., block KG-DWN-98/3] and, furthermore appear to have a continuity with the producing pools of block KG-DWN-98/3”. It further stated that in order to corroborate the existence of lateral continuity of these gas pools across the blocks operated by ONGC and RIL, additional integrated interpretation of G&G data was required, comprising all three blocks in question. Accordingly, ONGC requested the DGH to provide it with G&G data, along with the production and well data of the contiguous area of block KG-DWN-98/3.

3.5.2 This communication led to the Management Committee for the block KG-DWN-98/2 to pass a resolution on 04.08.2013 regarding, among other things, gas balancing assessment.

3.5.3 On 20.08.2013, DGH wrote a letter to RIL, stating that G&G data along with production and well data for the block KG-DWN-98/3 may be provided to ONGC for analysing field continuity of the pools. Reminders were sent to RIL in this regard as well.

3.5.4 A series of meetings was convened over the next few months between all the parties concerned, including ONGC, RIL, DGH and MOPNG. Various issues were discussed at the meetings, including the appointment of an independent third party for conducting a study on the core issue of continuity of channels and connectivity of reservoirs in question.

3.5.5 A meeting was convened by ONGC and RIL on 30.09.2013 at the office of ONGC in New Delhi, the outcome of which was communicated to DGH thereafter. On 21.11.2013, an exchange of data took place between ONGC and RIL at the RIL office in Mumbai. A technical meeting was held on 10.12.2013, but the minutes of this meeting remained unsigned. Another

meeting was held on 11.03.2014 between ONGC and RIL, with DGH as the observer. At the next meeting on 28.03.2014 held between ONGC and RIL at the DGH office, the parties agreed to appoint a reputed international consultant to evaluate the possible continuity of reservoirs across the block boundaries. At the meeting held on 15.04.2014, at DGH, between ONGC, RIL and DGH, a broad scope of work for the consultant was drawn up, as well as a course of action for identifying the third party consultant worked out. Another meeting was held at DGH between these three parties on 09.05.2014, where it was agreed that a draft of enquiry would be prepared and sent out to identify third parties for conducting the study.

3.5.6 However, before the independent consultant could be appointed and the study formally commissioned, ONGC filed a writ petition in the Delhi High Court against the exploitation and extraction of gas by RIL from ONGC blocks, being WP(C) No. 3054/2014 dated 15.05.2014 against the Government of India, DGH and RIL.

3.5.7 The petition sought, among other things, directions to the Government and DGH for the appointment of an independent agency to establish continuity of reservoirs across the two blocks of ONGC and RIL and for gas balancing in accordance with the provisions of Oilfield (Regulation and Development) Act, 1948 ("**the Act**" or "**Oilfield Act**"), and Petroleum and Natural Gas Rules, 1959 ("**PNG Rules**"). The petition also pleaded that if ONGC was found entitled by the independent agency, RIL should agree to compensate ONGC, and that RIL be directed to submit full accounts of the past and prospective gas production, and past and prospective gas sales, and undertake to pay ONGC as may be determined. A reply and counter-affidavit to the petition was filed by the Government, through the MOPNG.

3.5.8 In the interim, a draft scope of work was agreed to by ONGC, RIL and DGH, and sent onwards to possible international experts. Regular

meetings were held at the office of the DGH from 02.06.2014 to 14.06.2014 to expedite the engagement of the third party.

3.5.9 Finally, an independent consultant – D&M – was appointed on 03.07.2014 to conduct a third-party assessment of the study area, with certain specified objectives. The study/project, which commenced on 25.09.2014, was carried out under the supervision of the DGH and managed jointly by ONGC and RIL.

3.5.10 The study area included portions of three contract areas (blocks), i.e., the Godavari PML and block KG-DWN-98/2, operated by ONGC, and block KG-DWN-98/3, operated by RIL. The coordinates for each of the contract areas were provided to D&M by ONGC and RIL through the DGH.

3.5.11 The Delhi High Court issued its order on the writ petition on 10.09.2015, prior to the report being submitted by D&M. The order of the Court directed the Government to decide on the action to be taken on the D&M Report, as and when it would be submitted and within six months from the date of submission of the report. All concerned parties were directed to co-operate fully with D&M and promptly furnish all information, particulars and data required to enable and assist the agency to submit their report as soon as possible. Parties were also granted liberty to, if the need was so felt, to revive this petition, subject to the pleas of the respondents, including as already taken and as to the very maintainability of this petition.

3.5.12 Meanwhile, data was provided to D&M by both RIL and ONGC through DGH, and eight meetings were conducted between ONGC, RIL, and DGH at Dallas, Texas, USA, at the office of D&M.

3.5.12 D&M submitted its report to DGH on 30.11.2015, in terms of its scope of work.

3.5.13 The report of the study conducted by D&M estimated the connected and unconnected gas volumes in the gas blocks in question, and in conclusion, indicated that there was connectivity and continuity of reservoirs across the blocks operated by ONGC and RIL. The report quantified the volume of gas that was estimated to have migrated from Godavari PML and KG-DWN-98/2 to KG-DWN-98/3. The report also simulated two forecast cases for gas production, using, in one case, continued operations and active wells as of 31.03.2015 as the base case; and in the other case, by including three additional wells added after 31.03.2015.

3.5.14 The findings of the D&M Report will be discussed in more detail subsequently. However, having discussed the background facts that led to the present dispute, it is necessary to understand the prevailing petroleum regime in India. This will enable the Committee to evaluate the stand taken by the parties, and their interpretation of the varying contractual, statutory, and constitutional rights. To this, we now turn.

## **CHAPTER – 4**

### **PETROLEUM REGIME IN INDIA**

4.1 The petroleum regime, as will be detailed below, operates on an interaction between the Constitution of India, the existing legislations and rules therein, and the PSC executed between the contractor (ONGC or RIL-Niko) and the Government of India. Together, these laws govern the relationship and actions of the parties to the present dispute.

#### ***A. The Constitution of India***

4.2.1 To understand the petroleum regime in India, one must start with Article 297 of the Constitution. By virtue of Article 297, natural gas and petroleum in its natural state in the territorial waters and the continental shelf of India are vested in the Union of India, i.e. the Government. It states that:

“297. Things of value within territorial waters or continental shelf and resources of the exclusive economic zone to vest in the Union.

(1) All lands, minerals and other things of value underlying the ocean within the territorial waters, or the continental shelf, or the exclusive economic zone, of India shall vest in the Union and be held for the purposes of the Union.

(2) All other resources of the exclusive economic zone of India shall also vest in the Union and be held for the purposes of the Union.

(3) The limits of the territorial waters, the continental shelf, the exclusive economic zone, and other maritime zones, of India shall be such as may be specified, from time to time, by or under any law made by Parliament.”

4.2.2 Apart from this, Article 39(b) and Article 14 of the Constitution are also relevant, with Article 39(b) requiring the State to direct its policy towards securing the distribution of ownership and control of the material resources of the community as best to sub-serve the common good.

4.2.3 The position as it currently stands is that the Government, through the people of India, owns the natural resources (including gas) for the purpose of development in the interests of the people, till the point of time it reaches the ultimate consumer. The Government thus has a proprietary interest in the gas, and the title passes only upon the sale at the delivery point. The relationship between the Government and the contractor, such as the contractor's right of distribution, is governed by the PSC, which overrides all other contractual obligations.

4.2.4 In its three judge bench decision in *RNRL v RIL*, (2010) 7 SCC 1, the Supreme Court clarified that the Constitutional mandate of the country was that "the natural resources belong to the people of the country" and that the word "vest" in Article 297 of the Constitution must be seen in the context of the "Doctrine of Public Trust". The public trust doctrine is premised on the principle that certain resources such as air, water, gas etc. are gifts of nature that should be made freely available to everyone, and should not be the subject of private ownership. The doctrine, usually applied in environmental jurisprudence, also has broader application. The Court thus clarified that gas, being an essential natural resource, is held by the Government in trust for the people of India. Consequently, it concluded that it is the duty of the Government to provide complete protection to the natural resources as a trustee of the people at large. This is consistent with Article 39(b) of the Constitution.

### ***B. The Legal Regime***

4.3.1 While the Constitution indicates the nature of ownership of natural resources such as gas, it is the statutory scheme that details the rights and obligations of the parties. The statutory scheme of control of natural resources, the regulation of petroleum operations and the grant of licenses and leases for exploration, development, and production of

petroleum in India is governed by a combined reading of the Oilfields Act and the PNG Rules.

(i) *The Oilfields (Regulation and Development) Act, 1948*

4.3.2 The Act is meant to provide for the regulation of oilfields and for the development of mineral oil resources. It has been enacted by Parliament in exercise of its powers under Entry 52 of the Union List of the Constitution. The Constitution Bench of the Supreme Court in *In Re Special Reference No. 1 of 2001*, (2004) 4 SCC 489 confirmed that natural gas, whether in its raw or liquefied form, is a "petroleum product" and part of "mineral oil resources" under Entry 52, List I and not Entry 25 of List II dealing with "gas and gasworks". Thus, only the Centre has legislative competence to pass laws dealing with the regulation and development of natural gas.

4.3.3 Section 3(a) defines "lessor" and "lessee" as including a licensor and licensee respectively; while Section 3(c) defines "mineral oils" as including natural gas and petroleum. The Act further defines "mining lease" (to include an exploring or prospecting license) and "oilfield" (an area where any operation for obtaining natural gas and petroleum is carried on) in Section 3(d) and Section 3(e) respectively.

4.3.4 Section 5 of the Act lays down the power of the Central Government to make rules in respect of mining leases and Section 6 provides for the power to make rules for the conservation and development of mineral oils. Section 6A of the Act deals with royalties in respect of mineral oils, which are described in greater detail in the Schedule to the Act. Finally, Section 7 delineates the Central Government's power to make rules for the modification of existing leases and Section 8 provides for delegation.

(ii) *The Petroleum and Natural Gas Rules, 1959*

4.3.5 The PNG Rules have been notified by the Government in the exercise of its powers under Sections 5 and 6 of the Act. These Rules seek to regulate the grant of exploration licenses and mining leases in respect of petroleum and natural gas that belongs to the Government, and provide a mechanism for their conservation and development.

4.3.6 Thus, Rule 4 in Chapter II clarifies that there shall be no prospecting or mining except under a license or lease, which is granted under Rule 5. The PNG Rules, *vide* Rule 7, also outline the rights of the licensees and lessees. Apart from this, Chapter III of the Rules deals with different features of a PEL and PML. Chapter IV details other provisions relating to licenses and leases, including the provision of raw, interpretative and derivative data by the licensee or lessee to the Central Government. Chapter V lays out the conditions for suspension or cancellation of licenses and leases. At the end, Chapter VI focuses on conservation and development, with specific provisions for the restriction of petroleum, oil, and gas production (Rule 27) and for the regulation of operations in a field or area (Rule 28) by the Central Government. The Committee will discuss the specific rules relied upon by the parties, and necessary for this Report, subsequently.

4.3.7 Having detailed the statutory and constitutional regime application to petroleum operations in India, it is apt to turn to the agency responsible for supervising such operations, namely the DGH, which was also a party in the present proceedings.

***C. The Directorate General of Hydrocarbons***

4.4.1 The DGH was established under Resolution No. O-20013/292-ONG,D-III dated 08.04.1993 under the administrative control of the MOPNG, in the exercise of the Central Government's powers under Section 8 of the Oil

Fields Act read with Rule 32 of the PNG Rules. Through Notification No. S.O. 1391(E) dated 01.09.2006, the MOPNG designated the DGH as the authority or agency to exercise the powers and functions of the Central Government to promote the sound management of Indian petroleum and natural gas reserves, with balanced regard to the environmental safety, technological, and economic aspects.

4.4.2 The DGH has, *inter alia*, been tasked with reviewing and monitoring the exploration programmes and development plans for commercial discoveries of hydrocarbon reserves, as proposed by companies operating under PEL granted under the Act and the PNG Rules, and to advise the Government on the adequacy of such plans. Such powers and functions have to be fulfilled by the DGH with a view to optimise hydrocarbons recovery from the reservoir in accordance with good international petroleum industry practices (GIPIP). The DGH also has to review the management of petroleum reservoirs, and advise the licensees or lessees on actions to ensure the sound management and conservation of the reservoirs in accordance with GIPIP.

4.4.3 Furthermore, in cases where the Central Government signs a PSC for the exploration and production of hydrocarbons, the DGH has been tasked with discharging the Government's powers and functions consistent with the PSC.

#### ***D. The New Exploration and Licensing Policy ("NELP"), 1999***

4.5.1 Under the Act and the PNG Rules detailed above, natural gas was produced only from the fields operated by state-owned companies such as ONGC and Oil India Ltd. from the blocks given to them by the Government on a nomination basis. The gas herein was subject to an administered price regime. This changed in the mid-1990s when the Government decided to open the petroleum sector to private investment on a competitive basis in order to fund exploration and production of oil and gas. Consequently, various

blocks were awarded to private sector companies under PSCs and served as the pre-NELP PSCs, where the pricing formula was specified in the PSC itself. Although the early-1990s administered price mechanism did not continue, contractors under these PSCs were obliged to sell all their gas to the PSU, Gas Authority of India Ltd. Therefore, they did not have any marketing freedom in respect of natural gas.

4.5.2 This pre-NELP regime was replaced by NELP, under which the two PSCs in issue were entered into. Under the NELP regime, petroleum blocks could be awarded to private contractors for exploration, development and production of petroleum and gas and these private entities (both Indian and foreign) were on a level playing field with PSUs. Thus, contractors in NELP-I were given limited marketing freedom and were free to determine “arm’s length price” or market price, subject to the overall regulation by the Government.

4.5.3 In 1999, when NELP was announced for the exploration, development and production of petroleum and gas, RIL and NRL were awarded block KG-D6 (KG-DWN-98/3) and Cairn was awarded block KG-D5 (KG-DWN-98/2) from among the bids.

### ***E. The Relevant PSCs***

4.6.1 The petroleum regime in general, and the history of petroleum operations in India, has to be read alongside the contractual regime governing the rights and obligations of both the parties. The case before the Committee concerns two PSCs entered into by RIL and NRL for KG-DWN-98/3 and Cairn for KG-DWN-98/2 with the Central Government, and one nomination block – Godavari PML.

4.6.2 On 12th April 2000, the Government of India (through the President) entered into a PSC with RIL and NRL with respect to contract area

identified as block KG-DWN-98-3 comprising approximately 7645 sq. km. The Preamble, in Recital 2, makes it abundantly clear that the Oil Fields Act and the PNG Rules are the applicable legal regime. Thereafter, Recital 4 states that RIL-NRL had applied for a license/letter of authority to carry out exploration operations in the offshore area identified as block KG-DWN-98-/3 and had been duly authorised to carry out petroleum operations therein. Recital 8 makes it clear that the contract entered into between the Government and RIL-NRL is based on the terms and conditions set forth in the PSC. As on date, RIL has 60%, BP has 30% and Niko has 10% participating interest in block KG-DWN-98/3

4.6.3 On 12th April 2000, the Government of India (through the President) also entered into a PSC with Cairn, a company incorporated in New South Wales, with respect to the contract area identified as block KG-DWN-98-2 comprising approximately 9800 sq. km. The recitals in the Preamble and the Articles in the KG-DWN-98/2 PSC are mutatis mutandis those in KG-DWN-98/3. As on date, ONGC is the sole operator with 100% interest in the KG-DWN-98/2 or KG-D5 block.

4.6.4 It is pertinent that there is no PSC in respect of the Godavari PML block over an area of 111.5 sq km, which is a nomination block, adjoining block KG-DWN-98/2 and sharing a common boundary with block KG-DWN-98/3.

4.6.5 It is pertinent that Articles 10, 11 and 12 of both the PSCs flow from Rule 28 of the PNG Rules, and form the crux of the controversy. They are discussed in brief here.

4.6.6 Article 10 of the PSCs deals with "Discovery, Development, and Production". Article 10.15 states that if the area encompassing the commercial discovery extends beyond the development area designated in the Development Plan, the Management Committee may make

recommendations to the Government concerning the enlargement of the development area, "provided the same was not awarded to any other company by the Government or is not held by any other party or not on offer by the Government" and there is no pending application for a license or lease. The Government may consider such an extension request at its discretion and on such terms and conditions it thinks fit.

4.6.7 Article 11 is another important provision concerned with PML for an Offshore Area. Article 11.1 states that after submitting a development plan of a commercial discovery pursuant to Article 10.7, the contractor has to submit an application to the Government for lease in respect of the proposed Development Area. Article 11.2, was repeatedly referred to by the parties, and is quoted below for reference:

"Where a part of a Reservoir in respect of which a Commercial Discovery has been declared extends beyond the Contract Area, subject to Article 10.15 such area may be included in the proposed Development Area, in relation to which application for a Lease is made, on terms and conditions as decided by the Government; provided that such area is:

- a) not subject to a license or lease granted to any other person;
- b) not the subject of negotiations/bidding for a license or lease;
- c) available for licensing (i.e. is not an area over which Petroleum Operations are excluded)"

4.6.8 Article 12 of the PSCs is concerned with Unit Development and sub-clause (1), which forms the crux of the controversy, provides that:

"If a Reservoir in a Discovery Area is situated partly within the Contract Area and partly in an area in India over which other parties have a contract to conduct petroleum operations and both parts of the Reservoir can be more efficiently developed together on a commercial basis, the Government may, for securing the more effective recovery of Petroleum from such Reservoir, by notice in writing to the Contractor, require the Contractor:

- a) collaborate and agree with such other parties on the joint development of the Reservoir;
- b) submit such agreement between the Contractor and such other parties to the Government for approval; and
- c) prepare a plan for such joint development of the said Reservoir, within one hundred and eighty (180) days of the approval of the agreement referred to in (b) above.”

4.6.9           The terms of the PSC and the various PNG Rules will assume great relevance when the question of unjust enrichment is discussed later in the context of the prevailing legal and contractual regime. Having examined this in detail, including the parties’ rights and obligations deriving from the Constitution, the Act, the PNG Rules, and the PSCs, it is first appropriate to consider the jurisdiction and scope of the enquiry, being conducted by the Committee, and then examine the TOR in detail.

**CHAPTER – 5**  
**JURISDICTION AND SCOPE OF THE COMMITTEE**

5.1 The Committee was faced with two key challenges right at the outset, even before it could address the issues contained in its TOR. These pertained to challenges to the jurisdiction and scope of the Committee, raised by RIL and Niko at the very outset.

***A. Jurisdiction***

5.2.1 RIL objected to the constitution of the Committee on several grounds, both in its written submissions and oral arguments.

5.2.2 First, RIL said that MOPNG did not have statutory powers to establish the Committee. RIL argued that the Government's actions were restricted to what was permitted under the PNG Rules and the parties' PSCs. Therefore, the appointment of this Committee went beyond the order of the Delhi High Court and Rules 28 and 32 of the PNG Rules since the Committee was not a "suitable supervisory agency", and that its functions were "at their core adjudicatory in nature".

5.2.3 Secondly, RIL argued that the appointment of the Committee to examine ONGC's claims for unjust enrichment; make any necessary quantification; and give recommendations, instead of leaving it to a court of competent jurisdiction, violated the doctrine of separation of powers under Article 50 of the Constitution.

5.2.4 Thirdly, RIL contended that the Committee, being incapable of recording evidence or evaluating the facts against legal standards, lacked the requisite judicial authority to make recommendations. On the contrary, ONGC had to prove its claims in a court of competent jurisdiction, where there was

due process of law and compliance with principles of natural justice, especially since it had no contractual relationship with RIL.

5.2.5 Fourthly, RIL said that any recommendations given by the Committee, even if not binding, would be likely to cause irreparable harm to RIL and its reputation since the recommendations would be released in the public. The recommendations would also likely provide the foundation for the Government of India to base its actions on, and guide the determination of civil proceedings.

5.2.6 Finally, RIL also expressed concerns that the Committee's recommendations, being likely to be premised on the D&M Report, even though the Report was jointly commissioned by the parties on a "without prejudice" basis, may amount to or imply a determination of the parties' rights, liabilities, or wrongdoings.

5.2.7 Even if the Committee decided to make certain recommendations, RIL argued that they should be limited to requiring ONGC to prove its case against RIL and DGH in an appropriate forum, being either an international arbitration under the PSC or in a court of competent jurisdiction in India.

5.2.8 RIL, in the course of its further arguments, reiterated that the Committee could be regarded as only one of recommendation, rather than adjudication. In other words, it was not a Committee that could make findings of fact, or reach conclusions of law. RIL also said that Committee could highlight issues that did not have such a sufficient basis in fact or law and indicate that these could be decided by the right jurisdiction, whether that be arbitration or a court of competent jurisdiction.

5.2.9 In its response, ONGC said that the purpose of the Committee was to make recommendations on the basis of which the parties could base

future action. These recommendations would not be binding on any party. The role of the Committee was to help the MOPNG understand how it should proceed. This role is important, particularly since the petroleum, oil and gas regime is such that such incidents are likely to occur again in the future, thus making it critical for the MOPNG to know and understand as to how such matters should proceed.

5.2.10 Further, ONGC pointed out that the MOPNG could constitute an ad-hoc Committee of this nature under its executive powers under Article 73 of the Constitution of India. ONGC also stated that the Committee was not a quasi-judicial body, and would be carrying out a purely administrative role, the objective of the Committee was to assess the facts relating to the dispute, and make recommendations, which would be considered by the MOPNG in taking its final executive decision.

5.2.11 ONGC also argued that the jurisdiction of the Committee could not be challenged before the Committee itself. ONGC argued that the authenticity of the D&M Report could not be challenged either, because the Committee was expected to consider the Report, and make recommendations after an in-depth study of the Report. Indeed, as pointed out by ONGC, none of the parties were in a position to state that the D&M Report was invalid or wrong.

5.2.12 On its part, DGH argued that this was not an adjudicative forum, but is merely an extension of what the Government was going to do. Instead of setting up this Committee under a retired judge, according to DGH, the Government could have deputed one of its officers to perform this task of making recommendations, but the Government decided to appoint an independent authority, with the view that, perhaps because the parties would feel more confident approaching an independent authority like this Committee, which, in turn, would be in a position to render proper advice as to what the Government should do. In sum, the constitution of this

Committee, according to DGH, is nothing but a consequence of the compliance of the order of the Delhi High Court.

5.2.13 In the view of the Committee, it is clearly not open for the Committee to itself look into the issue of its own appointment or constitution. In any event, the Committee was appointed by the Government of India, and the argument that the Government had no competence to make such an appointment is without merit, as pointed out by both ONGC and DGH. Further, the appointment is directly in consonance with, and in adherence to the order of the Delhi High Court, as again made clear by ONGC and DGH.

5.2.14 In the view of the Committee, it is important to read the memorandum appointing the Committee along with the terms of the order of the Delhi High Court in W.P. (C) No. 3054/2014 dated 10.09.2015, in which the High Court directed the MOPNG to take appropriate action after receipt of the report to be submitted by D&M. Once D&M submitted its report to the MOPNG, the Government had the choice to take advice and recommendations from any person or body by virtue of its executive prerogative. In its wisdom, MOPNG decided to appoint this Committee. At no stage could the Government have been said to transgress its executive powers in appointing such a Committee and seeking its recommendations.

5.2.15 Further, it is evident from the TOR of the Committee that it is intended to play a purely recommendatory and advisory role. There is no indication contained in the TOR that the Committee is expected to act as quasi-judicial body, and indeed, there is no question of adjudication, as no evidence has been presented, and no witnesses have been examined. Several questions about the interpretation of various provisions have been raised by the parties before the Committee, and every effort has been made to address these questions of interpretation, despite the limitations that the Committee was operating under.

5.2.16 It is fairly clear that the role of the Committee is limited to expressing a *prima facie* view, based on the points raised by the parties, and that its role is purely advisory and recommendatory, and certainly not adjudicatory in nature. By its office memorandum O-22013/17/2015/ONG.DV dated 29.07.2016, MOPNG has reiterated that the “Committee has to look into the case with the fair prospective [*sic*] and should not get restricted by DGH’s view or by the view of any other stakeholder”, which is what this Committee has striven to do. Wherever the Committee has been incapable of recording any *prima facie* view, it has made an observation to that effect, and clarified that such recording is not possible for lack of evidence, or insufficient material, or some such similar reason.

### ***B. Scope of the Committee’s TOR***

5.3.1 RIL argued that the TOR limited the Committee’s role to “recommendation”, and did not extend to the “determination” of any legal rights or obligations of the parties. In any event, RIL argued that the terms of the TOR were themselves demonstrative of unfair bias.

5.3.2 RIL contended that the Committee could not make any recommendation for various reasons.

- a) First, several issues under the PSC remained undetermined, such as in relation to joint development, contractual rights, limitation etc. These issues could only be resolved in a forum constituted under Article 33 of the PSCs.
- b) Further, the question of proprietary interest over any oil and gas that may underlie a block at any given time remained undetermined, especially in light of the legal regime, specifically Articles 15, 16 and 27 of the PSCs.
- c) Finally, the Committee lacked any basis to demonstrate that RIL owed any obligation to ONGC since the Committee could not examine ONGC’s claims or determine the parties’ rights (including the question of privity between RIL and ONGC and questions of tort) as if it were a competent forum.

5.3.3 It was RIL and BP's further case that the phrasing of the TOR reflected an unfair bias against RIL, since the Committee was asked to make recommendations in respect of the "quantum" of "unfair enrichment" to be paid by RIL to ONGC, without first establishing the factum of unjust enrichment or legal liability of the parties. Additionally, the parties' legal rights and obligation had also not been established, which in any event, could not be determined by the Committee.

5.3.4 According to RIL, the TOR also erred in presuming that the D&M Report provided a valid and sufficient basis to enable the Committee to make the required recommendations.

5.3.5 The Committee believes that in order to address these challenges as regards the scope of its TOR, it is useful to examine the text of the TOR in detail to understand the same. The office memorandum dated 15.12.2015, prior to setting out the TOR, opens with recording a statement of fact that after ONGC had written to DGH on 22.07.2013 indicating evidence of lateral continuity of gas pools in relevant blocks, ONGC and RIL jointly appointed D&M to carry out a third-party study. Thus, this Committee was expressly appointed to make its recommendations based on the D&M Report. The Committee's role does not extend to making an independent assessment of the validity of the D&M Report itself, which in any event, no party has challenged. Therefore, the Committee cannot entertain or accept the contention that the TOR incorrectly presumes the D&M Report to be a valid and sufficient basis for the Committee's recommendations.

5.3.6 Next, the order of the Delhi High Court in W.P. (C) 3054/2014 dated 10.09.2015 directed the MOPNG to make a decision based on the D&M Report. The TOR makes a reference, therefore, to the conclusions drawn by the D&M Report as regards continuity and connectivity of reservoirs, etc., and crafts the scope of the Committee accordingly. While no party has challenged the validity of the D&M Report, concerns have been expressed about its

limitations and ambiguities contained in the Report, which the Committee has been fully cognizant of in making its recommendations. It is also incorrect to speculate that the TOR was biased with respect to ONGC's alleged claims of unjust enrichment. On the contrary, the Committee has made no such assumptions. Instead, the Committee has examined the Report, and the contentions of both sides, and provided its views and recommendations accordingly. Therefore, RIL's allegations that the TOR is biased in favour of ONGC does not stand.

5.3.7 Further, it is relevant to reiterate that the Committee was asked to make an in-depth study of the D&M Report, and it has attempted to do precisely that. In arriving at its recommendations, the Committee's proceedings were completely open and transparent, and all parties were heard extensively, and given a chance to make rebuttals/sur-rebuttals.

5.3.8 The Committee reiterates that its scope does not extend to assessing the validity of the D&M Report, and is restricted to the issues raised in the TOR, which will be addressed in the following pages. It is further clarified that while making any recommendations on the TOR, the views of the Committee are to be regarded as being only *prima facie*, as it is not a quasi-judicial body, and has not had the opportunity or remit to examine witnesses, study evidence, or perform any such procedural roles. To reiterate, the Committee's role is one of providing advice and recommendations to the MOPNG, and does not, in any capacity, extend to an adjudicatory function, and the contents of the Committee's Report must be read in this context.

5.3.9 The subsequent chapters consider the various TORs of this Committee in detail, in the light of the submissions made by the parties to the Committee, both in writing and in oral hearings, and make findings and recommendations accordingly. It begins with paragraph 4(a) of the TOR requiring an in-depth examination of the D&M Report.

## **CHAPTER – 6**

### **D&M REPORT**

#### ***A. Reference***

6.1.1 The Committee has been tasked in paragraph 4(a) of the TOR with the reference “to consider in depth the report submitted by D&M and recommend the action to be taken by the Government thereon considering legal, financial and contractual provisions including those contained in Oilfields (Regulation and Development) Act, Petroleum and Natural Gas Rules and concerned Production Sharing Contracts (“PSCs”) etc.” The appointment of D&M as an international consultant to evaluate the connectivity of reservoirs and migration of gas across the block boundaries was a critical event in the course of this dispute. This chapter briefly discusses the manner in which this appointment was made, offering a broad overview of the findings of the report submitted by D&M, as well as a discussion of the challenges put to the Committee against the D&M Report, with a view to addressing the reference put to the Committee.

6.1.2 The history of D&M’s engagement in the matter can be traced to the letter sent by ONGC to DGH on 22.07.2013 raising concerns about continuity and connectivity. Subsequently, there was an agreement between ONGC and RIL to collaborate and provide data to a third-party independent agency, which would be identified to conduct the study of the wells in question. This agreement was entered into on 03.07.2014.

6.1.3 Under the terms of this agreement, “DGH for and on behalf of ONGC and RIL ha[d] invited a password protected tender to undertake an independent third-party study in the contiguous area”, where the agency would be required to carry out “[c]omprehensive reservoir modelling and analysis to evaluate continuity of channels and connectivity of reservoirs in the ‘Contiguous Areas’”, “[i]f reservoir continuity and connectivity is

established, [t]o estimate gas volumes,... allocation of connected/unconnected gas volumes in respect of the 'Contiguous Areas' to ONGC and RIL for the purpose of any commercial agreement / gas balancing if applicable."

6.1.4 As per the agreement, DGH was the project coordinator for this project, and no party except DGH was to "interact or submit any information or data and make any correspondence with the agency in any manner whatsoever, except for payment related communication and except for interaction in review meetings". Further, the agreement stated that unless otherwise mutually agreed by the parties, all review meetings would be held at the office of the agency so appointed. Finally, regarding the review, it was decided that ONGC and RIL would "review the work flow processes and time lines being followed by the agency", and the "review [would] be carried out under the supervision of DGH". Further, parties were expected to "make all endeavours to make decisions unanimous or by consensus". It was agreed that parties would "review draft reports prepared by the agency", and would "provide the agency with comments to DGH within ten business days of receipt of the same for the purposes of finalising the report". The final report would be issued, as per the agreement, by the agency after a representative of each party had reviewed and commented on the same."

6.1.5 In effect, the Committee notes that as per the terms of the July 2014 agreement between ONGC and RIL, both parties would participate jointly in the review meetings, jointly review the workflow, processes and timelines being followed by D&M, as well as make all efforts to make decisions unanimous or by consensus. The parties also agreed to review all draft reports submitted by the appointed agency, and provide the agency with feedback within a stipulated period. It was agreed that the final report would be issued by the appointed agency only after representatives of each party had an opportunity to review and comment on the same.

6.1.6 Thereafter, an agreement was entered into between ONGC and RIL on the one hand and D&M on the other hand, with DGH as project coordinator, for D&M to conduct the independent third-party study in the matter.

***B. Objectives of the D&M Report***

6.2.1 D&M was awarded the Contract No. ONGC-RIL-DGH/KG/01/2014 for an 'Independent Third Party Study in KG Offshore', and the project started from 25.09.2014.

6.2.2 The objectives of the Third Party Study entrusted to D&M were as follows:

- a) Comprehensive reservoir modelling and analysis to evaluate the continuity of channels and connectivity of reservoirs across the block boundaries operated by ONGC and RIL.
- b) If reservoir continuity and connectivity was established, the objectives were further as follows:
  - i. To estimate gas volumes (in-place volumes, estimated ultimate recovery (EUR), and reserves) in the proposed study area of the respective blocks operated by ONGC and RIL
  - ii. The allocation of connected/unconnected gas volumes (in-place volume, EUR and reserves) to ONGC and RIL for the purpose of any commercial agreement/gas balancing, if applicable

6.2.3 This study was to be carried out under the supervision of DGH, the technical arm of the MOPNG, Government of India and managed jointly by ONGC and RIL.

6.2.4 The Scope of Work for the Third Party Study was as follows:

- a) All analysis to be done based on the available data Consultant to review the available data and advice on data preparation and requirements, if any
- b) Milestones are indicated for the purpose of QC, Technical Assurance and Progress Review
- c) Petrophysical analysis with 2 Milestone review & acceptance
- d) Seismic with 2 Milestone review & acceptance
- e) Static model with 2 Milestone review & acceptance
- f) Dynamic model with 4 Milestone review & acceptance
- g) Consolidated analysis
- h) Preparation of reports
- i) Deliverables

6.2.5 In effect, the study required D&M to design certain reservoir models, and on the basis of these models, establish whether there was connectivity of reservoirs, and if so, estimate the gas that might have migrated. This appears to have been agreed to between the parties. As part of the scope of work under the contract, 12 milestones were identified by ONGC and RIL, and review meetings would be periodically held to address the milestones.

6.2.6 In all, eight review meetings were held for quality assurance and acceptance for completion of the relevant milestone prior to heading towards the next milestone. The meetings, held at the D&M office at Dallas, Texas, were attended by representatives from ONGC, RIL and DGH.

6.2.7 It was ONGC's case that the D&M Report was the outcome of the agreement of the parties on the matters discussed at the various meetings held. The matters so discussed included static and dynamic modelling, the preparation of estimates, and so on. ONGC highlighted that the review meetings held at D&M's premises were held for quality assurance and acceptance for the relevant milestone, prior to heading to the next milestone, under the terms of the agreement between them. For instance, ONGC

referred to the main objective of one of the meetings, which was to “discuss the results to date for static modelling, engineering and dynamic modelling,” thus indicating that even the modelling pattern was discussed, and there was no objection to the same from any party. At another meeting, the objective was “to discuss quality check aspects for static and dynamic modelling, review of results on dynamic modelling and discuss scenarios for forecast.” Thus, the inputs of the parties were invited for static modelling, dynamic modelling, the forecast case, as well as, later, for the final report. This demonstrated that any uncertainty that may have existed with regard to any of these aspects (modelling, forecast, etc.), had been accounted for by incorporating the inputs from parties.

6.2.8 ONGC cited further minutes of certain meetings to point out that the D&M representative “presented the status of the pending actions and the work completed to the companies [and] provided copies of the preliminary draft reports ... for review and comments.” The parties were expected to provide initial comments on the preliminary draft report for D&M to review and incorporate as appropriate. It was also agreed that once the comments were discussed and reviewed, the contractor would provide the final report to ONGC and RIL.

6.2.9 The process described by ONGC to the Committee through the lens of the meeting minutes reveals that there was considerable attention paid to the views and considerations of both ONGC and RIL, by allowing them to give continuous feedback and comments during the course of the study and on the draft of the final report. In this process, it is evident that any objections that the parties might have had regarding the study, the methodology or the results, would have been taken note of, and the report would have proceeded accordingly.

6.2.10 The Committee notes that the Third Party independent project was completed on 08.10.2015 and the draft report was submitted by D&M on

08.10.2015 itself. After examination and incorporation of views/comments from ONGC and RIL, the final report was submitted by D&M on 30.11.2015.

6.2.11 Read with the terms of the previous agreement between ONGC and RIL to appoint an agency to conduct the study, it is evident that the proceedings of the meetings involving ONGC, RIL, DGH and D&M were extremely transparent; every stage of the D&M study was carried out with the consent of the parties; the methodology was agreed upon beforehand and fixed by both the parties; the draft report was shared prior to finalising, and comments were solicited from all. Considering this sequence of events, the process followed, and the continuous participation of all the parties, it becomes difficult for either party to bring into question the authenticity, reliability or validity of the report.

### ***C. Methodology of the D&M Report***

6.3.1 D&M followed a detailed methodology for the purpose of its study. To begin with, two three-dimensional (3-D) seismic data sets of ONGC and RIL covering the study area were merged into a single data set. Thereafter, an Area of Interest was defined within the three contract areas belonging to ONGC and RIL. This Area of Interest included discovered gas-bearing sands within the reservoir interval, inferred from the distribution of seismically defined geobodies and from the results of dynamic data interpretations. A detailed petrophysical analysis of the 38 logged wells in the study area was carried out, which provided calibration to the seismic analysis and input to the Full Field Geocellular Model ("**FFGM**"). The depositional setting for these Upper Pliocene sediments was that of a complex deep water submarine fan fed by an evolving series of sediment gravity flows, with most sand deposition confined within or adjacent to one of two major channel systems. Based on an analysis of multiple logs, four petro physical rock types in all wells were consolidated.

6.3.2 The FFGM was constructed via a series of iterative steps as follows: the structural framework was defined; petro physical rock types and petrophysical properties were propagated using geostatistical methods of Good International Petroleum Industry Practices ("**GIPIP**"), and the results were iterated to ensure the distributions were consistent with well data and interpretations. The FFGM framework consists of over 114 million cells, with a vertical resolution of about 1 metre.

6.3.3 Thereafter, a Full-field Reservoir model ("**FFRM**") was constructed by upscaling the grid and properties of the FFGM within the Area of Interest, and initializing the pressure and fluid distribution in the model. The initial water saturation (Swi) was estimated by PRT-specific J functions relative to the appropriate fluid contact. Pressure-Volume-Temperature properties used were consistent with the existing dry gas. The total Gas Initially in Place ("**GIIP**") of the reservoir model was estimated consistent with the material-balance analysis. A history match was achieved to reproduce the volume, timing and character of gas and water production for the field and for individual wells. The history-matched model was then run in forecast model to investigate the production scenarios to be expected from continued operations and also with additional producing wells.

6.3.4 Sensitivity on the pressure depletion was conducted to estimate the connected and unconnected gas volumes within the Area of Interest. The connected gas volume was defined to be the gas volume that has significant pressure depletion and contributes to the production and pressure performance of the field. The simulation model was calibrated by history-matching the FFRM to measure pressures and fluid volumes, including post-production Modular Dynamic Tester ("**MDT**"), through 31.03.2015.

#### ***D. Findings of the D&M Report***

6.4.1 The technical study by D&M indicated the connectivity and continuity of reservoirs across block boundaries of Godavari PML, KG-DWN-98/2 and KG-DWN-98/3. The report quantified the volume of gas migrated

from Godavari PML and KG-DWN-98/2 to KG-DWN-98/3 block and respective production of gas from migrated volumes till 31.03.2015. Based on the model prepared by D&M, two production forecast cases were simulated. The estimated gas migration volumes from Godavari PML and KG-DWN-98/2 to KG-DWN-98/3 as on 01.01.2017 and 01.04.2019 were simulated along with production volumes of respective contract areas.

6.4.2 The findings of the D&M Report are summarised as follows:

- a) The GIIP for Godavari PML and D1 discovery area of KG-DWN-98/2 block were found to be 14.210 and 11.857 BCM respectively.
- b) From 01.04.2009 (gas production commenced from KG-DWN-98/3 block) till 31.03.2015, 7.009 and 4.116 BCM of gas had migrated from Godavari PML and D1 discovery of KG-DWN-98/2 block respectively to KG-DWN-98/3 block. Of these migrated gas volumes, 5.968 and 3.015 BCM of gas was produced from Godavari PML and D1 discovery of KG-DWN-98/2 block respectively, through KG-DWN-98/3.
- c) The D&M Report also makes two future gas production forecasts (Base Case and Case 1) with effect from 31.03.2015. The Base Case forecast was simulated using continued operations and active producers as on 31.03.2015. A Case 1 forecast was simulated using continued operations as in the Base Case and further including three additional producers that were added post 31.03.2015, and are currently in operation. As on date, it is the only Case 1 forecast which is to be considered.
- d) The Base Case forecast indicates that as on 01.01.2017, 7.519 and 4.377 BCM of gas would have migrated from Godavari PML and D1 discovery of KG-DWN-98/2 block respectively to RIL's KG-DWN-98/3 block. Out of these migrated volumes, 6.549 and 3.395 BCM of gas would be produced from Godavari PML and D1 discovery of KG-DWN-98/2 block respectively through KG-DWN-98/3 block.
- e) As on 01.01.2017 thus, 6.691 and 7.480 BCM of gas would be left behind in Godavari PML and D1 discovery area of KG-DWN-98/2 block respectively.
- f) The Case 1 forecast indicates that as on 01.04.2019, 8.059 and 4.650 BCM of gas would have migrated from Godavari PML and D1 discovery of KG-DWN-98/2 block respectively. Out of these migrated volumes, 7.065 and 3.846 BCM of gas would be produced from Godavari PML and D1 discovery of KG-DWN-98/2 block respectively through KG-DWN-98/3 block.

6.4.3 The final Report was submitted by D&M after incorporating the comments of both the parties to the Reference, i.e., RIL and ONGC. Pertinently, a substantial portion of the arguments of RIL and ONGC, as discussed next, pertained to this report.

### ***E. Challenges to the D&M Report***

6.5.1 The D&M Report was jointly commissioned to independently evaluate the continuity of channels and connectivity of reservoirs across the block boundaries operated by ONGC and the RIL-JV, and if so established, estimate gas volumes and their allocation for gas balancing, if applicable. D&M used the production data from individual wells in the D1-D3 fields between April 2009 and March 2015. In its arguments, RIL raised several issues regarding the limitations of the D&M Report, in light of the uncertainty and the use of the Report to answer the TOR.

6.5.2 RIL stated that the D&M Report was not commissioned to address the issues raised in the TOR and thus lacked the necessary data and analysis to assist the Committee. In particular, RIL referred to paragraphs 4(b) and (c) of the TOR that required the Committee to “recommend the future course of action”, “quantify the unjust enrichment”, and suggest measures to “prevent future unjust enrichment”.

6.5.3 However, according to RIL, the D&M Report did not fulfil the TOR’s objectives since it did not contain the requisite information or analysis to arrive at accurate or justifiable volumetric estimates for quantifying any purported damage from the alleged unjust enrichment. For instance, the Report’s scope of work did not actually require it to conduct any gas balancing exercise, nor did it consider any of RIL’s development, drilling and facilities costs (CAPEX), operating costs (OPEX), realised sales gas volumes, or resultant NPV of the gas etc.

6.5.4 RIL argued that the D&M Report suffered from some significant limitations and uncertainties, which were acknowledged in page 102 of the D&M Report itself. In this regard, RIL raised at least four objections. First, the complex nature of the KG reservoir created uncertainty in reservoir modelling, which was exacerbated by insufficient field data. *Secondly*, D&M's analysis could not resolve the geological and technical issues that arose in the TOR, especially given the inherent uncertainty in its static (FFGM) and dynamic (FFRM) models. *Thirdly*, D&M's approach to subsurface modelling and the failure to run multiple scenarios on a model calibrated by field performance data could not answer the TOR since it generated only a single "deterministic" outcome that ignored the range of other (equally valid) possible outcomes. As a result, the D&M Report failed to establish the range of uncertainty that existed in the reserves. *Finally*, the data set underlying the D&M Report limited its reliability considering its asymmetric nature, i.e., where RIL has shared considerable static and dynamic data from its D1-D3 fields (such as field performance, coring, gas samples, and well tests) in contrast to ONGC's undeveloped blocks. This further added to the quantitative uncertainties in the input data.

6.5.5 Additionally, RIL stated that the reliability of the D&M Report's findings were put into question by the fact that the field performance data from the D1-D3 fields after March 2015 (which was the end period of the D&M Report) revealed that the reservoir did not behave in a manner consistent with D&M's dynamic model and ensuing predictions.

6.5.6 According to RIL, the Committee lacked the necessary information to enable it to make recommendations consistent with principles of natural justice and due process. Additional data and analysis is required to assess the volume of gas migrated and quantify the compensation, if any, due to ONGC.

6.6.7 RIL averred that the Committee could only fulfil its TOR if it was in possession of additional field data from “ONGC’s undeveloped contract areas” and RIL’s contract area post March-2015; if it could calibrate the static dynamic and geological models with this additional data; if it could generate multiple cases with different input parameters; if these multiple scenarios could be evaluated by internationally recognised experts to provide a quality check; and if the uncertainties could be quantified and applied to the final result.

6.6.8 ONGC countered the objections raised by RIL regarding the reliability of the D&M Report in equal measure. ONGC stated that the methodology of the D&M Report was transparent, as it was conducted with full participation of RIL (and BP, as one of the members of the contractor in the PSC), ONGC and DGH. Eight review meetings were held at Dallas, at which RIL, ONGC and DGH were all present. Input data for the report was provided to D&M through DGH, with each party having full knowledge of, and access to each other’s data. Further, D&M’s technical workflow was adopted by D&M after consultation with the parties, and the draft report was also circulated for comments to the parties. The final report was thus issued by D&M after discussion at every stage between the parties.

6.6.9 ONGC further argued that RIL’s concerns of data asymmetry were not credible, and did not affect the reliability of the D&M Report in any way. As regards the complex nature of the reservoir creating uncertainty in reservoir modelling, ONGC argued that the D&M Report had utilised all the data sets to arrive at a robust FFGM and FFRM to draw its conclusions. Moreover, the analysis conducted by D&M included an analysis to validate its own results, due to which there could be no ambiguity in the estimates of gas volumes made by D&M.

6.6.10 In response to RIL’s contention that the D&M Report contained a single realisation model leading to a single deterministic outcome, ONGC

argued that D&M did not run a single realisation model, but had run a number of iterations and arrived at the final model to obtain a history match of the production and pressure data of both RIL's and ONGC's wells. ONGC further pointed out that these iterations were carried out with RIL's full knowledge, and at no point of time during the study, had RIL raised this issue.

6.6.11 Additionally, ONGC contended that RIL's argument that D&M had conducted inaccurate history matching to arrive at its conclusions was incorrect because the history matching had been done as per standard industry practice and as per agreed technical workflow. Further, ONGC pointed out that till 31.03.2015, the history match had been successfully achieved for the bulk quantity of the gas reserves produced by RIL.

6.6.12 On RIL's contentions that there was a lack of actionable findings of the D&M Report, ONGC argued that the D&M Report was prepared at the joint request of ONGC and RIL, under the supervision of DGH. The information used in preparing the report was obtained from both ONGC and RIL, with DGH as the intermediary. The methodology was clearly stated in the D&M Report, and all the evidence relied upon and its own evaluation results were clearly mentioned in the report itself. Accordingly, ONGC argued that RIL was estopped from raising these contentions, as it had not demonstrated any legally-established basis to fault an expert report.

6.6.13 ONGC also pointed out that the level of uncertainty projected by RIL was not supported by any material or evidence. On the contrary, according to ONGC, D&M had made three key findings which were relevant for the Committee to proceed with this recommendations: first, the integrated analysis indicated connectivity and continuity of natural gas reservoirs across the ONGC and RIL blocks. *Secondly*, RIL had produced gas (of 8.983 BCM up to 31.03.2015) which had migrated from Godavari PML and KG-DWN-98/2,

through the field wells of KG-DWN-98/3. *Thirdly* the estimated forecast of gas migration till March 2019 was approximately 10 BCM.

6.6.14 On its part, DGH stated that D&M issued its final draft Report to both ONGC and RIL for their review and comments prior to finalising the same. Notably, RIL did not raise any issue regarding D&M's study or data limitation while finalising the final draft report, prior to the submission of the final report by D&M. Further, DGH said that RIL signed all the minutes of the review meetings held with D&M at Dallas, and agreed to the technical completion of every milestone defined for the study, prior to taking steps towards the next milestone. Therefore, RIL was aware of the limited data availability from the ONGC acreages since the beginning of D&M's study, but never raised any issue towards it, during the progress of the Report.

6.6.15 DGH additionally pointed out that D&M had already mentioned the limitations of its study in the report itself. Further, DGH submitted that subsurface studies always involve uncertainty issues, because the characters and production behaviour of the reservoirs are assessed indirectly through geological, geophysical and petro-physical characteristics. In such cases, subjectivity or uncertainty in sub-surface data interpretation always exists, which gives rise to variation from the simulated and actual performance of the reservoir.

6.6.16 Incidentally, as a peripheral note to the conclusions drawn by the D&M Report, ONGC raised the issue of "stranded gas". ONGC stated that it had independently evaluated the models provided by D&M, to understand the extent of reservoir damage and the quantum of otherwise-producible gas that would have been left behind as stranded gas due to the operations carried out by RIL. This was countered in detail by DGH (as well as RIL), which said that ONGC's claim was speculative for various reasons, and pointed out that there were technical discrepancies in ONGC's assessment of stranded gas.

6.6.17 The issue of stranded gas raised by ONGC appears to be only incidental, and with limited or no merit, in the view of the Committee, particularly in the light of the explanation provided by DGH regarding the concept of stranded gas. As a result, the Committee has not considered this issue any further.

6.6.18 The Committee's review of the D&M Report in the context of its remit under the TOR addresses three key issues. The first pertains to an in-depth study of the Report itself, which the Committee has attempted to do in a preceding sub-section in this chapter. The in-depth study suggests that the Report was commissioned under terms agreed upon by all the stakeholders in the present dispute, crucially by RIL and ONGC. All the meetings with D&M had extensive minutes, revealing that all proceedings were as transparent as possible. The data to be shared was agreed upon in advance, and analyses, methodology and results were jointly agreed upon throughout the process of conducting the study. In the circumstances, and with the information available at hand, it is difficult for the Committee to believe that the manner in which the D&M Report was arrived at was questionable. The Committee is unable to evaluate in any further detail the concerns expressed by RIL about data asymmetry or methodological limitations or uncertainty in the results, and the Committee has not considered these concerns in any more detail.

6.6.19 The D&M Report itself appears to be reasonable in its research, methodology and conclusions drawn, and is hard to be faulted. The D&M Report establishes connectivity and quantifies the gas that has migrated and is likely to migrate within the time period covered by the Base Case and Case 1 Scenarios. Further, the D&M Report as well as the statements made by the parties to the Committee point to the fact that gas production in the relevant fields is likely to cease because of pressure depletion, and the fields are expected to reach their technical limits for further gas production. Due to the fact that only meagre reserves are left in the relevant fields, there is no

question of contemplating any kind of joint development, unitisation, or gas balancing. The D&M Report appears to establish that there is practically no development or further production that can be carried out by ONGC in its fields in the current scenario.

6.6.20 In sum, the Committee notes and accepts that the D&M Report finds that connectivity between the reservoirs in KG-DWN-98/3, KG-DWN-98/2 and Godavari PML blocks is established. Further, as per the calculations contained in the report, from 01.04.2009 (when gas production commenced from KG-DWN-98/3 block) till 31.03.2015, 7.009 and 4.116 BCM of gas had migrated from Godavari PML and D1 discovery of KG-DWN-98/2 block respectively to KG-DWN-98/3 block, of which, 5.968 and 3.015 BCM of gas was produced from Godavari PML and D1 discovery of KG-DWN-98/2 block respectively, through KG-DWN-98/3.

6.6.21 Additionally, the Committee notes that the D&M Report makes two forecasts regarding gas migration. *First*, as per the Base Case forecast, as on 01.01.2017, 7.519 and 4.377 BCM of gas would have migrated from Godavari PML and D1 discovery of KG-DWN-98/2 block respectively to RIL's KG-DWN-98/3 block, of which 6.549 and 3.395 BCM of gas would have been produced from Godavari PML and D1 discovery of KG-DWN-98/2 block respectively through KG-DWN-98/3 block. *Secondly*, as per the Case 1 forecast, as on 01.04.2019, 8.059 and 4.650 BCM of gas would have migrated from Godavari PML and D1 discovery of KG-DWN-98/2 block respectively, of which 7.065 and 3.846 BCM of gas would have been produced from Godavari PML and D1 discovery of KG-DWN-98/2 block respectively through KG-DWN-98/3 block.

6.6.22 In light of the findings of the D&M Report, and the Committee's acceptance of the same, it is now instructive to consider the question of unjust enrichment and its legal and contractual implications, as required by paragraphs 4(a) and (c) of the TOR.

## **CHAPTER – 7**

### **UNJUST ENRICHMENT**

7.1 The previous Chapter, in pursuance of paragraph 4(a) of the TOR, examined the D&M Report in depth to conclude that the D&M Report establishes connectivity of reservoirs and continuity of channels across the blocks operated by ONGC and RIL, with 11.125 BCM gas having migrated from ONGC's blocks to block KG-DWN-98/3 and 8.983 BCM produced from it at block KG-DWN-98/3 up to 31.03.2015. The D&M Report also made two forecasts, the Base Case and Case 1 Forecast for 2017 and 2019 respectively, which the Committee accepts.

7.2 Consequently, the ensuing questions before the Committee now are whether the migration, production, and sale of such gas from the ONGC blocks constitutes "unjust enrichment" to RIL, the contractor of the adjacent KG-DWN-98/3 block. This has to be examined in light of the detailed scrutiny of the legal and contractual provisions contained in the Oilfield Act, PNG Rules, and the PSCs, governing the rights and obligations of the parties. The Committee thus, also has to determine the construction and import of Articles 10.15, 11.2 and 12 read together. Apart from this, the other questions before the Committee include determining whether RIL had prior knowledge of connectivity, or potential connectivity, of reservoirs; and notwithstanding the same, whether ONGC's alleged laggard conduct and unpreparedness permitted the exploitation of gas by RIL from ONGC's adjoining blocks.

7.3 This Chapter will thus answer parts of paragraphs 4(a) and (c) of the TOR dealing with the determination of unjust enrichment in view of the applicable contractual provisions and law. It will begin by discussing and interpreting the current petroleum regime, comprising the relevant PNG Rules and clauses of the PSCs. Apart from being essential to answer all the four clauses of paragraph 4 of the TOR, a discussion of the petroleum regime will

enable the Committee to evaluate the parties' stands and answer whether the migration of gas to block KG-DWN-98/3 and its subsequent production and sale by RIL has caused RIL to be unjustly enriched.

7.4 During the course of the arguments, and in its written submissions, ONGC made extensive submissions charging RIL with having prior knowledge of the connectivity and continuity of reservoirs (which it did not share with anybody) and deciding the position of its four development wells in KG-DWN-98/3 very close to ONGC's blocks, so as to unduly benefit from gas that would migrate from there. Incidentally, RIL also charged ONGC with having knowledge of potential connectivity and extension of the Reservoir as far back as 2007 (or that it could have been discovered with due diligence), but remaining silent about it till 2013, when ONGC finally brought it to DGH's notice. However, to determine whether there was any unjust enrichment, the Committee will not delve into the question of knowledge at this stage, and will discuss it later. Instead, notwithstanding this issue of knowledge, it will partly answer para 4(c) of the TOR by interpreting the PNG Rules and the terms of the PSCs, specifically Articles 10, 11 and 12, in light of the parties' positions and the law on unjust enrichment.

#### ***A. The PNG Rules***

7.5.1 The PNG Rules form part of the statutory regime that governs petroleum operations, both in nomination blocks such as Godavari PML, and in PSCs, such as for blocks KG-DWN-98/2 and KG-DWN-98/3.

7.5.2 Rule 4 clarifies that a person shall prospect for petroleum and mine it only pursuant to a PEL ("license") and PML ("lease") granted under the PNG Rules respectively.

7.5.3 Rule 5 deals with the grant of licenses and leases and states that a license or lease in respect of any land or mineral underlying the ocean

within the territorial waters, continental shelf, or the exclusive economic zone (“**EEZ**”) of India, which is vested in the Union, shall be granted by the Central Government. Rule 5(2) provides that every such license or lease shall contain such covenants as may be prescribed by the PNG rules and such additional covenants as may be contained in the agreement with the Central Government. The regime operates slightly differently if the license or lease is in respect of land vested with the State Government, which is not the case before the Committee.

7.5.4 Rule 7 enumerates the rights of the licensee and lessee subject to the provisions of the Act, Rules, and any terms of agreement between the Central Government and licensee/lessee, such as the PSCs. Rule 7(i) grants every licensee the exclusive right “to carry out, in addition to geological and geophysical surveys, information drilling and test-drilling operations for petroleum in the area covered by the license and shall have the exclusive right to a lease over such part of the area covered by the license as he may desire.” Rule 7(ii), *inter alia*, grants every lessee the exclusive right to “conduct mining operations for petroleum and natural gas in and on the area demised by such lease” along with other connected rights. Thus, licensees are granted these rights in respect of an area (defined in Rule 3(d) under “field”).

7.5.5 Rule 10 of the PNG Rules covers the area and term of license and, *inter alia*, requires that the area covered by the license shall be specified. Thus, the area where the hydrocarbon reserves are, have to be demarcated. Following from this, Rule 16 provides for the identification of areas, where the licensee or lessee is required to display notices at all conspicuous points on the area covered by the license or lease to indicate the boundaries.

7.5.6 As part the amendments that were carried out to the PNG Rules in 2003, Rule 19(c) was inserted in “General Provisions”. It requires the licensee or lessee to provide the Central Government or its designated agency

(which is the DGH, as per Notification No. S.O. 1391(E) dated 01.09.2006), as soon as possible, all the data obtained or to be obtained as a result of its petroleum operations free of cost. This data encompasses raw data as well interpretative and derivative data, including reports, analysis, interpretations and evaluations prepared in respect of petroleum operations. All such data has been declared the property of the Government.

7.5.7 Rules 20 and 21 of the PNG Rules provide for suspension of conditions of a license/lease and the cancellation of a license/lease respectively. Rule 30 injuncts the licensee or lessee from suspending normal drilling or production operations or abandoning an oil/gas well without giving the Central Government at least a fortnight's notice or 24 hours after, if operations have to be suspended immediately.

7.5.8 Chapter VI of the Rules focuses on conservation and development. Rule 27 empowers the Central Government to restrict the amount of petroleum or gas that may be produced by a lessee in a particular field in the interests of conservation of mineral oils. This thus makes clear the power of the Government to regulate petroleum production within a demarcated field for certain reasons.

7.5.9 Similarly, Rule 28 enables the Central Government to prescribe conditions to regulate the conduct of operations by a licensee or lessee in a field or area where the Central Government has "reason to believe that the petroleum deposit extends beyond the boundary of the leased or licensed area" into another operator's area. The Government may require the licensee or lessee to undertake any operation, or prohibit any operation, or permit it to be undertaken subject to certain conditions. Thus, Rule 28 empowers the Central Government to control the conditions under which, if at all, a licensee or lessee can operate outside their field or area. Pertinently, Rule 28 is the genesis for Articles 10.15, 11 and 12 of the PSCs of both the parties, as shall be discussed in detail in the next section.

## ***B. The PSCs***

7.6.1 Although both ONGC and RIL-Niko-BP have entered into separate PSCs with the Central Government, the terms of these PSCs are *mutatis mutandis*, and thus, shall be used interchangeably. Furthermore, the terms of the PSC that apply to oil, also apply to natural gas by virtue of Articles 10 and 21. Apart from the Articles of the PSCs, it is also important to examine various recitals, which reaffirm certain foundational principles in respect of petroleum operations.

7.6.2 Recital 1 stipulates that under Article 297 of the Constitution, petroleum in its natural state, whether in India's territorial waters or continental shelf, vests in the Union of India. This reiterates the position that the Central Government is the owner of natural resources, including gas, and holds it in public trust for the people of India. Thus, only the Government has a proprietary interest over the gas, till it is sold at the delivery point, by contractors.

7.6.3 Recital 4, mentioned above, makes it clear in each of the PSCs that Cairn and RIL-Niko applied for a license or letter of authority to carry out exploration operations in the offshore area identified as block KG-DWN-98-/2 and block KG-DWN-98/3 respectively, and that they had been duly authorised to carry out petroleum operations therein. These offshore blocks were described in greater detail in the accompanying Appendix. Thus, Recital 4 highlights the idea that each contractor only applies for exploration in a specified and demarcated block and is granted rights for that block, and is reinforced by Recital 8, which stipulates that this area (in Recital 4) forms the subject matter of the PSC.

7.6.4 Recital 6 of the Preamble highlights the Government's desire that petroleum resources that may exist in the continental shelf, territorial

waters and the EEZ of India be discovered and exploited with the “utmost expedition” in the “overall interest of India” and in accordance with GIPIP. The emphasis here is on expeditious discovery in the interest of the people of India and consistent with international practices. It is also reflective of the proposition that the Union Government holds the gas in trust for the people of India.

7.6.5 Article 1 of both the PSCs defines the various terms used throughout the contract, and focuses on “contract area”.

- a) Under Article 1.24, “Contract Area” means the area described and delineated on the map in two Appendices A and B respectively on the Effective Date (the later of the date of the PSC or the grant of PEL under Article 1.40). It also includes any portion of the said area that remains after relinquishment or surrender pursuant to the PSC, and any additional area under Article 11.2. Thus, unless certain additional area is provided under Article 11.2, the contract area is confined to the coordinates of the two Appendices (pre-relinquishment).
- b) The focus on the contract area is also found in Article 1.5, which defines “Appraisal Programme” as one carried out following a discovery in the contract area for the purpose of appraising such discovery. Thus, even the Programme is restricted to the contract area itself.
- c) Similarly, even “Cost Petroleum” in Article 1.28 permits the contractor’s recovery of contract costs only from the total portion of the crude oil and natural gas produced and saved from the contract area. It is connected to “Profit Petroleum” in Article 1.77, which is the total value of the crude oil and natural gas produced and saved from the contract area as reduced by the cost petroleum.
- d) Further, Article 1.32 defines “Development Area” to be an area within the contract area comprising of single or multiple reservoirs, which has been designated by the Management Committee, subject to Article 11.2, to include the maximum area of potential productivity in the contract area in respect of which a commercial discovery has been declared and a development plan approved.
- e) The focus on contract area continues in Article 1.39’s “Discovery Area”, which is that part of the contract area where the contractor believes petroleum exists, and is likely to be produced in commercial quantities.

7.6.6 Other definitions in Article 1 that lay emphasis on contract area include Exploration Operations conducted in the contract area in search for petroleum in an Appraisal Programme (Article 1.43); Gas Field (Article 1.51) and Oil Field (Article 1.67) located within the contract area; Lessee (Article 1.57) and Licensee (Article 1.60) being contractors permitted to carry out petroleum operations within the contract area; Production Operations (Article 1.76) for petroleum conducted from the development area. In contrast, Reservoir has been defined under Article 1.80 as “a naturally occurring discrete accumulation of petroleum”. Pertinently, there is no reference to contract area. This emphasis on contract area is helpful in understanding the boundaries and restrictions of a conductor’s exploration and mining operations to his block or specified area.

7.6.7 Recital 6 relies on GIPIP, defined in Article 1.52, and mentioned in various Articles of the PSC as a condition of the license or lease. GIPIP are those that are generally accepted and followed internationally by prudent, diligent, skilled and experienced operators in petroleum exploration, development, and production operations, which are best equipped at that point of time to accomplish the desired results. GIPIP are not intended to be limited to the optimum practices or methods to the exclusion of others, but are a spectrum of reasonable and prudent practices, in light of the facts then known, to accomplish the desired results. In case a party raises a question as to what constitutes a GIPIP, the Management Committee decides, failing which the Government decides with input from DGH or other listed organisations, which decision shall be binding.

7.6.8 Following the definition clauses, Article 3 of the PSCs deals with the License and Exploration Period, with the exploration period lasting seven years unless extended (Article 3.1). Article 3.9 stipulates that if no commercial discovery is made in the contract area by the end of the exploration period, the contract shall terminate. Article 4 deals with Relinquishment, while Article 5 is about the Work Programme.

7.6.9 Article 6 of the PSCs deals with the Management Committee, comprising of two members nominated by the Government to represent it and one member nominated by each company constituting a contractor to represent it. It is important because it demonstrates that the Government, through the Committee, is expected to be kept in the full know-how of all matters pertaining to petroleum operations in the block. Article 6.5 and 6.6 specify a list of matters that are to be submitted by the Operator on behalf of the Contractor to the Management Committee for review and approval respectively. These include, *inter alia*, proposals for an Appraisal Plan and declaration of discovery as Commercial Discovery (Article 6.5) and for the approval and modification of Development Plans (Article 6.6). The Management Committee is required to meet at least once every six months during exploration and once every three months or more thereafter under Article 6.8. The voting procedures in Article 6.13 stipulate that in matters requiring the Management Committee's approval, the Government had to give a positive vote in favour of the decision.

7.6.10 Article 8 lists the rights and obligations of the parties and stipulates that the contractor shall, in the conduct of petroleum operations, follow GIPIP (Articles 8.3 and 8.3(e)) and be mindful of the rights and interests of India (Article 8.3(k)). Article 8.1(a) grants the contractor exclusive rights, subject to Article 12, to carry out petroleum operations in the contract area while Article 8.1(d) gives the right to use all available technical and other data of the contract area. Once again, thus, the emphasis is on contract area. Contractors are also obliged, under Article 8.3(c), to ensure the provision of all information, data, samples etc. required to be furnished under the law or the PSC. This is similar to the requirements under Rule 19(c) of the PNG Rules discussed above.

7.6.11 Article 10 of the PSCs deals with discovery, development and production and reiterates the focus on contract area and providing raw and

interpretative and analytical data to the Management Committee (and the Government) at every stage to enable them to exercise their powers and make a decision.

- a) The scheme of the article is that when a discovery is made within the contract area, its particulars are required to be communicated to the Management Committee and the Government under Article 10.1(a). The contractor is also required under Article 10.1(c) to determine if the discovery is of potential commercial interest and to submit the data and its analysis and interpretation with a written notice to the Management Committee stating its opinion and whether the discovery is of potential commercial interest and merits appraisal.
- b) Under Article 10.5, within 30 months of sending the aforementioned notice, the contractor has to advise the Management Committee on whether the discovery should be declared as a commercial discovery and it should send a report containing all the relevant economic and technical data alongside.
- c) If, after following the provisions of Article 10, the contractor declares the discovery a commercial discovery, it has to submit a comprehensive development plan to the Management Committee under Article 10.7, which shall relate to discovery area, contain a Reservoir and boundaries of the development area, and detailed proposals along with data and supporting interpretation. This discovery has to be within the contract area.
- d) If the area encompassing the commercial discovery, extends beyond the designated development area, and outside the original contract area, the Management Committee may recommend the enlargement of the development area to the Government, *provided* that the Government has not awarded or offered this to any other person, nor is held by any other party, nor is any application pending. Thus, if another contractor has the area adjoining the contract area, no recommendations for enlargement can be made under Article 10.15.

7.6.12 Article 11 deals with PML for Offshore Areas and comes into play only after the contractor submits a development plan of a commercial discovery under Article 10.7. Thereafter, under Article 11.1, he shall submit an application to the Government for a lease in respect of the proposed development area. Article 11.2 has already been quoted above and deals with

conditions under which a part of the reservoir in respect of which a commercial discovery has been declared, which extends beyond the contract area, can be included in the proposed development area – when the adjoining area is not subject to a license or lease granted to another contractor.

7.6.13 Although similar, Articles 10.15 and 11.2 are materially different in two respects elucidated below:

- a) First Article 10.15 contemplates situations where the *area* encompassing the commercial discovery extends beyond the designated development area outside the original contract area. However, Article 11.2 applies in situations where the *reservoir* (where the commercial discovery has been declared) extends beyond the contract area, and that is why it is subject to Art. 10.15.
- b) Second, Article 10.15 regulates the powers of the Management Committee to make recommendations to the Government about the enlargement of the development area, whereas Article 11.2 deals with the subsequent stage of the Government decision to include the adjoining/outside area within the contractor's proposed development area in respect of which his lease application has been made.

7.6.14 Article 12 of the PSC, which forms the crux of the controversy, refers to Unit Development. Article 12.1, extracted previously, lays down the conditions under which the Government may require joint development in cases where a reservoir in a discovery area is situated partly within the contract area and partly in another contractor's area. The rest of Article 12 lays down the scheme in cases where no plan is submitted within the specified period/or is acceptable to the Government; or when the parties are unable to agree on the proposed plan for joint development; or when the proposed joint development plan is agreed and adopted by the parties.

7.6.15 Apart from this Articles 15 and 16 respectively lay down the mechanism for recovery of cost petroleum (i.e. the entire cost including royalty payments, exploration development and production costs with

provisions for carry forward) and production sharing of petroleum (i.e. profit petroleum).

7.6.16 Article 26 relates to information, data, confidentiality, inspection and security. Similar to Rule 19(c) of the PNG Rules, it reiterates that the contractor shall provide the Government all the data obtained as a result of its petroleum operations, along with all interpretative and derivative data, which shall be the property of the Government. The confidentiality of such data is highlighted and parties cannot disclose its contents to third parties without written consent of the other parties.

7.6.17 Article 27 on the title to petroleum, data and assets reiterates that the Government is the sole owner of the petroleum underlying the contract area and shall remain the sole owner of the petroleum produced under the PSC, except that part of crude oil or gas whose title has passed to another person pursuant to the PSC. Title to the petroleum passes at the delivery point to the buyer party. Such a stand also has judicial support, in *RNRL v RIL*, (2010) 7 SCC 1.

7.6.18 Article 33 of the PSC provides for on dispute settlement through a sole expert, conciliation and arbitration.

7.6.19 Having conducted a detailed scrutiny of the applicable statutory and contractual regime, the Committee is now in a position to consider the question of unjust enrichment in detail.

### ***C. Whether RIL has unjustly enriched itself?***

#### *(i) ONGC's case*

7.7.1 This Committee will discuss ONGC's case on unjust enrichment here only very briefly, and will consider it in detail during the discussion on

the law of unjust enrichment and its applicability to the facts of the present case. The case law relied upon by ONGC, RIL, and DGH on the scope and meaning of the phrase “unjust enrichment” will also be discussed.

7.7.2 ONGC contended that while ownership and title of the hydrocarbons were with the Central Government, contractors had possession of such hydrocarbons within their contract area, and thus had been given the right to produce and get economic benefits from the gas within their contract area. Further, since the gas belonged to the Government, the rule of capture had no applicability in India.

7.7.3 The Counsel for ONGC took the Committee through various provisions of the PSC in detail to highlight the emphasis on contract area, and the fact that contractors could only produce gas and make cost and profit petroleum recoveries from gas that was drilled from their demarcated contract area. It was their case that bearing in mind the legal proposition that contracts involving the State conferring rights to another party have to be construed strictly against the party and in favour of the State, the PSC had to be construed strictly against RIL. Under such an interpretation, since the PSC did not expressly grant RIL the right to produce any gas that had migrated from outside its contract area, RIL could not claim to exercise extra-contractual rights to produce such migrated gas.

7.7.4 On the interpretation of the terms of the PSC, ONGC in their arguments claimed that Articles 10.15 and 11.2 functioned as a complete bar against RIL in developing their block since their reservoir extended into ONGC’s adjoining blocks. The only option available in such a case with RIL was to apply to the Government for joint development. In the present case, since RIL applied for their mining lease on 02.03.2005, Article 11 became applicable then, and since RIL could not proceed under Article 11.2 (since it knew that its development area was outside its contract area), RIL had to apply for joint development under Article 12. ONGC claimed that the

Government never exercised its powers under Article 12 to consider the question of joint development. Thus, in the absence of joint development, RIL had no right to go ahead and unilaterally produce and sell the gas that had migrated from ONGC's blocks. It was contended that ONGC's allegedly laggard conduct did not grant RIL any additional property rights, which in any way it did not have, and which could have enabled it to justify its actions. This was because there was a complete prohibition in the PSC, in the absence of action under Article 12, for a contractor to develop its block when the discovery/reservoir extended beyond its contract area.

7.7.5 Finally, on unjust enrichment, it was argued that ONGC's alleged conduct or failure to commence commercial production was irrelevant in determining whether RIL had been unjustly enriched by producing ONGC's migrated gas. It was stated that the Committee had to only consider RIL's conduct – their unjust retention of the benefit – in deciding the issue of unjust enrichment. Consequently, ONGC claimed that it was entitled to restitution in equity from RIL, which had unjustly enriched itself from the gas migrating from ONGC's blocks.

*(ii) RIL's case*

7.7.6 It is now instructive to briefly state RIL's case on unjust enrichment. RIL's case is premised on the fact that ONGC and RIL, as contractors, have no legal or proprietary rights or possessory interests in hydrocarbons, and are not the owners of the hydrocarbons. Consequently, they have no right to the unproduced gas. RIL's rights are best understood through a service contract analogy where it has been given an opportunity to take a development risk as service provider with possible resultant economic benefit at its cost and expense.

7.7.7 In the present case, RIL argued that only it had taken the opportunity to expeditiously develop its block and comply with its duties

under the PSC, while ONGC had been laggard throughout, not commencing commercial production till date. Thus, in the absence of any order of joint development under Article 12 of the PSC, RIL was entitled to produce all the gas that existed or had migrated into its block KG-DWN-98/3, as long as such gas was produced from wells drilled in its own contract area. In support, RIL cited the PSC's omission to expressly prohibit the production of migrated gas from outside its contract area. Hence, ONGC's claim to have rights or possession over the gas was argued to be irrelevant.

7.7.8 RIL further claimed that the Central Government was agnostic about the source of the produced gas, as long as it was in line with the Government's stated policy of expeditious and efficient production of hydrocarbons in the interest of the people of India and in accordance with GIPIP. In fact, RIL referred to Rule 30 of the PNG Rules to highlight the Government's emphasis on uninterrupted petroleum operations and the penalty that could be imposed on them in terms of suspension if they did not act efficiently and expeditiously.

7.7.9 It interpreted Articles 10.15 and 11.2 as being facilitative in nature, and not prohibitive, and thus not operating to restrict RIL's rights to conduct petroleum operations within its contract area, regardless of the source of the gas. With respect to Article 12, it argued that Article 12 could only be invoked at the Government's discretion and this was not a fit case for the exercise of such discretion, since neither had ONGC argued that the conditions for joint development were fulfilled nor had DGH ever recommended it. In support, it relied on DGH's written submissions before the Hon'ble Delhi High Court in W.P. (C) No. 3054/2014 and before the Committee dated 23.03.2016, where DGH took the stand that the option to exercise Article 12 in the present case "became irrelevant" since "one part of the reservoir [ONGC] remained without appraisal when the other part entered the development stage".

7.7.10 Thus RIL concluded that it was entitled to produce whatever gas flowed into the geographical confines of its contract area, so long as it was produced from a production well located within its contract area, and received the Management Committee's approval. Its emphasis was on the location of the physical operations that led to production "from" its contract area, and not the source of the oil or gas.

7.7.11 Finally, RIL relied on the report and expert opinion by Prof. Terrance Daintith on "Dispute between RIL and ONGC regarding ONGC blocks KG-DWN-98/2 and Godavari PML, and RIL block KG-DWN-98/3 in KG Basin", *inter alia*, that India's petroleum regime only granted contractors the right to carry out mining activities within their contract area. He cites similar petroleum statutory regimes in UK, Australia, and Nigeria, and federal leases in USA to conclude that drainage from one block to another "as a result of lawful exercise of rights" does not give rise to a compensation claim.

*(iii) DGH's case*

7.7.12 Before proceeding with laying out DGH's stand, it is important to note that in its oral arguments, the counsel for DGH completely departed from their stand as taken in their written submissions. DGH's case, as pleaded in their oral arguments, in summary was that RIL had been unjustly enriched by producing and selling gas that had migrated from ONGC's blocks outside its contract area into RIL's contract area. A claim for unjust enrichment would lie regardless of motive, as long as the benefit (in terms of production and sale) had been unjustly retained. Thus, whether RIL had deliberately positioned its four wells near ONGC's block boundary or had given the wells a particular slant in a manner so as to induce their migration was irrelevant to the question of whether RIL had been unjustly enriched.

7.7.13 This view was predicated on the fact that only the Government had title and ownership over hydrocarbons below the ground, including un-

extracted gas, and RIL had no rights over the gas that happened to migrate into its contract area from ONGC's adjoining blocks.

7.7.14 DGH further relied on the fiduciary nature of the relationship between the contractors and RIL, which amounted to a principal-agent relationship. In support, it relied on the decision of the Supreme Court in *CBSE & Anr v Aditya Bandopadhyaya & Ors*, (2011) 8 SCC 497, which refers to a fiduciary relationship as one involving a common duty or obligation. It cites *Black's Law Dictionary's* definition of such relationship as one where "one person is under a duty to act for the benefit of the other on matters within the scope of the relationship" and which requires the highest duty of care. A principal-agent relationship is cited as an example of a fiduciary relationship, which can arise when "one person has a duty to act for or give advice to another on matters falling within the scope of the relationship".

7.7.15 Thus, DGH argued that the Central Government and the contractor are in a fiduciary relationship, where the contractor (RIL), as the agent is under a duty to act for its principal, i.e. the Government's benefit. This involves RIL advising the Government (or the Management Committee) on matters such as under Article 10.5 on whether a discovery should be a commercial discovery, which, in turn, requires it to fulfil its duty of disclosure, and provide DGH with all its data and its interpretation and analysis of the raw data. Additionally, all of RIL's actions have to keep in mind that it has to act in the overall interests of India and according to GIPIP.

7.7.16 On the question of the applicability of Article 12, it is pertinent to note that DGH in its submissions before the Hon'ble Delhi High Court in W.P. (C) No. 3054/2014 and in its written submissions dated 23.03.2016 took the stand that the option to exercise Article 12 in the present case "became irrelevant" since "one part of the reservoir remained without appraisal when the other part entered the development stage". Thus, DGH submitted that

ONGC's lagging operations meant that "planning of joint development" with RIL's block was "not possible".

7.7.17 However, in his arguments before the Committee, Mr. Ganguli, Sr. Adv. for DGH departed from this stance. He stated that in the absence of any data presented by either party indicating the possibility of continuity or connectivity, DGH had no reason to refuse RIL's IDP and Addendum to IDP in November 2004 and December 2006 respectively. On facts, thus, the DGH never had any occasion to even decide whether to invoke Article 12 or not. On law, he argued that ONGC's failure to produce gas did not automatically imply that the conditions under Article 12 could not be satisfied. In any event, the alleged failure of ONGC did not give any right to RIL to unilaterally produce the gas that had migrated from ONGC's adjoining blocks.

(iv) *The law on unjust enrichment*

7.7.18 Before deciding whether RIL had been unjustly enriched, it is important to understand the legal principles arising in the present case, including the meaning of unjust enrichment.

7.7.19 A seminal case in India discussing the concept of unjust enrichment is *Indian Council for Enviro-Legal Action v UOI & Ors*, (2011) 8 SCC 161 where the Supreme Court cites *Black's Law Dictionary* to define unjust enrichment as

A benefit obtained from another, not intended as a gift and not legally justifiable, for which the beneficiary must make restitution or recompense..... A claim for unjust enrichment arises when an "unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience."

7.7.20 Thus, unjust enrichment takes place when a person retains the benefit or money, which in justice and equity belongs to another. The basis for the development of this principle is not strictly in law (contract/tort) or even equity, but in the quasi-contractual principle of the doctrine of restitution, as stated in *Sahakari Khand Udyog Mandal Ltd. v Commissioner of Central Excise & Customs*, (2005) 3 SCC 738.

7.7.21 *Indian Council for Enviro-Legal Action* also cited the American decision of *Schock v Nash*, 732 A 2d 217 (Delware) for the proposition that the Defendant retaining the benefit may be liable even when he is not the wrongdoer and even though he may have received it honestly in the first place.

7.7.22 Thus three principles arise from the following decision, as will apply in the present case. *First*, there has to be a benefit (profit) in favour of RIL or a loss to ONGC/Government – i.e. RIL has to be enriched. *Second*, this benefit retained by RIL must not have been intended as a gift to it, nor is it legally justifiable, i.e. RIL has to be unjustly enriched. *Third*, RIL's motive or knowledge is irrelevant if it chose to retain the benefit after coming to know of the connectivity of reservoirs. The question of who can seek restitution from RIL, whether ONGC or the Central Government, will be discussed later. Next, however, we turn to examine the nature of the relationship between the Government and the contractor to better understand the case of unjust enrichment.

(v) *Fiduciary relationship between the Government and the contractor*

7.7.23 The contractors share a fiduciary relationship with the Central Government, which, as we have seen, is the owner of the natural resource and holds it in public trust. Thus, when the Government gives rights over such trust property to a contractor, it forms a fiduciary relationship between them. The contractor's fiduciary duty is evident from reading the terms of the

PSC, which incorporate the duty to disclose (Articles 8(3)(c), 10.1(a) and 10(1)(c), 10.5, 10.7, 26.1 and 27.3 of the PSC, Rule 19(c) of the PNG Rules) and the duty to act in the overall interest of the people of India and in accordance with GIPIP (Recital 6, Articles 8(3), 8.3(e) and 8(3)(k)) of the PSC.

7.7.24 However, it is important to note that while the Committee finds merit in the argument elaborated above on behalf of DGH on the fiduciary relationship and the principal-agent relationship, these principles are not decisive and are not the sole, or even primary, basis for the Committee's findings. This is especially because the case is primarily one of contractual obligations, and thus the Committee does not wish to dwell upon questions of fiduciary duties and principles of agency any further.

*(vi) Nature of the rights and obligations of the parties*

7.7.25 In determining whether RIL has been unjustly enriched, the Committee must first decide whether RIL has been enriched, i.e. has it benefited from the migration of gas from Godavari PML and block KG-DWN-98/2 into its block KG-DWN-98/3. The answer to this, simply, is in the affirmative, since it is clear that RIL has produced and sold such migrated gas that it has drawn from its wells, and has recovered cost and profit petroleum in accordance with Articles 15 and 16 of the PSC.

7.7.26 The Committee must, as a second step, determine if this benefit has been unjustly retained, i.e. whether the migrated gas was intended as a gift or was its retention legally justifiable. In the present case, the extra gas that migrated into RIL's production wells was obviously not intended to be given to them as a gift by the Government of India, nor even by ONGC. In fact, the Government's position as a trustee of natural gas for the people of India precludes it from making any largesse in RIL's favour by allowing it to use the migrated gas from Godavari PML and block KG-DWN-98/2; to do so

would be a breach of trust. The retention of the benefit of the migrated gas by RIL would amount to unjust enrichment, regardless of whether RIL had prior knowledge about such migration. This only leaves the question of whether RIL's production and sale of migrated gas was legally justifiable.

7.7.27 As a related point, it is worthwhile reiterating that it is an accepted position, both in the Supreme Court's enunciation in *RNRL v RIL* or from Article 27 of PSC that only the Central Government is the owner of natural resources, which it holds in trust, for the Indian people. Contractors cannot claim a special title to the natural gas given under a lease, and they have no ownership or possessory interests in the same. Only the Government has title over the gas, which passes to the buyer at the point of sale. In this respect, thus, the Committee agrees with Professor Daintith's observations that contractors have no rights to the sub-surface gas until they produce that gas to a delivery point, after which they are entitled to recovery of cost and profit petroleum as compensation and that imposition of unitisation is discretionary.

7.7.28 However, the Committee respectfully disagrees with Professor Daintith's conclusion in the context of the UK and Australian regimes that no claim for compensation arises for gas drainage between blocks "as a result of lawful exercise of rights under a license", given that RIL has not exceeded the scope of its lease. *First*, the examples cited by Prof. Daintith are only statutory regimes, which albeit similar, are not judicial decisions. However, in his book, *Finders Keepers: How the Law of Capture Shaped the World Oil Industry*, he cites the Dutch Supreme Court decision in *Unocal Netherlands B.V. v Continental Netherlands Oil Co. (Conoco)*, that "petroleum licensing arrangements do not incorporate the rule of capture, and thus, production of petroleum by way of drainage from the adjoining licensed block is, in certain circumstances at least, unlawful and will give rise to a duty of compensation." *Second*, the examples cited by Prof. Daintith involved the Governments of Australia and England *deciding* not to impose unitisation or joint development

on the parties, which is different from the case before the Committee. In the present case, the question of applying Article 12 and ordering joint development never actually came up and no decision was taken by the Central Government under Article 12 in that regard. Thus, Prof. Daintith does not examine a situation akin to the facts of the present case, where the contractor unilaterally proceeds to produce and sell migrated gas, without any determination of unitisation and joint development, and then unjustly retains the benefit. *Third*, only India has the public trust doctrine, which gives a different interpretation to the rights and obligations of the parties. *Fourth*, as will be explained in the next paragraph, RIL's production and sale of the migrated gas was not a result of its "lawful exercise of rights".

7.7.29 On the possible justification for RIL's actions, the PSCs and the PNG Rules do not expressly bar a contractor from using the wells located within its own contract to produce gas that has migrated into its contract area. Nevertheless, a detailed reading of the various clauses tells us that the answer is in the negative.

7.7.30 As the previous discussion on the terms of the PSC make evident, there is a clear focus on "contract area" through all the definitions in Article 1, and other clauses such as Articles 3.9, 8(1)(a) and 8(1)(d), 10.1, 10.7, 10.15, 11.2 and 12.1 and Rule 7 of the PNG Rules. The PSC and PNG Rules thus grant the parties rights *only* in respect of their demarcated contract area. No rights are granted to parties in the PSC to conduct their drilling, development, or production operations or recover their cost and profit petroleum from outside their contract area, even if such gas migrates into the contractor's block.

7.7.31 The only exceptions to this rule are laid out in Articles 10.15, 11.2 and 12.1, which have limited applicability in permitting the Management Committee to make recommendations for enlargement of development area (Article 10.15), in permitting a contractor to include the adjoining area in his

proposed development area for his lease application (Article 11.2), or in the Government ordering joint development (Article 12.1). In fact, the very existence of these clauses and the limited exceptions they carve out in permitting development or production from outside a contractor's contract area would be rendered nugatory if a contractor could unilaterally produce and sell the gas that has migrated into his contract area.

7.7.32 In the present case, it is clear that even though RIL's area encompassing its commercial discovery extended beyond its contract area, Articles 10.15 had no application since the extra area, with the migrated gas, was located in ONGC's gas blocks, which was adjoining RIL's block. Thus, there was no question of the Management Committee recommending the enlargement of RIL's development area.

7.7.33 Similarly, at the time of RIL's application to the Government for a lease in 2004, Article 11.2 could not come into play and RIL could not have included the extra area (part of ONGC's blocks) as part of its proposed development area in the lease because of Article 11.2(a). Article 11.2(a) precludes the application of Article 11 if the area outside the contract area is "subject to a license or lease granted to another person", which in this case was ONGC. Notably, RIL was actually precluded from even applying for its lease, and getting its IDP and AIDP approved in 2004 and 2006 in the present form, much less commence commercial production in 2009, without approaching DGH for joint development. At that stage in 2004, thus, RIL could *only* have proceeded if it had sought for, and was granted, an order for joint development at the Government's discretion under the conditions stipulated in Article 12 of the PSC.

7.7.34 Thus, a true interpretation of the PSC is that Articles 10.15 and 11.2 function as a prohibition in cases where a contractor's development area extends outside its contract area and it wishes to produce gas from outside this area. They are not merely facilitative in nature, as argued by RIL. In fact,

accepting RIL's argument would be analogous to accepting the rule of capture, which has no application in India, and only applies in some States in U.S.A. where there is no federal lease and there is individual ownership of gas below the ground. In the present situation, however, contractors can only proceed with the production of migrated gas if they get an order for joint development under Article 12.

7.7.35 The above conclusion – that RIL cannot rely on the absence of prohibition of extraction and production of migrated gas in the PSC to justify its conduct – is further strengthened by the proposition that in the absence of any express grant of right to RIL to produce and sell migrated gas, the PSC has to be strictly construed against it. The PSC in such a case has to be construed in favour of the Central Government, especially since it holds the gas in public trust. This is because of the principle of strict construction of crown contracts in favour of the State conferring the right and against the contracting party, recognised by the English court in *Attorney General v Ewelme Hospital*, [1853] 17 Beavan 366, as cited by ONGC, in arguments. These cases highlight the common law principle of construction that cases involving grants by the Crown have to be construed favourably for the Crown.

7.7.36 In fact, the principle of strict construction of contracts, without altering the nature of the contract so as to affect either parties' interest adversely, has been recognised by the Indian Supreme Court in *Rajasthan State Industrial Development and Investment Corporation v Diamond and Gem Development Corporation Ltd.*, (2013) 5 SCC 470. The Court in this case held that a party cannot claim anything more than what is covered by the terms of the contract since a contract is a transaction between two parties, who have entered into it with open eyes and after fully understanding the nature of the contract. Thus, the claims of a party are limited by what it had bargained for, and do not entitle it get anything extra, regardless of whether such a gain has been on account of its deliberate conduct or a fortuitous gain. This is also supported by principles of contract law, which make it clear that

breach of contract does not require intention, and questions of motive can only play a role at the stage of determining compensation, or in the present case, the quantum of restitution for unjust enrichment.

7.7.37 Such a finding is consistent with the terms of the contract and the law. This is because even if joint development has not been ordered by the Government (for instance because ONGC's alleged laggard conduct rendered such development inefficient), and thus Article 12 is inapplicable, it does not grant RIL an extra-contractual right to go beyond the prohibition of Articles 10.15 and 11.2 and produce part of ONGC's migrated gas. ONGC's conduct does not affect the legal nature of the rights granted to RIL by the Government of India in respect of its block KG-DWN-98/3. Nor does it permit RIL to take benefit of the gas, which had flowed from ONGC's adjoining field, whether due to RIL's actions in drilling the wells at certain locations or not, which right RIL otherwise did not possess.

7.7.38 At this stage, as an aside, it is useful to consider RIL's argument that its commencement of commercial production in 2009, and ONGC's failure to do so till date, was a relevant factor in deciding the question of unjust enrichment. As has been stated above, the conduct of either parties in 2009 is irrelevant since the question of joint development had to come up at the stage of the IDP's approval, i.e. in 2004 and 2006, and not thereafter. Since joint development was not considered or ordered by the Government in 2004 and 2006, RIL was precluded from unilaterally producing the migrated gas and retaining the benefits.

7.7.39 Similarly, RIL's reliance on Rule 30 of the PNG Rules on suspension of operations for the proposition that the Rules emphasised uninterrupted petroleum operations and would penalise contractors for their failure to act expeditiously is also misconceived. A bare perusal of Rule 30 makes it clear that it does not deal with the Government's power to cancel or suspend the contractor's operations based on its diligence and conduct. It

only requires contractors to give the Government a fortnight's notice of suspending normal drilling or production operations.

7.7.40 The third and final proposition articulated above in determining whether RIL has been unjustly enriched makes it clear that RIL's motive or knowledge in producing and selling the migrated gas is irrelevant if it chose to retain the benefit after coming to know of the connectivity of reservoirs. The migration of gas was like a fortuitous gain, which the PSC did not contemplate, and thus RIL could not have retained it.

*(vii) Duty to disclose and appraise*

7.7.41 It is evident that Articles 8(3)(c), 10.1(a) and 10(1)(c), 10.5, 10.7, 26.1 and 27.3 of the PSC read with Rule 19(c) of the PNG Rules, along with the emphasis on protecting the interests of the people of India and acting in accordance with GIPIP imposes a duty to disclose on contractors. Thus, both ONGC and RIL were obliged to provide DGH with raw, analytical, and interpretative data, and to keep the Management Committee informed at every stage of the discovery, exploration and production.

7.7.42 The underlying premise for such a duty to appraise and the emphasis on providing interpretations of the data is that the submission of raw data, in and of itself, does not lead to any conclusive finding. It does not assist the Management Committee in exercising its powers under Article 6 to approve work programmes, development plans, and development areas, even though it has access to all contractors' data, especially since the Committee only meets once every six months or three months. Nor does it enable the Government to determine in any meaningful way whether the effective recovery of petroleum can be secured by ordering joint development under Article 12.

7.7.43 Consequently, the Committee believes that even a potential for reservoir extension had to be immediately conveyed by a contractor to DGH so that a decision on Article 12 could have been taken in 2004-05 itself. The burden is thus on the contractor to ascertain connectivity, and in fact, that is why there is no unilateral right of contractors to produce and sell gas. Thus both RIL and ONGC were obliged to give full disclosure with the appropriate data and studies to the Management Committee and to ascertain whether there was connectivity. This is consistent with the fiduciary relation between the contractor and the Government.

7.7.44 In the instant case, there has admittedly never been an exercise of power under Article 12 to order joint development, whether during the submission of RIL's IDP in 2004 or when ONGC brought the potential extension to DGH's notice in 2013.

7.7.45 This brings us to the next argument put forth by RIL that joint development could not have been ordered when one party, namely ONGC, was laggard and had not commenced commercial production of gas, while the other party, namely RIL, has been doing so since 2009.

*(viii) Interpretation of Article 12*

7.7.46 At this stage, it is important to keep in mind the change in DGH's stance from its written submissions to oral arguments on the issue of Article 12. In oral arguments before the Committee, DGH, through Mr. Ganguli, argued that the question of applying Article 12 did not, as a matter of fact, ever arise. This stand is predicated on a reading of Article 12 with the wider Rule 28 of the PNG Rules, and as such, the Committee finds merit in it. The pre-requisite for exercising Article 12.1 in the instant case involving fulfilling the following conditions: (a) The reservoir in RIL's discovery area be situated partly within its contract area and partly within ONGC's area; and (b) both parts of the reservoir can be more efficiently developed together on a

commercial basis. In such circumstances, the Government then has the discretion to order joint development for “securing more effective recovery” of petroleum from such reservoir. A bare reading of this provision makes it clear that the conduct of one party in commencing production, whether laggard or efficient, has no bearing on the decision to order joint development and Article 12 does not speak about conduct. The only consideration is whether the reservoir can be more efficiently developed together on a commercial basis. Thus, in a hypothetical situation, the development of the reservoir can begin from only one part of the reservoir (the RIL block), instead of both parts (the ONGC and RIL blocks), as long as the conditions of Article 12 of the PSC and Rule 28 of the PNG Rules are satisfied.

7.7.47 The Committee thus does not find any merit in DGH’s stance in its written submissions of 23.03.2016 since it has no textual basis, and finds that on a true interpretation of Article 12 of the PSC, conduct of either party is not a condition precedent and plays no role in determining whether to exercise power under Article 12. On the facts of the present case, the time to invoke Article 12 was in 2004/2006 when RIL’s IDP/AIDP was approved, and not in 2009, when commercial production commenced in block KWDN-98/3. Since no facts regarding potential connectivity were brought before DGH’s notice, it did not even have the opportunity to consider the question of joint development.

7.7.48 This section makes it clear that Article 12, although potentially applicable, was never actually exercised by the Government in the present case. In fact, the Government can only be attributed knowledge of connectivity of reservoirs and migration of gas from ONGC’s blocks to RIL’s block and its sale when the D&M Report came out on 30.11.2015. Even at that stage, neither party approached the Government with a request for joint development. In fact, it is admitted by all that keeping in mind the limited amount of gas left in RIL’s and ONGC’s blocks and that the PSC is set to expire in 2019, there is no question of joint development today.

7.7.49 To summarise thus, the Committee finds that, regardless of RIL's knowledge or intention, its production of migrated gas and retention of the ensuing benefits amount to unjust enrichment, being the exercise of an extra-contractual right in the absence of an order under Article 12. As is evident, the legal determination of unjust enrichment is not tied to a factual determination of whether RIL had prior knowledge of the connectivity of reservoirs or whether ONGC took up the claim of unjust enrichment belatedly. However, in light of the facts of the present case and the extensive arguments advanced by the parties, the Committee finds it important to examine the aspect of RIL's and ONGC's prior knowledge. To this, we now turn.

#### ***D. Prior knowledge***

7.8.1 The previous section detailed the issue of unjust enrichment with the assumption that none of the parties had prior knowledge of continuity or connectivity of the reservoirs. However, it is also relevant to discuss prior knowledge of continuity and connectivity of the reservoirs on the part of the parties, in order to understand the acts of omission and commission of by the parties, and to make recommendations accordingly. As mentioned throughout this report, it is impossible to draw adjudicatory conclusions regarding any issue being examined in this matter; however, there are some facts and incidents that have emerged during the course of the proceedings that the Committee believes are worth highlighting.

##### *(i) RIL's prior knowledge*

7.8.2 Regarding RIL's prior knowledge, ONGC made a three-fold allegation against RIL, regarding data gathering, technical aspects of production and information contained in a 2003 Appraisal Report.

7.8.3 First, ONGC alleged that RIL collected data pertaining to gas blocks beyond its allocated/demised area, without the permission of DGH and without the knowledge of ONGC. According to ONGC, RIL acquired conventional 3D seismic data in 2001, and Q-Marine 3D seismic data in 2007 in KG-DWN-98/3 block, which extended into KG-DWN-98/2 and Godavari PML blocks. ONGC pointed out that contractors sometimes acquire data beyond their block boundaries to the extent of an area necessary to acquire full-foldage at their block's boundary, and in such cases, usually seek the permission of DGH and the operator of the block from which data is to be acquired, as per GIPIP. However, ONGC argued that RIL acquired data for an area that was more than the area required to get full-foldage data for its block and covered all of ONGC's discovery areas without any permission. According to ONGC, this came to their knowledge only when the information was shared by RIL with ONGC in December 2013. ONGC further claimed that RIL got its IDP approved for the KG-DWN-98/3 block from DGH and MOPNG with full knowledge of the extension of discoveries into the ONGC blocks. In effect, ONGC argued that RIL acquired seismic data in respect of ONGC's reservoirs without its knowledge. This data, so obtained, was more than what was technically required to produce from RIL's own block. On its part, RIL claims that there was no concealment of data; that all parties had commonality of knowledge regarding geology; and that the knowledge that all parties had was limited and did not reveal reservoir connectivity. There may or may not be truth or substance in the allegations made by ONGC in this regard. The Committee believes that it is not possible to resolve this issue in the absence of any further evidence, and is incapable of recording a finding in this regard.

7.8.4 Second, ONGC makes certain allegations against RIL's method of production that are of a technical nature. For instance, ONGC claims RIL drilled four development wells very close to ONGC's blocks, one being as near as about 50 metres to ONGC's block boundary, and two others being inclined or slanted towards ONGC's reservoirs, presumably with the intention of

deliberately guiding the flow of the gas so extracted. Another allegation pertains particularly to the location of one production well near the boundary, which is unaccompanied by either an appraisal well or an exploration well (which are otherwise precursory structures). ONGC alleges that locating wells, per se, near block boundaries may not be ordinarily objectionable. However, when combined with possible prior knowledge of connectivity and continuity of reservoirs, and the absence of appraisal or exploration wells, such location raises suspicion about the intent behind such structures. ONGC also made reference to the drainage radius/radii of wells, which are regarded as a determinant for the quantity of gas that could be extracted from a well. RIL denies all allegations made by ONGC in this regard, and states that its development and production processes were consistent with the terms of the PSC, GIPIP, and approved by the DGH in all respects, including the placement and drilling of wells. Again, the Committee, in view of the factual controversy, is incapable of recording a finding, as any finding or recommendations would necessarily require recording and consideration of evidence.

7.8.5 Third, and most importantly, perhaps, towards the close of the proceedings of the Committee, ONGC produced a report prepared in 2003 by D&M, apparently commissioned by Niko, and relying on data submitted by Niko and RIL, which according to ONGC, provides information about connectivity and continuity of the reservoirs in question. A reply to this allegation was given by RIL much later, after closure of the proceedings, and comments on that reply were received thereafter from ONGC, all of which will be discussed in detail below.

7.8.5 During the course of the oral arguments of the parties, on 03.05.2016, ONGC produced before the Committee a copy of a document titled "Appraisal report as of March 31, 2003, on block KG-DWN-98/3 located offshore India for Niko (Neco) Ltd." (Canadian Policy No. 2-B Case) authored by D&M ("**the Appraisal Report**"), alleging that this document clearly showed connectivity and continuity of the reservoirs in question.

7.8.6 The report appeared to contain an appraisal of the extent and value of the proved, probable, and possible natural gas reserves of the fields located in block KG-DWN-98/3. The information used in the preparation of the report appeared to have been obtained from Niko or on behalf of Niko by the operator, RIL. Further, it appeared that the authors of the report had relied upon the information thus provided by Niko and RIL without independent verification, and had not undertaken a field examination of the properties in question, since all pertinent data was available for review, and no special circumstances warranted a field examination.

7.8.6 Four wells of the KG-DWN-98/3 block were considered for the assessment in the 2003 Appraisal Report, i.e., A1, B1, B2 and C1 wells. The report relied upon a 3-D seismic data set furnished by RIL that covered the area of interest for the field areas. The report obtained estimates of ultimate recovery after applying recovery factors to original gas in place (OGIP), and these factors were based on the consideration of the type of energy inherent in the reservoirs, analyses of the petroleum, and the structural positions of the properties. The reserves estimates contained in the Appraisal Report were based on consideration of data available until 31.03.2003, although at the request for Niko, data from the D1 well that became available after 31.03.2003 was also considered.

7.8.7 Besides the KG-DWN-98/3 block itself, according to the Appraisal Report, "the reserves that [were] located off the KG-DWN-98/3 block have been included as possible reserves attributable to development of the KG-DWN-98/3 block". The Appraisal Report suggested that "[t]he reserves associated with that portion of the OGIP [i.e., the neighbouring block] would require a separate stand-alone development by the owner of the block (KG-OS-IG) which could prove cost-prohibitive". The Appraisal Report further added that the "[d]evelopment of the KG-DWN-98/3 block will be capable of depleting the OGIP in the KG-OS-IG block".

7.8.8 According to ONGC, the KG-OS-IG block, which lies westward of the KG-DWN-98/3 block, has now been converted into the Godavari PML block (a fact that is not disputed by RIL and Niko), and the Appraisal Report clearly showed that there was connectivity of the reservoirs in question.

7.8.9 In effect, based on this 2003 Appraisal Report, ONGC contended as follows: that the Appraisal Report suggested that the adjacent gas pool (Godavari PML) was connected with the KG-DWN-98/3 block; that the Appraisal Report concluded that a standalone working of the ONGC block Godavari PML would be cost prohibitive and may not be commercially viable; that the drawing of gas from the connected reservoir (RIL's KG-DWN-98/3 block) would deplete the gas reserves of ONGC's Godavari PML block; and finally, that all these findings of the 2003 Appraisal Report were known to RIL and Niko. Despite allegedly having this information as far back as March 2003, ONGC further alleges that neither Niko nor RIL chose to report the conclusions of this Appraisal Report to DGH in terms of its commitments under Article 26 of the PSC, or in the IDP filed with the DGH in 2004.

7.8.10 On its part, RIL, by its written communication dated 27.05.2016, claimed that the Appraisal Report said very little from a technical perspective, and said nothing that was helpful for the consideration of any joint development. RIL also pointed out that the report was in public domain. Further, RIL said that the impacted party was ONGC, and ONGC as a prudent operator, would have had access to the report in 2003, and could have raised the contents of the report with either RIL or DGH if it felt it required attention or discussion. ONGC, however, denies that it had knowledge of this report, and reiterated that till date, RIL and Niko had not filed the complete Appraisal Report with DGH.

7.8.11 According to RIL, the 2003 Appraisal Report was commissioned by Niko and prepared by D&M for the specific purpose of Niko's compliance

with the Canadian National Policy Statement 2-B 'Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators' of the British Columbia Securities Commission. In this regard, the Appraisal Report adopted a basic, static methodology and analysis, and relied on, in RIL's terms, a simplistic consideration of seismic data and very limited well data confined to discovery wells in block KG-DWN-98/3, with no modelling but rather a reliance on D&M's general experience of similar geology. According to RIL, while this methodological approach was appropriate for the purposes of the public filing that was required, it would not be appropriate for the complex question of whether reservoir connectivity existed across the contract areas, to what extent, and whether joint development was viable. RIL states that the comments made in the 2003 Appraisal Report suggest that there was a possibility of connectivity, but was not itself firm evidence of it; and it was not until D&M undertook its detailed 14-month study and analysis and furnished the 2015 D&M Report that reservoir connectivity was indicated. RIL additionally drew attention to the fact that the 2003 Appraisal Report focused on wells other than those under present consideration. In effect, RIL contended that the 2003 Appraisal Report had no probative value in establishing reservoir connectivity.

7.8.12           ONGC contended that RIL's letter of 27.05.2016 in response to the tabling of the 2003 Appraisal Report should be rejected by the Committee, particularly when RIL and Niko had withdrawn from the proceedings; or alternately, if the letter were taken on record, it would be construed as RIL's deemed continued participation in the proceedings before the Committee.

7.8.13           On its part, DGH argued that full disclosure of all information available with the parties flowed not only from its obligations under Article 26 of the PSC, but also from several other obligations and duties, such as GIPIP; the fact that such disclosure was in national interest, since the gas blocks

were held in trust for the nation; and the fiduciary relationship between the contractor/operator and the Government.

7.8.14 DGH also stated that contractors or operators could not take refuge under the PSCs or the Petroleum and Natural Gas Rules, regarding the depositing of raw data. They are obliged to not only report any significant data they come across while working in the field, but they are also duty bound to provide an interpretation of the data so collected. This data could include data to establish whether the gas has been taken from the area demarcated or demised for them. DGH too would have its role to play in interpretation, but the duty of the contractors/operators remained a key operative one.

7.8.14 The Committee took particular note of Article 26.1 of the PSCs, which contains a duty upon the parties to disclose all data with the DGH. In the absence of complete data having been submitted to the DGH, it would be very difficult for the DGH to form any opinion regarding future development of the blocks in question. At best, it could only be said that an IDP was submitted, which in turn came to be granted. In other words, DGH, without adequate information, could not have taken a conscious decision regarding the development of the well based upon knowledge of reservoir connectivity, or that gas would be likely to migrate from an adjoining area. In the present case, the DGH was bound to make its assessment on the basis of the representations made to it by the parties concerned.

7.8.15 The Committee is prompted to question as to why the 2003 Appraisal Report was not shared with the DGH. Had this report been presented by Niko or RIL to DGH at the appropriate time, a further investigation could have been immediately initiated. The Committee disagrees with RIL's contention that the 2003 Appraisal Report is 'of no probative value', as it is not for RIL to make a determination to this effect. RIL's duties, in the context of the 2003 Appraisal Report, was to have made it available to DGH,

and why it was not done remains inexplicable and difficult to understand. There were multiple opportunities for RIL to have presented the report, for example, along with its IDP, when it first submitted in 2004, or when the IDP was later amended in 2005.

7.8.16 The Committee notes that the 2003 Appraisal Report clearly indicated that there would be depletion of gas in the Godavari PML block, which in fact, the course of time has resulted in, leading to the migration of a huge amount of gas from the Godavari PML block to RIL's KG-DWN-98/3 block, and its subsequent production from the latter block. Even otherwise, the 2003 Appraisal Report appears to be at least a significant indicator of the fact that RIL may have had prior knowledge of connectivity. The Committee believes that the 2003 Appraisal Report, and knowledge of its findings, is worth further consideration by the MOPNG.

7.8.17 It bears reiteration that the Committee is not in a position to provide final views on the issue of prior knowledge on the part of RIL and Niko regarding connectivity or continuity. However, its *prima facie* assessment suggests that such prior knowledge did exist, and the non-submission of the 2003 Appraisal Report to DGH is a pointer to such prior knowledge. The more important concern that the Committee wishes to express is regarding the apparent failure of RIL and Niko to have placed this material on record before the DGH, and indeed, the Committee is inclined to believe that a substantial part of this dispute could have been avoided if this Appraisal Report had, in fact, been placed before the DGH at the appropriate time.

*(ii) ONGC's prior knowledge*

7.8.18 According to DGH, ONGC also had prior knowledge about possible continuity in the channels as far back as 2007, but took no action for several years. DGH points out that ONGC acquired and processed 3-D seismic Q-marine data in 2006-2007 in Godavari PML overlapping with the KG-DWN-

98/3 block. ONGC made a third party G&G study for appraisal plan for Godavari PML, which it submitted to DGH in October 2007, and which indicated the continuity of Pliocene channels from ONGC's block to RIL's block of KG-DWN-98/3. However, ONGC never raised any allegation regarding the possible continuity of Pliocene reservoirs for a period of more than six years, i.e., from at least 2007 to 2013. Ideally, according to DGH, ONGC should have carried out pressure tests in its blocks, once RIL commenced commercial production in April 2009, to confirm the suspected connectivity and continuity. Instead, DGH alleges that ONGC neither acted in time as a prudent operator nor took any steps to carry out prompt analysis of the data available with it.

7.8.19 Prompted by DGH's submissions, the Committee directed ONGC to submit before the Committee the records/files related to the analysis/interpretation of the 3D Q- marine seismic data along with details as to when the G&G data became available, when the so-called detailed interpretation was commenced at the ONGC-end, and to explain the reasons as to why it took six years for ONGC to raise allegations regarding continuity in the present matter. However, no such records/files were submitted or explanation provided to the Committee.

7.8.20 RIL also relied upon DGH's submissions to contend that prior knowledge and inaction of the part of ONGC.

7.8.21 In sum, the Committee believes that there appears to be substance in DGH's contentions regarding ONGC's prior knowledge. It appears that ONGC had some information about the gas blocks in 2007, with which information it could have come to certain conclusions about continuity and connectivity, acted diligently, and taken appropriate action right away. However, it chose to wait until 2013, and did not offer any explanation to the Committee as to why it waited to so long to take any action. Pertinently, ONGC promised to produce before the Committee the new knowledge of

connectivity/continuity that it had purportedly acquired between 2007 and 2013, but did not do so.

7.8.22 As in the case of the examination of prior knowledge on the part of RIL, the Committee is unable to draw final conclusions regarding ONGC's prior knowledge, other than that, *prima facie*, it appears that ONGC may have had information about possible continuity in 2007 itself, but chose to take no action until 2013. The Committee notes that this dispute could have been avoided to a great extent if ONGC had acted with diligence to bring the issue of connectivity to the notice of DGH. The reasons for such inaction may be probed further, but it is beyond the Committee's remit to do so.

7.8.23 Thus, in the view of the Committee, RIL's production of migrated gas and retention of the ensuing benefits amount to unjust enrichment, since the PSC, in the absence of an order on joint development under Article 12, does not permit a contractor to produce and sell migrated gas. There is also no other extra-contractual right granted to the contractor that enables it to produce gas, regardless of its source. In fact, a contractor is limited by the gas that is available in its clearly defined and demarcated contract area. In the present case, Articles 10.15 and 11.2 appeared to contain a prohibition on the unilateral production of migrated gas, and the only remedy (exception) available to the contractor was to approach the Government and get an order for joint development. Since RIL did not pursue such a step, and it had not been given the migrated gas as a gift or largesse, its actions had no lawful justification and amounted to unjust enrichment. Further, the Committee finds that the 2003 Appraisal Report *prima facie* reveals that RIL had prior knowledge about connectivity and continuity of reservoirs. It also appears that RIL did not bring the contents and findings of the 2003 Appraisal Report to the notice of DGH, which is particularly disconcerting, considering the obligations of contractors/operators to make all relevant information pertaining to their block available to the regulator. ONGC, on its part, also appears to have had some form of prior knowledge

about possible continuity in 2007, but did not act promptly or with due diligence, and took up the matter only six years after it first obtained relevant information. The Committee believes that the allegations of prior knowledge on the part of both RIL and ONGC must be enquired into further, with particular emphasis laid upon the failure of both parties to present the information they had to DGH at the time they allegedly obtained the information. Regardless of the question of knowledge, however, in light of the Committee's findings that RIL had unjustly enriched itself, the following question is whether it is ONGC or the Government of India that can seek restitution. This will be dealt with next.

## CHAPTER – 8

### RESTITUTION

8.1 Having concluded in the previous chapter that RIL's actions of producing and selling the gas migrated from ONGC's blocks to its block amount to unjust enrichment, the next step is to determine who can seek restitution from RIL. Paragraph 4(c) of the TOR also enjoins the Committee to "recommend action to be taken to make good the loss to ONGC/Government on account of such unfair enrichment to the contractors" and to "quantify the unfair enrichment, if any". This chapter will thus, *first* determine whether ONGC or the Central Government can make a claim for restitution from RIL for its unjust enrichment; and *second*, what is the quantum of such restitution that RIL is liable to pay.

#### ***A. Stand taken by ONGC***

8.2.1 As has been stated above, ONGC filed W.P. (C) No. 3054/2014 before the Hon'ble Delhi High Court, seeking *inter alia*, compensation from RIL. In its written submissions before the Committee dated 28.01.2016 and 10.04.2016, ONGC reiterated its claim that RIL be directed to account for and compensate it the monetary value, in USD(\$), for:

- a) 9.476 BCM gas extracted from its blocks, KG-DWN-98/2 and Godavari PML from April, 2009 till 31.12.2015, with interest @ 18 % p.a. till the date of payment;
- b) 1.435 BCM migrated gas to be extracted by RIL from 01.01.2016 to 31.03.2019 on monthly basis at a price realisable by RIL from time to time along with interest at 18% p.a. calculated from the end of each month till payment;
- c) 7.3359 BCM gas as stranded gas, estimated to be not recoverable/ under-recovery because of damage to the reservoirs by RIL along with interest @ 18 % p.a.

8.2.2 It was ONGC's stand throughout that it was it had a (right to) claim for unjust enrichment against RIL, based on its possessory interests in the hydrocarbons beneath the surface allocated to it in block KG-DWN-98/2 and Godavari PML, which in turn gave it a right to economic benefit (from the production of gas). As we shall see later, this stand was opposed by DGH in its oral submissions before the Committee.

8.2.3 Notably, ONGC did not frame its claim either on ownership of the gas or for the breach of contract, which could only admittedly be made by the Government of India. ONGC's claim was based on the law of tort – for trespass and conversion – for having possession of gas to which economic benefit was attached, and having lost that possession to RIL due to the migration, being entitled to restitution from RIL.

8.2.4 The trigger for ONGC's claim was the migration and loss of gas to RIL, irrespective of RIL's intentions or knowledge in drilling four wells near ONGC's block boundaries. In support of its claim, ONGC cited various English and Indian decisions, specifically *Bocardo SA v Star Energy UK Offshore Ltd*, [2011] 1 AC 380; *Islamic Republic of Iran v Barakat Galleries*, [2008] 1 All ER 1177; and *Dhian Singh Sobha Singh v UOI*, [1959] SCR 781. These laid out the proposition that possession, or the right to possession is a pre-condition to bring a claim for trespass or conversion, and not ownership. The tort of conversion only requires a legal change in possession, and will still lie even if physically, possession does not change. Since, ONGC had lawful possession of the gas within their blocks, their rights were protected, and RIL, as a private party, could not take away such rights, especially when the property (gas) in question was held in public trust by the Union of India.

8.2.5 Counsel for ONGC also relied on multiple other English cases such as *Wilson v Lombank Ltd*, [1963] 1 WLR 1294 and *Marfani & Co v Midland Bank*, [1968] 1 WLR 956 for the proposition that the tort of trespass

and conversion is of absolute liability, and the moral fault or knowledge of any party or the ensuing damage is not relevant as long as possession of goods has been obtained and disposed. Thus, in the present case, ONGC argued since RIL had, whether knowingly or unknowingly, produced the gas that had migrated away from ONGC's possession, it was liable under tort. It was no defence for them to argue that ONGC had not commenced production.

8.2.6 Based on the above, ONGC argued that RIL had obtained a benefit, retained it unjustly, and thus, had to disgorge the same in favour of ONGC. ONGC thus claimed the monetary value of the migrated gas produced by RIL and the gas that would migrate to its block KG-DWN-98/3 till the expiry of the lease period under the PSC. It did not therefore frame its claim for restitution in terms of the profits earned or the money made by RIL because its case was that RIL had not made any extra investment or incurred additional costs for the development, production or sale of the migrated gas. In fact, ONGC argued that the fact or quantum of sale was irrelevant since the gas was within RIL's control. Thus, these costs could not be factored into a final determination of quantum.

### ***B. RIL's case***

8.3.1 In contrast, RIL's position throughout has been that the contractors, including ONGC, have no legal or proprietary rights to, or possessory interest in, the hydrocarbons below the ground. At most, they can only be said to have been granted the exclusive right to "carry out" mining activities and the chance to take a "development risk" at their cost and expense with the possibility of economic benefit in the future. This is supported by the PSC, which noticeably contains no terms conferring such ownership or possessory rights to contractors, whilst also not prohibiting the production of migrated gas.

8.3.2 Instead, analogous to a service contract, RIL argued that the Central Government at all times owns the oil and gas that had been produced and that, which remains unproduced. Thus, contractors such as ONGC are only entitled to receive gas at the delivery point as cost and profit petroleum, as compensation or consideration for performing services. The important point to focus on is the point of delivery, at which stage the Central Government stops retaining ownership of all the produced and unproduced oil and gas and the contractor can recover its cost and profit petroleum. Apart from decisions of the Supreme Court of India, such a position also finds support in Article 27, among other articles of the PSC.

8.3.3 Thus, as explained in the previous chapter, RIL's contention was that it had not been unjustly enriched since its actions had been "legally justifiable", and thus outside the ambit of the definition of unjust enrichment in *Black's Law Dictionary* and the judgments of the Supreme Court. This was consistent with the principle of "equity follows the law", recognised in *Narinder Chadha v Municipal Corporation of Greater Mumbai*, (2014) 15 SCC 689 and *LAO v H. Narayanaiah*, (1976) 4 SCC 9, where equity reliefs cannot be granted outside the recognised legal framework, and can only supplement and not supplant the law (the PSC and PNG Rules). Thus ONGC had no claim for unjust enrichment, regardless of any loss suffered by it, since RIL was in a better position to justify its actions under the contract. RIL further relied on *Krishi Uptadan Mandi Samiti v Pahal Singh*, (2007) 12 SCC 193 to argue that delay defeats equity.

8.3.4 However, what is also relevant for this chapter is RIL's argument that ONGC could not maintain an action in trover or conversion, and thus, could not make any claim for restitution, since it did not have any title on the goods in question (the oil and gas), nor did it have a right of possession. For this, it relied on the Supreme Court's decisions in *LJ Leach v Jardine Skinner*, [1957] SCR 438 and *Yarlagadda Venkatasubbaya v Gajjala Satyanarayanmurthy*, (1940) 51 LW 644. All rights, thus, continued to belong

to the Government of India, which meant that without any rights, ONGC could not seek any restitution.

8.3.5 On the question of quantification, RIL put forward the case that it did not unduly benefit from the migrated gas, since it assumed all the costs and risks of drilling and extraction itself, while the profits went to the Government after RIL recovered its cost and profit petroleum. Thus, the D&M Report could not be used as a basis for quantifying the value of the gas, since it had not estimated RIL's costs of producing or monetising the migrated gas. RIL further argued that the Government had not suffered any loss that merited restitution; since it was only due to receive royalty, which it would receive from RIL, regardless of the source of the gas.

### ***C. The stand taken by DGH***

8.4.1 The DGH, in its written submissions filed before the Committee on 25.01.2016 and 23.03.2016, also seemed to support ONGC's right to claim compensation from RIL through a gas balancing agreement. It clarified that although neither RIL nor ONGC had proprietary rights for un-extracted hydrocarbons under their respective PSCs or the PML, they were entitled to "economic benefits". These economic benefits were in respect of the contractors' share of cost petroleum and profit petroleum under the PSC, to be shared with the Government; and in entirety under the PML. Pertinently, the written submissions made no reference to the Government of India's (possible) claims against RIL under the PSC.

8.4.2 Thus, in the present case, DGH's written stand that ONGC possessed a "right to the economic benefits" under the PSC for the gas that migrated beyond its block boundaries, implies, that even assuming ONGC took no steps to develop and produce the gas, RIL could not have the economic benefit in respect of those reserves that may have migrated from ONGC's blocks into RIL's block.

8.4.3 Further, DGH opined that the commercial issue associated with the natural gas migration should be addressed by ONGC and RIL through a gas balancing agreement, where ONGC could have approached RIL to share the infrastructure already constructed in its neighbouring contract area in block-KG-DWN-98/3. It cited the case of the Hazira gas terminal and the Hazira offshore pipeline belonging to ONGC, which had been shared by the contractors on Panna-Mukta and Mid- and South-Tapti PSCs on a chargeable basis.

8.4.4 However, in its oral submissions before the Committee, Mr. Ganguli, Senior Advocate, representing DGH departed from this written stand taken by DGH and put forward an entirely new case stating that ONGC had no right to any restitution. He argued that in the absence of joint development, it was the Central Government that was entitled to restitution from RIL for its production and sale of the excess migrated gas. This was because the migrated gas represents the entitlement and property of the Government, and not ONGC. The crux of Mr. Ganguli's argument was two fold – *first*, after RIL had recovered its costs under Article 15 of the PSC, the Central Government was entitled to a certain, varying percentage of the profit petroleum from RIL's production of gas in its contract area in block KG-DWN-98/3 in terms of Article 16, apart from the royalty. Such a mechanism was applicable for the gas produced by RIL from gas *in situ* in its own block. *Second*, and more importantly, however, was the argument that for the excess gas that RIL produced from its block on account of gas migration from ONGC's block KG-DWN-98/2, there can be no profit or production sharing between the Central Government and RIL. This is because, in the absence of any commercial production by ONGC, the entire amount of migrated gas belongs absolutely to the Government.

8.4.5 Thus, Mr. Ganguli argued that the migrated gas produced by RIL was a quantity which "only the Government is entitled to" and to which

ONGC had “no right whatsoever”. Since ONGC had not produced any gas from block KG-DWN-98/2, it had lost the opportunity to make a claim for restitution. However, from the Government’s perspective, instead of receiving 100% of the excess migrated gas in RIL’s block, it was only getting a certain percentage, such as 10%, with the rest going to RIL (and whose retention constituted unjust enrichment). Thus, the Government was suffering a loss.

8.4.6 Subsequently, it was clarified by the counsel appearing for DGH that the stand taken before the Committee in oral submissions was that of the DGH alone and did not represent the views of the Government of India. The Government also issued O.M. No. O-22013/17/2015-ONG-D-V on 29.07.2016 stating that “at this stage”, it “cannot take stand that whether ONGC or Government had unfair enrichment claim” and the Committee should give its views independently.

8.4.7 The DGH, agreed in substance with ONGC’s arguments regarding the quantification of the unjust enrichment being based on the value of the migrated gas produced by RIL, and not on its profits or sales figures.

#### ***D. Discussion***

8.5.1 As discussed earlier, the Supreme Court in *RNRL v RIL*, (2010) 7 SCC 1, and Article 27 of PSC state that only the Central Government is the owner of natural resources, which it holds in trust, for the Indian people, till the point of delivery. Further, contractors have no legal rights or possessory interest in the un-extracted gas below the surface. However, at this stage of production and sale, contractors are granted the right to recover cost and profit petroleum. Thus, ONGC’s reliance on cases to support their claims for trespass and conversion and absolute liability have no applicability in the present case since ONGC cannot be said to be in possession of the gas in block KG-DWN-98/2 and Godavari PML. ONGC’s arguments to that effect are consequently, rejected.

8.5.2 The principle that contractors have no rights till the stage of production is also supported by a Privy Council decision *U Po Naing v Burma Oil Company Ltd.*, (1928-29) 56 IA 140 cited by the counsel for RIL in their oral arguments. Here, the Plaintiff/Appellant was in possession of an oil well site in Upper Burma and was granted the right to win and get earth oil from this site and sell it, subject to payment of royalty to the Government. The Plaintiff leased this well site to the Defendants, giving them the right to win oil from there. However, despite sinking wells, the Defendants did not find any oil, but instead found gas. The Defendants then proceeded to extract the gas and use it for their purpose, leading to the Plaintiff's claim for compensation for the use of the gas. Under the prevailing regulations, the right to all minerals and earth oil was deemed to belong to the Government, even though private ownership on the land was recognised. The Privy Council rejected the Plaintiff's claim based, *inter alia*, on the proposition that unextracted gas under the soil was not the property of the Plaintiff and that, "unless it can be said that the gas was always the property of the [Plaintiff/]appellant, it never became his property at any material date." Further, the Defendants were in possession of the site from the time of signing the lease and were not mere holders of the Government grant. Consequently, the Privy Council ruled that even though gas could be reduced into possession, it only became the property of the person reducing it by digging the well and using it. Hence, the Respondents were not liable for any compensation. The Committee finds that the principle of the Privy Council decision – that without production, contractors have no rights or title – is consistent with the petroleum regime in India today.

8.5.3 Applying these principles, the Committee concludes that till the time ONGC produces gas from its blocks, it has no legal or possessory rights in the gas under its surface and contract area. The property (gas) continues to belong to the Government of India. Consequently, ONGC does not have the *locus standi* to bring a claim for unjust enrichment or for the tort of

trespass and conversion; and cannot seek restitution. It is only the Government that has the right to claim restitution from RIL for its unfair enrichment.

### ***E. On Quantification***

8.6.1 Having answered the first part of paragraph 4(c) of the TOR of *locus standi* against ONGC, the Committee will now determine the quantification of unfair enrichment to RIL.

8.6.2 As is evident from the arguments of the parties, the quantification of unjust enrichment can either be based on the monetary value of the migrated gas produced, and to be produced, by RIL or it can be the profits earned by RIL, after taking into account its costs and sales figures.

8.6.3 ONGC and DGH argued that the quantification of unfair enrichment has to be based on the monetary value of the migrated gas produced by RIL. Conversely, RIL argued that in case the Committee were to conclude that it had been unjustly enriched, it was still entitled to recover the development, drilling and facilities costs (CAPEX) and operating costs (OPEX) for the migrated gas and to take into account its sales figures.

8.6.4 However, in actual terms, the Committee faces significant limitations in quantifying a value of the gas since it does not have access to any data related to the market value of the gas nor does it have access to the actual production figures post-2015, i.e. after the submission of the D&M Report. With respect to pre-2015 data, the D&M Report provides a basis for the Central Government to act on. The Committee also lacks the expertise to assess the operation of CAPEX and OPEX in the present case. It is thus for the Government of India to inquire into this issue of quantification in further detail, keeping in mind the principle that whatever benefit RIL received in terms of the migrated gas is liable to be returned to the Central Government.

8.6.5 Finally, on the issue of royalty, it is pertinent to state that it was ONGC's case that the royalty passes on to the consumer, and that the operators recover the entire royalty as part of cost petroleum under Article 15 of the PSC. The question of whether royalty or any tax has to be excluded from such quantification of the unjust enrichment is a matter to be decided by the Government of India.

8.6.6 To reiterate, the Committee has arrived at the following findings in the present chapter:

- a) First, the Government of India, and not ONGC, is entitled to claim restitution from RIL for the unjust benefit it received and unfairly retained. ONGC has no *locus standi* to bring a tortious claim against RIL for trespass/conversion since it does not have any ownership rights or possessory interest in the natural gas.
- b) Second, in furtherance of the above, it is stated that whatever benefit RIL received in terms of the migrated gas is liable to be returned to the Government of India.
- c) Third, on the issue of quantification of such unjust enrichment, the Committee believes that the Government of India is best placed to take a final decision on the same, in light of the limitations faced by the Committee to assess the data and costs involved. It is also important to note the limitations of the Committee in giving a figure to the final value of the migrated gas produced by RIL during the term of its lease. While the D&M Report has to form the basis for the migration of gas up till 2015, subsequent migration of gas post-2015 has to be inquired into by the Government of India.
- d) With respect to royalty, the facts before the Committee – in terms of the contractors' arrangement with the Government and with the consumers, and whether the royalty had been passed on to the consumers – are unclear. This issue also has to be looked into by the Government in greater detail.

8.6.7 In light of the Committee's findings in these preceding chapters, the Committee wishes to express certain views on the possible course of future action.

**CHAPTER – 9**  
**FUTURE COURSE OF ACTION**

9.1 The Committee is tasked with the reference to “recommend the future course of action to be taken on this issue in light of the findings contained in the [D&M] report.” In the Committee’s view, any future course of action will involve implications for all key stakeholders, i.e., RIL, ONGC and DGH. The Committee is also cognizant of the present circumstances, and the limitations they pose on future possibilities regarding exploration and development of the blocks in question. There is, for example, little or no gas left in the blocks, therefore, ruling out the possibility of joint development in the future. Gas balancing is also not possible, and the lease for the blocks is coming to an end in 2019, thus, leaving very little that is possible to be done from the point of view of gas production. This chapter makes its recommendations in the light of this situation.

9.2 The Committee has arrived at certain key *prima facie* conclusions:

- a) First, the Committee finds that the 2003 Appraisal Report *prima facie* reveals that RIL had prior knowledge about connectivity and continuity of reservoirs.
- b) Second, it appears that RIL did not bring the contents and findings of the 2003 Appraisal Report to the notice of DGH, which is particularly disconcerting, considering the obligations of contractors/operators to make all relevant information pertaining to their block available to the regulator.
- c) Third, ONGC also had some form of prior knowledge about possible continuity, but did not act promptly or with due diligence, and took up the matter only six years after it first obtained relevant information. The Committee believes that the allegations of prior knowledge on the part of both RIL and ONGC must be enquired into further, with particular emphasis laid upon the failure of both parties to present the information they had to the DGH at the time they allegedly obtained the information.

9.3 This highlights concerns regarding the regime of disclosures in the petroleum sector, and the promptitude with which parties are expected to provide information to the regulatory authorities. The present case is a useful opportunity for MOPNG and DGH to review and strengthen the disclosure system itself. The Committee believes that the disclosure system could be made more meaningful, to include, for example, penalties for deliberate suppression of material information. If a party is found to have deliberately not provided the DGH relevant information; or suppressed key data; or omitted to present the full picture regarding exploration or development, it must be prepared to face consequences, in the form of monetary penalties, contractual restrictions, or other similar punitive action. Towards this, the DGH must seek to craft and employ a strict disclosure regime applicable to all supervised entities. Strict directives regarding disclosures can only be ensured by the DGH, and the Government must, in turn, ensure that the DGH is appropriately empowered to issue and enforce such directives.

9.4 During the course of the proceedings, the Committee was also led to believe that the DGH, despite being the regulatory authority in the sector, was helpless and entirely reliant on the operators not only for raw data, but also for the interpretation of the data so provided. This is not a desirable situation from any perspective for a regulator in an area involving such complex technicalities. To address this issue, the DGH must look to become more proactive in exercising its regulatory authority, whether it is in the form of better vigilance, acquiring more incisive technical skills, or stronger enforcement powers. The DGH must, in particular, ensure that it has the adequate technical expertise and infrastructural wherewithal to conduct regulatory operations in unhindered fashion. The presence of a strong, empowered, vigilant and diligent regulator cannot be emphasised enough, particularly in a sensitive and vital sector like petroleum.

9.5 Another issue that emerged during the course of the proceedings pertains to the role of ONGC in the Indian oil and natural gas

sector, which the Committee believes must be assessed with great scrutiny. The long periods of alleged inactivity on the part of ONGC in this case particularly must be examined further. For example, ONGC had some rights to explore in the Godavari PML block in the KG basin since at least 1997, and complete control over its blocks in the area since 2003. However, even today, ONGC has hardly progressed beyond exploratory stage, and there is no commercial production in either of its blocks under consideration. An entity of its stature and relevance cannot be permitted to languish for a period of 15 to 20 years in a zone of opportunity. The Committee believes that the MOPNG should make efforts to understand what steps may be taken to avoid a situation like this in the future.

9.6            There was a useful suggestion from BP regarding the role of a regulator, and that was with regard to the creation of a mechanism to amicably resolve disputes among parties, as and when they arise. The Committee concurs that the creation of such a mechanism will help reduce the occurrence of disputes between parties, and allow for a smoother functioning of the energy sector, which is ultimately in the interest of the nation.

9.7            Having answered the TOR to the best of its ability, the Committee will now summarise its findings and recommendations in the next chapter.

**CHAPTER – 10**  
**SUMMARY OF FINDINGS AND RECOMMENDATIONS**

10.1 According to the Office Memorandum (F. No. O-22013-/17/2015-ONG.DV) of 15.12.2015, the Committee's TOR were as follows:

- a) To consider in depth the report submitted by D&M and recommend the action to be taken by the Government thereon considering legal, financial and contractual provisions including those contained in Oilfields (Regulation and Development) Act, Petroleum and Natural Gas Rules and concerned PSCs, etc.;
- b) To recommend the future course of action to be taken on this issue in light of the findings contained in the report;
- c) To quantify the unfair enrichment, if any, to the contractors of the adjacent block KG-DWN-98/3 and measures to prevent future unfair enrichment to these contractors on account of gas migration and to recommend action to be taken to make good the loss to ONGC/Government on account of such unfair enrichment to the contractors;
- d) To consider the acts of omission and commission, if any, on part of the stakeholders including RIL, ONGC, DGH and Government and give recommendations on them.

***A. Reference (a)***

10.2.1 According to the Committee, the D&M Report appears to have been commissioned under terms agreed upon by all the stakeholders in the present dispute, crucially by RIL and ONGC. All the meetings with D&M had extensive minutes, revealing that all proceedings were as transparent as possible. The data to be shared was agreed upon in advance, and analyses, methodology and results were jointly agreed upon throughout the process of conducting the study. The D&M Report itself appears to be reasonable in its research, methodology and conclusions drawn, and is hard to be faulted. The D&M Report establishes connectivity and quantifies the gas that has migrated and is likely to migrate within the time period covered by the Base Case and Case

1 Scenarios. In the circumstances, and with the information available at hand, it is difficult for the Committee to believe that the manner in which the D&M Report was arrived at was questionable. The Committee is unable to evaluate in any further detail the concerns expressed by RIL about data asymmetry or methodological limitations or uncertainty in the results, and the Committee has not considered these concerns in any more detail.

10.2.2 The Committee accepts the D&M Report's findings that connectivity between the reservoirs in KG-DWN-98/3, KG-DWN-98/2 and Godavari PML blocks is established. Further, as per the calculations contained in the report, from 01.04.2009 (when gas production commenced from KG-DWN-98/3 block) till 31.03.2015, 7.009 and 4.116 BCM of gas had migrated from Godavari PML and D1 discovery of KG-DWN-98/2 block respectively to KG-DWN-98/3 block, of which, 5.968 and 3.015 BCM of gas was produced from Godavari PML and D1 discovery of KG-DWN-98/2 block respectively, through KG-DWN-98/3.

10.2.3 Additionally, the Committee notes that the D&M Report makes two forecasts regarding gas migration. First, as per the Base Case forecast, as on 01.01.2017, 7.519 and 4.377 BCM of gas would have migrated from Godavari PML and D1 discovery of KG-DWN-98/2 block respectively to RIL's KG-DWN-98/3 block, of which 6.549 and 3.395 BCM of gas would have been produced from Godavari PML and D1 discovery of KG-DWN-98/2 block respectively through KG-DWN-98/3 block. Secondly, as per the Case 1 forecast, as on 01.04.2019, 8.059 and 4.650 BCM of gas would have migrated from Godavari PML and D1 discovery of KG-DWN-98/2 block respectively, of which 7.065 and 3.846 BCM of gas would have been produced from Godavari PML and D1 discovery of KG-DWN-98/2 block respectively through KG-DWN-98/3 block.

10.2.4 Further, the D&M Report as well as the statements made by the parties to the Committee point to the fact that gas production in the relevant

fields is likely to cease because of pressure depletion, and the fields are expected to reach their technical limits for further gas production. Due to the fact that only meagre reserves are left in the relevant fields, there is no question of contemplating any kind of joint development, unitisation, or gas balancing. The D&M Report appears to establish that there is practically no development or further production that can be carried out by ONGC in its fields in the current scenario.

***B. Reference (c) and (d)***

10.2.5 The Committee finds that RIL's production of migrated gas and retention of the ensuing benefits amount to unjust enrichment, since the PSC, in the absence of an order on joint development under Article 12, does not permit a contractor to produce and sell migrated gas. There is also no other extra-contractual right granted to the contractor that enables it to produce gas, regardless of its source. In fact, a contractor is limited by the gas that is available in its clearly defined and demarcated contract area. In the present case, Articles 10.15 and 11.2 of the PSC functioned as a prohibition on the unilateral production of migrated gas, and the only remedy (exception) available to the contractor was to approach the Government and get an order for joint development. Since RIL did not pursue such a step, and it had not been given the migrated gas as a gift or largesse, its actions had no lawful justification and amounted to unjust enrichment.

10.2.6 On the question of knowledge, the Committee finds that it is unable to draw final conclusions regarding RIL's and ONGC's prior knowledge, without any evidence being led before it. Nevertheless, certain observations are warranted here. The Committee finds that the 2003 Appraisal Report *prima facie* reveals that RIL had prior knowledge about connectivity and continuity of reservoirs. It also appears that RIL did not bring the contents and findings of the 2003 Appraisal Report to the notice of DGH, which is particularly disconcerting, considering the obligations of contractors/operators

to make all relevant information pertaining to their block available to the regulator. ONGC, on its part, also had some form of prior knowledge about possible continuity in 2007, but did not act promptly or with due diligence, and took up the matter only six years after it first obtained relevant information. The Committee believes that the allegations of prior knowledge on the part of both RIL and ONGC must be enquired into further, with particular emphasis laid upon the failure of both parties to present the information they had to the DGH at the time they allegedly obtained the information.

10.2.7 On the question of unjust enrichment, the Committee concludes that the Government of India, and not ONGC, is entitled to claim restitution from RIL for the unjust benefit it received and unfairly retained. ONGC has no *locus standi* to bring a tortious claim against RIL for trespass/conversion since it does not have any ownership rights or possessory interest in the natural gas.

10.2.8 The Committee also notes that the question of quantification of unfair enrichment is to be decided by the Government of India, with the principle that whatever benefit RIL received in terms of the migrated gas is liable to be returned to the Government of India. The Committee faced significant limitations in giving a figure to the final value of the migrated gas produced by RIL during the term of its lease, due to the lack of data and the Committee's inherent technical limitations. While the D&M Report has to form the basis for the migration of gas up till 2015, subsequent migration of gas post-2015 has to be inquired into by the Government of India.

10.2.9 With respect to royalty, the facts before the Committee – in terms of the contractors' arrangement with the Government and with the consumers, and whether the royalty had been passed on to the consumers – are unclear. This issue has to be looked into by the Government in greater detail.

### ***C. Reference (b)***

10.3.1 The Committee further notes that the present case is a useful opportunity for MOPNG and DGH to review and strengthen the disclosure system itself. The Committee believes that the disclosure system could be made more meaningful, to include, for example, penalties for deliberate suppression of material information. If a party is found to have deliberately not provided the DGH relevant information; or suppressed key data; or omitted to present the full picture regarding exploration or development, it must be prepared to face consequences, in the form of monetary penalties, contractual restrictions, or other similar punitive action. Towards this, the DGH must seek to craft and employ a strict disclosure regime applicable to all supervised entities. Strict directives regarding disclosures can only be ensured by the DGH, and the Government must, in turn, ensure that the DGH is appropriately empowered to issue and enforce such directives.

10.3.2 The DGH must also look to become more proactive in exercising its regulatory authority, whether it is in the form of better vigilance, acquiring more incisive technical skills, or stronger enforcement powers. The DGH must, in particular, ensure that it has the adequate technical expertise and infrastructural wherewithal to conduct regulatory operations in unhindered fashion. The presence of a strong, empowered, vigilant and diligent regulator cannot be emphasised enough, particularly in a sensitive and vital sector like petroleum.

10.3.3 The Committee further believes that the role of ONGC in the Indian oil and natural gas sector must be assessed with great scrutiny. The long periods of alleged inactivity on the part of ONGC in this case particularly must be examined further. For example, ONGC had some rights to explore in the Godavari PML block in the KG basin since at least 1997, and complete control over its blocks in the area since 2003. However, even today, ONGC has hardly progressed beyond exploratory stage, and there is no commercial

production in either of its blocks under consideration. The Committee believes that the MOPNG should make efforts to understand what steps may be taken to avoid a situation like this in the future.

10.3.4 The Committee also notes and concurs with the recommendation made by BP regarding the creation of a mechanism to amicably resolve disputes among parties, as and when they arise. Such a mechanism will help reduce the occurrence of disputes between parties, and allow for a smoother functioning of the energy sector, which is ultimately in the interest of the nation.

10.3.5 The Committee is strongly of the view that manner in which the present matter will be handled by the MOPNG can chart the course of the future of the Indian energy industry and market in more ways than one.



**[Justice Ajit Prakash Shah]**