

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

*Judgment reserved on: 17.01.2018*

*Judgment pronounced on: 31.05.2018*

+ W.P.(C) No.11599/2015

VEDANTA LIMITED & ORS.

.....Petitioners

Through: Mr. C.A. Sundaram, Sr. Adv., Mr. Gopal Jain, Sr. Adv. with Ms. Anuradha Dutt, Mr. Anish Kapur, Mr. Dhritiman Roy and Mr. Chaitanya Kaushik, Advs

Versus

UNION OF INDIA & ORS.

....Respondents

Through: Mr. Kirtiman Singh, Mr. Waiz Ali Noor, Mr. Prateek Dhanda and Mr. Saeed Qadri, Advs.  
Mr. Ajay Kumar Jha and Mr. K.R. Sasiprabhu, Advs. for R-3

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**RAJIV SHAKDHER, J.**

**Preface:**

1. The extension of tenure of Production Sharing Contract dated 15.5.1995 (hereafter referred to as "PSC") qua the Rajasthan Block RJ-ON-90/1 (hereafter referred to as "Rajasthan Block") for a period of 10 years beyond its current term is at the heart of the matter.

1.1 The present tenure of the PSC comes to an end on 14.5.2020. The petitioners seek the extension of the tenure of the PSC for a further period

of 10 years i.e., till 14.5.2030. This right, the petitioners claim, based on the provisions of Article 2.1 of the PSC.

1.2 It is the stand of the petitioners that the extension of tenure of the PSC is required to take place without alteration of the subsisting terms. The petitioners claim that the mutuality envisaged under Article 2.1 of the PSC pertains to the periods in issue and not qua financial terms already agreed to by respondent no.1 and 2.

2. Therefore, much would turn upon how Article 2.1 of the PSCs is construed. Thus, for the sake of convenience, Article 2.1 of the PSCs is extracted hereafter:

*"The term of this Contract, subject to the terms hereof and the applicable laws, shall be for a period of twenty five (25) years from the Effective Date, unless the Contract is terminated earlier in accordance with its terms, but may be extended upon mutual agreement between the Parties for a further Period not exceeding five (5) years; provided that in the event of Commercial Production of Natural Gas, which is expected to continue beyond the end of the term of the Contract, the Contract shall be extended for such a period up to but not exceeding thirty five (35) years from the Effective Date, as may be mutually agreed between the Parties to be sufficient to permit the Contractor to maximize the production of Natural Gas in accordance with good petroleum industry practice. If the production of Crude Oil or of Natural Gas is expected to continue beyond the end of the relevant period referred to above, the Parties may agree to extend this Contract for a further period upon such terms as may be mutually agreed."*

3. Respondent no.1 and 2, who are charged with the responsibility of taking a decision on the extension of the tenure of the PSC, resist the same, on the ground that during the pendency of the writ petition, a New Policy

stood framed, and therefore, grant of extension can only be on the terms and conditions stipulated therein. This policy, which was framed on 07.04.2017 (hereafter referred to as "New Policy") according to respondent no. 1 and 2 should form the basis for extension of the PSC.

3.1 According to respondents no. 1 and 2, the New Policy provides for a transparent and defined framework for granting extension to operational Pre-New Exploration Licensing Policy (Pre-NELP) exploratory PSCs. The New Policy, thus, as per the stand of the respondent no.1 and 2, provides a level playing field to all contractors, who had secured for themselves Pre-NELP blocks for exploration.

3.2 It is the stand of respondent no. 1 and 2 that, the Government of India (GOI) is the owner of natural resources and, thus, holds sway over the exploration blocks in the larger interest of the people of India.

3.3 The logical sequitur of this argument is that the GOI cannot be divested of its supervisory power in matters pertaining to national importance.

4. This, in effect, is the stand of respondent no. 1 and 2 on merits. Thus, in line with the foregoing submission it is stated, on behalf of respondent no.1 and 2 that the petitioners' were advised vide letter dated 12.04.2017 to submit a formal application to seek approval of the extension of the PSC tenure in accordance with the New Policy framework.

4.1 The respondent no.1 and 2, thus, take the line that the expression "mutual agreement" obtaining in Article 2.1 of the PSC would mean that extension can only be granted in terms of the New Policy.

5. This apart the respondent no.1 and 2 take the objection that no writ petition would lie in respect of rights and obligation which are rooted in a contract.

5.1 In this behalf, respondent no.1 and 2 have referred to the order dated 14.12.2015, when, while issuing notice in the writ petition, this aspect was taken note of.

**Background Facts:**

6. Therefore, before I proceed to deal with the issues raised in the writ petition, I propose to set out the following broad facts which form the background in which the instant dispute has arisen between the parties.

6.1 On 15.5.1995, when, the PSC was first executed, there were two parties to the contract, i.e., ONGC and Shell India Production Development NV (hereafter referred to as "Shell"). At this point of time, Shell had 100% participating interest in the Rajasthan Block. Via an addendum dated 07.06.2000, Shell assigned 50% of its participating interest in the Rajasthan Block in favour of an entity by the name of: Cairn Energy India Pvt. Ltd. ("CEIL").

6.2 On 27.07.2004, Shell assigned the remaining 50% of its participating interest in the Rajasthan Block in favour of petitioner no.3/ CEHL. This was captured in Amendment no.2 to the PSC.

6.3 Since, GOI decided to exercise its back-in-option under the PSC, ONGC was nominated to hold 30% of the participating interest in the Rajasthan Block. Accordingly, at that juncture, the participating interest in the Rajasthan Block was spread out as follows:

(i) While Petitioner no.3 and CEIL held 35% each of the participating interest, the balance 30% was held by ONGC.

6.4 This arrangement underwent a change when on 18.10.2012, GOI allowed CEIL to assign its entire participating interest in favour of petitioner no.1/ CIL. This apart, a change in operatorship was also brought about. Consequently, petitioner no.1 acquired 35% participating interest in the Rajasthan Block and, was also, designated as the operator under the PSC. In this capacity, petitioner no.1 was required to act on behalf of its joint venture partners. Thus, in effect, at present, the participating interest in the Rajasthan Block is shared in the following manner:

(i) Petitioner no.1 and 3 hold 35 % each of the participating interest, while ONGC holds 30%.

7. It is the case of the petitioners that though the PSC was executed as far back in May, 1995, the delay in commencement of production of crude oil and natural gas was attributable to respondent no. 1 and 2. Though a chart in that behalf comprising of dates and events has been appended to the writ petition, it is not necessary to discuss the same in detail in view of the nature of the controversy at hand.

8. Suffice it to say that according to the petitioners, on 15.09.2004, "Commercial Discovery" at Rajasthan Block was made which led to commercial production of crude oil, in 2009.

8.1 It is the case of the petitioners that, with the use of sound industry practices and latest technology, they were able to make 25 hydrocarbon discoveries in the Rajasthan Block.

9. The petitioners' claim that they have made an additional investment of USD 4 billion towards development of fields and construction of pipe lines. It is the petitioners' say that there is considerable potential in the Rajasthan Block provided latest petroleum industry practices are employed. It is also the petitioners' assessment, that estimated recoverable reserves in Rajasthan Block is approximately 1.2 billion Barrels of Oil Equivalent ("BOE"). Furthermore, according to the petitioners, out of this reserve, 466 million BOE can be recovered if the tenure of the existing PSC is extended till 2030.

9.1 The petitioner no. 1 & 3 claim that they have upto now invested in the Rajasthan Block moneys in excess of the Rs.30,000/- crores.

9.2 It is also the say of the petitioners that currently GOI's revenue which includes its nominee/licensee is, approximately, 60-70% of the prevailing price; which includes the revenue from "Profit Petroleum", royalty, and cess.

10. It is in this background that on, 15.01.2009, petitioner no.1 made a representation to respondent no.2 to extend the PSC tenure by 20 years i.e., up to 14.05.2040. In this communication, petitioner no.1, *inter alia*, indicated to respondent no.2, that if, enhanced oil recovery methods were used in addition to conventional recoveries schemes, it had the potential of increasing the expected ultimate recovery by 10-20% of Stock-Tank Oil Initially In Place (hereafter referred to as "STOIIP").

10.1 In response thereto, vide communication dated 21.03.2009, respondent no.2 requested petitioner no.1 to submit long term production

profiles of the Rajasthan Block to establish that the production line of the said block would continue beyond the current tenure of the PSC. Furthermore, petitioner no.1 was also told to furnish detailed break-up of additional investment which was required to be made in the Rajasthan block.

10.2 In response thereto, petitioner no.1 vide its communication dated 06.03.2009 provided the production profile and proposed investment, which, incidentally, was factored for development of both, existing discoveries and future potential of the Rajasthan Block.

11. Having received the requisite information from petitioner no.1, respondent no. 2 did a wee bit of U-turn by indicating to it via its communication dated 31.03.2009 that it was in the process of framing policy guidelines qua extension of PSCs beyond the initial contractual period. In this behalf, reference was also made to Article 2.1 of the PSC.

12. Pertinently, in view of the fact that no permission was granted to conduct further exploration activities in the Rajasthan Block beyond the exploration phase, further exploratory development could not be undertaken.

13. It is the petitioners' say that, since, GOI issued office memorandum dated 1.2.2013 permitting contractors under PSCs to undertake further exploratory activities, in the mining areas, beyond the initial exploration period, albeit, on certain terms and conditions (such as Government's share of petroleum profits was not impacted), they recommenced their exploratory activities in the Rajasthan Block.

13.1 It is in this context that on 05.04.2013, petitioner no.1 wrote to respondent no.1 that, while the known commercial production profile of the Rajasthan Block extends beyond 2040, in terms of Article 2.1 of the PSC, extension by a period of 10 years beyond 2020 would suffice. The relevant observation made in this communication is extracted hereafter for the sake of convenience:

*"At this point in time the PSC term is valid till 14 May 2020 while the known commercial production profile extends beyond 2040. Also while all the stakeholders believe in the further and huge potential of the block, we are keen and ready to proceed with huge investments to find more and more hydrocarbons. We will be able to firm up our investment and action plans and with reasonable certainty once the PSC term is formally extended.*

*The RJ-ON-90/1 PSC (pre NELP PSC) has been contemplated extension of PSC term vide Art 2.1. It initially provides for 5 years extension on general merit basis and in the alternative 10 years extension if gas sales profile is extending beyond 2020. It also provides for subsequent extension for indefinite period. In the present case 10 years extension is applicable. In respect of this 10 years extension Art 2.1 uses the expression "shall" which is very significant and positive. Art 2.1 also contemplates mutual agreement for such extension and hence we hereby convey our agreement for the same."*

(emphasis is mine)

14. Happily, since certain fields in the Rajasthan Block were also producing natural gas along with crude oil, *albeit*, in excess of its operational needs, petitioner no.1 sought permission to sell excess quantities of natural gas, so produced, for a period up to 2 years. This permission was sought by petitioner no. 1 vide its communication dated

30.01.2013 addressed to respondent no.1/GOI. The request was reiterated by petitioner no.1 vide communication dated 18.02.2013 and 12.03.2013.

14.1 Consequent thereto, GOI vide letters dated 28.03.2013 and 23.04.2013 accorded its approval for sale of gas to Gujarat Narmada valley Fertilizers and chemical ltd ("GNVFC") limited though to the extent of 0.10 mmscmd.

15. In view of the fact that the production was better than expected and there was lesser consumption of gas, petitioner no.1 vide letter dated 20.5.2013 sought approval to increase the volume of gas to be sold to GNVFC from 0.10 mmscmd to 0.2 mmscmd. This request was made, once again, vide letter dated 20.11.2013; though this time around approval was sought to sell 0.35 mmscmd volume of gas to GNVFC.

16. As a matter of fact, via letter dated 02.07.2014, petitioner no. 1 sought approval of GOI to sell gas beyond the test period to avoid shutting off wells, pending approval of Field Development Plan ("FDP") addendum. This review was sought as FDP-2005 did not envisage gas-sell as the field was developed for captive consumption.

16.1 It was petitioner no.1's stand that data collected from ongoing extended well test had established potential of production of gas from Raageshwari Deep Gas Fields (in short "RDG fields").

17. Petitioner no.1 in this behalf sought approval of the Management Committee ('MC'). Pertinently MC comprises of four (4) members, out of which two (2) members represent respondent no.1 and 2. Crucially,

members representing respondent no. 1 and 2 are also conferred with Veto rights.

17.1 Despite this configuration, on 23.12.2014, MC approved revised FDP which enabled commercial sale of natural gas on the premise that it would continue beyond the current tenure of PSC and was likely to go upto, at least, 2030.

18. The record shows that in the interregnum i.e. on 20.05.2013, respondent no.2, apparently, had written to petitioner no.1 to give its suggestions qua the draft policy formulated by it for grant of extension to PSCs awarded to private joint ventures, in cases where the economic life of the field was not yet over.

18.1 Consequently, petitioner no.1 vide communication dated 15.05.2013 gave its suggestion qua the draft policy for grant of extension to subsisting PSCs.

18.2 Thereafter, several communications were sent in that behalf to all and sundry which, however, did not result in any fruitful result. Reliance in this regard is placed by the petitioners on communications dated 16.05.2013, 23.10.2013, 03.12.2013 and 09.01.2014 and 04.02.2014.

19. Finally, vide communication dated 31.03.2014 respondent no.1 wrote to respondent no.2. By virtue of this communication, it was indicated that respondent no. 2's proposal for extension of PSCs had been examined and, thereafter, a decision had been reached that consent of respondent No.3's Board had to be taken before the proposal could be processed further. This view was taken in the background of the fact that

respondent No.3 was one of the parties to contract, and also, GOI's nominee and licensee of the Rajasthan Block. A copy of this letter was marked by respondent no.1 to petitioner no.1.

20. Consequent, thereto vide letter dated 01.04.2014, respondent no.2, formally wrote to petitioner no.1 that it had to obtain the consent of the respondent No.3's Board before the proposal for extension of the PSC tenure could be re-submitted to respondent no.1/GOI.

21. Resultantly, petitioner no.1 wrote to respondent No.3 vide letter dated 07.04.2014 to accord its consent to the extension of tenure of the PSC.

22. In the same vein, respondent no.2, on 04.06.2014, wrote to respondent No.3 to give its comments on petitioner no.1's proposal for seeking extension of the PSC tenure.

23. While, petitioner No.1 was awaiting a response from respondent No.3 with regard to its view on extension of PSC tenure, it wrote another letter dated 11.06.2014 to respondent No.2. In this communication, while reiterating its view that the PSC, tenure ought to be extended, reference was made to clause 4.5 of the Joint Operating Agreement.

23.1 Based on the said provision, it was contended that being the operator of the Rajasthan Block, it was entitled to request for extension of the tenure of the PSC. It was the say of petitioner No.1 that under Articles 2.1 and 5.6 of the PSC, neither the Operating Committee ('OC') nor the MC had any role to play in the matter involving extension of tenure of the PSC. The thrust of the communication was that involvement of the MC, at this stage,

would not only delay the matter but would also cause significant loss to the exchequer.

23.2 Importantly, in this communication, emphasis was laid by petitioner No.1 on the fact that it was already producing 2 lakh barrels of crude oil from Rajasthan block alone which was nearly 1/4<sup>th</sup> of the entire domestic production. It indicated to respondent No.2 that it had plans to explore, develop and produce higher volumes in future — a circumstance which if allowed to occur would help the country as GOI otherwise, was importing 80% of its crude oil requirement.

24. Via letter dated 12.06.2014, respondent No.3, in response to petitioner No.1's letter of 04.02.2014 not only sought a break-up of projected figures of production and planned investments in Rajasthan block but also a response to its proposal for extension of tenure.

24.1 Petitioner No.1, vide written letter dated 20.06.2014, promptly supplied the information sought by respondent No.3.

25. On 14.08.2014, petitioner No.1 apprised GOI that it had submitted RDG FDP addendum, wherein, a proposal was made for commercial production of gas beyond 2030 at the plateau rate of 0.9 mmscfd. The emphasis on behalf of petitioner No.1 was that since Article 2.1 of the PSC places an obligation on it to maximize the production of gas, it was agreeable to extend the same, in accordance with the provisions of the said Article.

26. In line with the aforesaid, on 15.09.2014, a resolution was passed by the OC approving the revised RDG FDP. This recommendation under the

PSC was made to the MC for its consideration and approval of the Revised Development Plan for 'RDG' Field and commercial sale of gas. This resolution bears the signatures of representatives of petitioner No.1 and respondent No.3.

26.1 In the interregnum i.e. on 03.12.2013, petitioner No.1's parent company wrote to GOI seeking extension of the PSC tenure. Emphasis was laid on the fact that extension of PSC should be automatic and the fact that they had still not got approval qua the Rajasthan Block. It was also stressed that the GOI had earned revenue of Rs.24,000 crores from petitioner No.1 during the subsistence of the PSC.

26.2 Interestingly the Confederation of Indian Industry (CII) also got into the fray and, accordingly, wrote to the GOI vide letter dated 18.12.2014, *albeit*, in support of all explorers that Global petroleum industry practice for PSC extension should be used as a reference point to frame guidelines, if the same were required to be formulated. CII emphasized that while according extension, fiscal terms should remain unchanged and, in case the fiscal terms are being re-negotiated, they should be made more favourable to the contractors as it is important to ensure continuity of operations.

27. Pursuant to the resolution passed by the OC. (to which reference has been made above), MC at its meeting held on 23.12.2014 approved the revised Raageshwari Deep Gas FDP excluding export gas pipeline. The result was that the MC approved production profile of revised Raageshwari Deep Gas FDP till 31.12.2030.

28. In line with the resolution passed by the MC, respondent No.3 vide its communication dated 27.01.2015 wrote to respondent No.2 that it had approved the revised FDP of RDG Field at its Board of Directors meeting held on 21.01.2015, entailing gas delivery at RGT Battery limit with an estimated Capex of USD 531.20 million.

29. In sync with its earlier correspondence, on 19.02.2015, petitioner No.1 via one of the MC members wrote to respondent No.2 as to why, according to it, both, based on interpretation of Article 2.1 of the PSC and economic rationale, the tenure of the PSC should be extended. In support of its argument for extension of tenure, reference was made to the fact that the MC had approved the revised FDP qua RDG Field having regard to the fact that it had been established that commercial gas development could take place at least till 2030.

30. Coincidentally, vide a letter of even date i.e. 19.02.2015, respondent No.3 wrote to respondent No.2 that they would like to hold a meeting to discuss the terms and conditions for extension of tenure of the PSC. In this regard, reference was made to the decision taken by respondent No.3's Board of Directors on the subject, which, evidently was conveyed to GOI via its letter dated 27.01.2015; a copy of which was dispatched to respondent No.2.

30.1 Respondent No.2, via communication dated 20.02.2015, convened a meeting on the issue on 23.02.2015. This communication was addressed both to petitioner No.1 as well respondent No.3.

31. Accordingly, a meeting was convened and at the meeting, after the views of representatives of petitioner No.1, respondent No.2 and respondent No.3 were heard, a decision was taken that respondent No.3 and petitioner No.1 would form a joint working group which would come up with a common proposal for extension of tenure of the PSC.

31.1 Resultantly, it was agreed that they would place their proposal with respondent No.2 by 20.03.2015.

31.2 Significantly on 25.05.2015, respondent No.3 conveyed to GOI that its Board of Directors at its meeting dated 28.04.2015 had taken a decision that the tenure of the PSC should be extended on the existing terms and conditions. Pertinently, in this letter respondent No.3 provided both commercial and the legal rational which had propelled its Board of Directors to reach such a conclusion.

32. It appears that pursuant to the issuance of the aforementioned letter of respondent No.3 to GOI, a meeting was convened on 18.06.2015, amongst, the representatives of petitioner No.1, respondent No.2 and respondent No.3 whereat the issue concerning extension of tenure was discussed once again. Respondent No.2 conveyed to the other participants that GOI would expect an increase in the profit petroleum by at least 5% subject to the condition that its share would be protected at the level of at least 60% during the extended period of the PSC. Furthermore, respondent No.2 conveyed to the other participants that upto 31.03.2015, the profit share of three constituents was as under:

(i) *GOI* : *USD 3.2 billion*

(ii) Petitioner No.1 : USD 6.3 billion

(iii) Respondent No.3/ONGC : USD 2.7 billion

32.1 Importantly both petitioner No.1 and respondent No.3 conveyed to respondent No.2 that existing fiscal terms and Contract Area to be extended were not negotiable as per the prevailing terms of the contract obtaining between the parties. It was pointed out that the extension of the PSC was sought in terms thereof and not for the areas within the contract.

32.3 Evidently, at this meeting, a query was raised by respondent No.2 as to why respondent No.3 had changed its view in the matter. The response given and as recorded in the drafts minutes of meeting being relevant, is extracted hereafter:

".....ONGC representative responded that the latest ONGC Board decision is based on the legal opinion obtained subsequently from outside agency. Further, the working ground of Cairn and ONGC has also deliberated the present development activities in the block, production profile available beyond PSC period (both for oil and gas) and the future ensuing projects as put up by Operator. All these details were also put up to Board, which were deliberated and was primarily the basis to review the earlier decision as these activities were likely to come/give results beyond the PSC period. Further, extension under the existing terms and conditions would be beneficial to ONGC as a commercial organization....."

(emphasis is mine)

33. It appears that petitioner No.1 after having received the drafts minutes of meeting dated 18.06.2015, closely examined the profit share figures placed at the meeting by respondent No.2.

33.1 Accordingly, petitioner No.1 sent a mail dated 03.07.2015 to respondent No.2 with a copy to respondent No.3 with regard to the profit share of each of the constituents.

33.2 As per this mail, up to 31.03.2015, GOI's total profit share was USD 6.1 billion which included profit petroleum and cess (includes NCCD) and not USD 3.2 billion as was stated in the draft minutes. In addition thereto, it was also pointed out that the Government of Rajasthan had also earned money and that its total profit share upto 31.03.2015 was USD 4.3 billion, out of which USD 3.8 billion was earned as royalty and USD 0.5 billion was earned in the form of sales tax. Likewise, it was pointed out that while respondent No.3's profit share was rightly recorded as USD 2.7 billion, petitioner No.1's profit share was incorrectly recorded. According to petitioner No.1, it had earned a total profit of USD 5.1 billion upto 31.03.2015 and not USD 6.3 billion as indicated in the draft minutes. The relevance of this mail is that an attempt was made by petitioner No.1 to show that the Government's entities had made more money than that which was projected at the meeting dated 18.06.2015. In this connection, petitioner No.1 sent another mail dated 29.06.2015.

34. Pursuant to the meeting dated 18.06.2015, respondent No.3 wrote to petitioner No.1 via communication dated 22.07.2015 asking it to submit its proposed plan of action, reserve estimates, probable project economy and, likely, GOI share — so as to justify that the entire area should be retained during the extended period of PSC. The said information was sought by respondent No.3, from petitioner No.1, by 27.07.2015.

34.1 On 22.07.2015, respondent No.2 wrote to the petitioner. In this letter, petitioner No.1 was informed that GOI was formulating a policy for extension of PSC. Comments of petitioner No. 1 were sought *vis-à-vis* the draft policy which was appended to the said letter.

35. Petitioner No. 1, thus, vide communication dated 25.07.2015 gave its comments on the proposed policy sought to be formulated by the GOI for extension of Pre-NELP PSCs.

35.1 In addition thereto, *apropos* to the letter of respondent No.3 dated 22.07.2015, petitioner No. 1 vide letter dated 03.08.2015 supplied the necessary details.

35.2 Evidently, respondent No.3 vide letter dated 05.08.2015 sought further details from petitioner No.1.

35.3 Given the fact that further information was sought by respondent No.3, petitioner No.1 communicated to respondent no.3 that its help was required in expediting the technical evaluation process. Furthermore, it was conveyed that since the Rajasthan Block resource estimates for many of the fields are only indicative, based on the current understanding, they are in no way binding on the parties. It was also suggested by petitioner No. 1 that neither approval of OC or MC was required for the said exercise and that a high level technical understanding and alignment was sufficient to proceed jointly in the matter.

36. On 18.09.2015, petitioner No. 1 once again wrote to the GOI for an early decision on the extension of PSC so that its joint venture partners could commit to the additional investments to be made and there could be

an increase in production, leading to maximization of economic recovery from the Rajasthan Block. To buttress its position, further facts and figures were also given with regard to production of hydrocarbons from Rajasthan Block. It was indicated that 300 million barrels of hydrocarbons were produced which not only helped in reducing the country's dependence on energy imports but also saved nearly, a sum of USD 25 billion in foreign exchange for the country. Reference was also made to the fact that there was a possibility of recovering nearly 1.2 billion BOEs from the Rajasthan Block.

37. The record shows that via communication dated 16.10.2015, respondent No.3 called upon petitioner No. 1 to convey to respondent No.2, the recoverable potential of the Rajasthan Block beyond the PSC period, that is, till 2030 based on technical alignment between JV partners.

37.1 Consequently, vide letter dated 20.10.2015, petitioner no.1 communicated to respondent No.2 that the JV partners had deliberated on the matter with regard to the remaining recoverable reserve potential of the Rajasthan Block in the extended tenure period, that is, between 2020 and 2030.

37.2 It was, thus, conveyed by petitioner no.1 that JV partners were fully aligned on the overall primary recoverable reserve potential of the Rajasthan Block. Petitioner No.1 stressed the point that the technical alignment achieved, demonstrated that the Rajasthan Block was estimated to hold a total recoverable resource potential of 1.128 BOEs. The break-up of this figure was also provided in the letter which reads as follows:

*".....0.280 bn boe has been produced till March 2015*

*0.382 bn boe incremental potential between FY15-16 to FY19-20*

*0.466 bn boe incremental potential between FY19-20 to FY29-30..."*

38. What is important to note is that petitioner No. 1 indicated to respondent No.2 that the aforementioned communication should be treated as its final communication, marking fulfillment of requirements qua the Rajasthan Block with respect to achieving technical alignment.

38.1 A great amount of stress was laid by petitioner No.1 on fact that it was critical, that an early decision be taken on extension of the tenure of the PSC to avoid potential value loss.

39. As had been the approach in the past, respondent No.2 vide letter dated 30.10.2015, asked for further information from petitioner no.1.

40. Consequently vide letter dated 05.11.2015, petitioner no.1 gave its justification for retaining the areas referred to in the PSC for its extension. Since endorsement of JV partners was also required to be given, petitioner No. 1 vide letter dated 06.11.2015 wrote to respondent No.3 requesting for a joint endorsement of commercials, as was sought by respondent No.2. In this regard, a request was made that a meeting be convened.

41. Since, there was no movement in the matter, the petitioners took the decision to move this Court under Article 226 of the Constitution. Accordingly, the captioned writ petition was filed which, as indicated above, came up before this Court for the first time on 14.12.2015. The Court after recording submissions of the counsel for parties decided to

issue certain directions, albeit, without prejudice to rights and contentions of parties. A perusal of the order would show that the Court was concerned about the delay in decision being taken with regard to the extension of PSS. Consequently, the Court, as indicated above, fixed a time frame for each step. These directions are recorded in paragraphs 17 of the order. The relevant part of the said order is extracted hereafter:-

*"A The respondents no. 1 & 2 Ministry of Petroleum & Natural Gas and Director General of Hydrocarbons to within four weeks furnish the petitioners, with a copy to the respondent No.3 ONGC, a list of further particulars if any required by them to be able to take a decision on the request of the petitioners for extension of PSS.*

*B The respondent No.3 ONGC to also within the said period of four weeks furnish the petitioners a list of further particulars required by the respondent No.3 ONGC to give its consent to the commercial terms of the project of the petitioner for extension.*

*C The petitioners to within two weeks thereafter furnish to the respondent No.3 ONGC the particulars sought by the respondent No.3 ONGC.*

*D The respondent No.3 ONGC to take a decision thereon within a period of six weeks and to communicate the same to the petitioners.*

*E If there consensus between the petitioners and the respondent No.3/ONGC, the petitioners will forward the documents in that regard to the GoI.*

*F. The GoI to take a decision thereon within three months therefrom."*

42. The matter was, thereafter, posted for hearing on 05.04.2016. On that date, it was represented on behalf of respondent No.1/GOI that due to

insufficient information being supplied by the petitioners, respondent No.3 could not take a decision on the petitioners' request for extension of tenure of PSC beyond 2020. Accordingly, the Court directed respondent No.3 to give last and final opportunity to the petitioners to furnish the relevant documents. For this purpose, two weeks were granted to the petitioners. Respondent No.3 was directed to take a decision within a period of two weeks of the documents being furnished. The matter was renotified for 28.07.2016

43. In the interregnum, an interlocutory application (C.M. No.17679/2016) was moved and the matter was taken up on 11.05.2016. On that date, respondent No.3 was directed to convey to the petitioners within one week as to the additional information sought by it. Furthermore, on behalf of respondent No.3, an assurance was given to the Court that once additional information was supplied by the petitioners, a decision would be taken within a period of five (5) weeks.

44. The matter, thereafter, came up for hearing, thereupon, on the usual date i.e. 28.07.2016. On this date, the Court recorded that respondent No.3 had taken a decision to approve the request of the petitioners and that this decision was being forwarded to the GOI for its consideration and final approval. On behalf of the GOI, it was conveyed to the Court that a decision will be taken on the issue within the next five weeks. The matter was fixed for further proceedings on 09.09.2016. On 09.09.2016, on behalf of the GOI, a stand was taken that in terms of the Court's earlier order dated 14.12.2015, it had available to it a period of three months from the date respondent No.3 forwarded its decision to it for processing the same. Thus,

the plea made on behalf of the GOI was that GOI will convey its decision to the Court by 14.10.2016.

44.1 Accordingly, the matter was posted for further consideration by the Court on 07.11.2016. On 07.11.2016, an interlocutory application was placed before the Court i.e. C.M. No.41397/2016. It was argued on behalf of GOI that it would require time to evaluate the pros and cons as also the technical and financial impact of extension of PSC sought by the contractors. It was sought to be conveyed to the Court that Policy guidelines had to be formulated so that a uniform decision could be taken in such like matters including the matter under consideration. Time for the purpose was sought till 31.01.2017.

44.2 The Court, however, declined to link the formulation of policy guidelines with the matter at hand. The observations made by the Court in this behalf, being crucial, are extracted hereafter:-

"..... The decision that the respondent no. 1 is to take is in terms of the order dated 14.12.2015 passed by this court. That order does not link taking of any decision with any policy guidelines that the respondent may be contemplating to be framing. Respondent No. 1 has to take decision in terms of the order dated 14.12.2015 without linking the same with any policy guidelines that may be in contemplation. Taking of a decision cannot be delayed or postponed on that account.

Since the respondent requires some consultative process to be carried out, I deem it appropriate to grant further time of two months i.e. till 06.01.2017 to comply with the order dated 14.12.2015. It may be noted that respondents have twice earlier assured the court that decision would be taken within the timeline as per order dated 14.12.2015. It is expected that respondents shall now positively take a decision within the time

*granted by this court. The application is disposed of, in the above terms... "*

*(emphasis is mine)*

45. Record shows that an interlocutory application (C.M.No.649/2017) was filed by GOI to seek extension of time for complying with the directions contained in the order dated 07.11.2016. The Court, based on the stand taken by the learned ASG on behalf of the GOI that he had personally examined the matter and that earnest steps had been taken to reach a decision, extended the time till 28.02.2017.

45.1 The matter was posted for further proceedings on 31.03.2017.

45.2 Thereafter, despite three dates, no substantial orders could be passed in the matter.

46. For the purpose of good order and record, it would be relevant to note, at this juncture that vide order dated 28.07.2017, based on an application (C.M. No. 26719/2017), the amendment to the cause title was allowed, whereby, the name of petitioner No. 1 was allowed to be substituted for Vedanta Limited, in view of an order of amalgamation passed by the Mumbai Bench of National Company Law Tribunal, on 23.03.2017.

47. The matter came up before this Court on 17.01.2018.

48. After hearing the detailed arguments in the matter, judgment was reserved.

49. However, an application (C.M. No.19300/2018) was moved on behalf of the petitioners, whereby, they sought leave to apply under the

New Policy along with respondent No.3, albeit, without prejudice to their rights and contentions. Consequently vide order dated 10.05.2018, leave was granted to the petitioners to apply under the New policy without prejudice to the rights and contentions of the contesting parties.

49.1 The application was disposed of on 10.05.2018, based on an agreed direction.

50. Given this background, let me briefly set out the arguments advanced on behalf of the parties herein:

**Submissions of the counsel**

50.1 However, before I proceed further, it would be relevant to record that submission on behalf of the petitioner were advanced by Mr. C.A. Sundaram, Senior Advocate, whereas, on behalf of respondent No.1/GOI and respondent No.2, submissions were advanced by Mr. Kirtiman Singh. Likewise, on behalf of respondent No.3, arguments were made by Mr. Ajay Kumar Jha and Mr. Sasiprabhu.

50.2 It was the submission of the petitioners that the present case only requires interpretation of one clause of the PSC i.e. Article 2.1. Therefore, according to the petitioners, notwithstanding the objection taken by the respondents, a writ petition was maintainable under Article 226 of the Constitution, as the issue raised would have impact on production of oil and natural gas available in the country. In other words, the petitioners contend that the dispute relates to public law. Furthermore, the petitioners contend that since, the respondents are not agreeable to the grant extension of tenure despite unambiguous provision contained in Article 2.1 of the

PSC, actions of the respondents are both unreasonable and arbitrary, and therefore, the provisions of Article 14 of the Constitution would come into play.

50.3 In this behalf, it was contended that the Rajasthan Block was not a discovered field, at the point in time, when, the PSC was executed between the parties concerned. Respondent No.1/GOI had, in fact, devised the methodology of putting in place a PSC so as to attract private investments for exploration and development of Rajasthan Block. Accordingly, the PSC gave incentives for exploration and development of the Rajasthan Block and, in consonance with said theme, stipulated therein that if there was commercial production of natural gas, which was expected to continue beyond the initial existing term of the PSC i.e. 2020, then, automatic extension for a further period of 10 years, albeit, on the same terms and conditions would be given.

50.4 This, according to the petitioners, being in line with the good petroleum industry practice would enable maximization of production of natural gas.

50.5 The failure on the part of respondent No.1/GOI to confirm extension of tenure of the PSC, based on the existing terms and conditions, was according to the petitioners, not only creating a sense of uncertainty but as also adversely affecting their future investment programs. In other words, the lack of clarity on the issue was discouraging financiers from lending monies required for investment in the Rajasthan Block. This uncertainty, according to the petitioners, was adversely and irrevocably affecting the viability and recoverability of crude oil from the Rajasthan Block.

50.6 It was contended on behalf of the petitioners that respondent No.1/GOI would get 80% of the revenue over the life of the Rajasthan Block and, therefore, increase in the revenue was in public interest. Emphasis was laid on behalf of the petitioners on the fact that till September, 2017, the petitioners had paid over US\$ 13.7 billion to respondent No.1/GOI in the form of profit petroleum, royalty, cess and sales tax. Furthermore, it was also contended that so far as the petitioners were concerned, it had already invested a sum of Rs.46,000 crores towards exploration, development and production, which was expected to increase to approximately Rs.54,000 crores by the end of financial year 2020.

50.7 Importantly, it was sought to be brought to the notice of the Court that Article 2.1 which stands incorporated in the instant PSC dated 15.05.1995, was customized and was, therefore, distinctly different from the Model Pre-NELP PSCs. For the sake of convenience, two articles are extracted hereafter:-

| <b><i>Article 2.1 of the Model Pre-NELP PSC</i></b>                                                                                                                                                                                                                                                                                                       | <b><i>Article 2.1 of PSC dated 15.05.1995</i></b>                                                                                                                                                                                                                                                                                                       |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>The terms of this Contract, subject to the terms hereof and the applicable laws, shall be for a period of twenty five (25) years from the Effective Date, unless the Contract is terminated earlier in accordance with its terms, but may be extended upon mutual agreement between the Parties for a further Period not exceeding five (5) years.</i> | <i>The term of this Contract subject to the terms hereof and the applicable laws, shall be for a period of twenty five (25) years from the Effective Date, unless the Contract is terminated earlier in accordance with its terms, but may be extended upon mutual agreement between the Parties for a further Period not exceeding five (5) years.</i> |
| <i>Provided that in the event of</i>                                                                                                                                                                                                                                                                                                                      | <i>Provided that in the event of</i>                                                                                                                                                                                                                                                                                                                    |

|                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Commercial Production of <u>Non Associated Natural Gas</u> , the Contract <u>may, by mutual agreement between the parties</u> , be extended for a period not exceeding ten (10) years. | Commercial Production of <u>Natural Gas, which is expected to continue beyond the end of the terms of the Contract</u> , the Contract <u>shall be extended for such a period up to but not exceeding thirty five (35) years from the Effective Date, as may be mutually agreed between the Parties to be sufficient to permit the Contractor to maximize the production of Natural Gas in accordance with good petroleum industry practice.</u> |
|                                                                                                                                                                                        | <u>If the production of Crude Oil or of Natural Gas is expected to continue beyond the end of the relevant period referred to above, the Parties may agree to extend this Contract for a further period upon such terms as may be mutually agreed.</u>                                                                                                                                                                                          |

(emphasis is mine)

50.8 Based on the difference in the language of Article 2.1 as found in the instant PSC, and that which is found mentioned in the Model pre-NELP PSC, it was argued that respondent No.1/GOI was obligated to automatically extend the tenure by another 10 years, albeit, on the existing terms and conditions. In this context, it was emphasized that the purpose of automatic extension was to enable the contractors to maximize the production of natural gas in accordance with good petroleum industry practice.

51. Accordingly, my attention was drawn to the fact that there was no dispute that commercial production of natural gas from Rajasthan Block was expected to continue beyond 2020 for a period of 10 years i.e. up to

14.05.2030. In this context, reference was made to the approval granted by the MC to the revised FDP qua the Rajasthan Block, on the basis, that commercial production of natural gas from the said block was expected to continue even beyond 2030.

51.1 It was stated that it was for this reason that respondent No.3, on 08.07.2016 during the pendency of the instant writ petition, had approved the extension of PSC for a period of 10 years beyond the existing tenure, albeit, on the same terms and conditions.

51.2 This decision, according to the petitioners, had the approval of the Board of Directors of respondent No.3, which was taken at their meeting held on 30.06.2016.

51.3 In other words, it is contended that proviso to Article 2.1 adverts to petitioner No.1's accrued right of extension which, willy-nilly, stands vested in it. This right, according to the petitioners, is recognized in the PSC as other rights under Article 7.1.

51.4 According to the petitioners, the New Policy was not applicable to them as it was announced by respondent No.1/GOI during the pendency of the instant writ petition. As per the directions issued by this Court on 07.11.2016, respondent No.1/GOI was required to take a decision on the issue of extension of tenure of the PSC under Article 2.1 to the New Policy without linking it to policy guidelines. According to the petitioners, this was contrary to the directions issued by this Court on 07.11.2016 and, therefore, the communication dated 12.04.2017 served on the petitioners

calling upon them to apply under the New Policy was an attempt to overreach the directions issued by this Court.

51.5 It was, thus, contended on behalf of the petitioners, that the provisions in the New Policy which require them to pay an additional sum of 10% had no nexus with the objective of improving the investment climate so as to ensure expeditious exploration of resources and maximization of production in the interest of energy security of the country.

51.6 It is submitted that the action of respondent No.1/GOI in unilaterally applying the provisions of PSC by taking recourse to the New Policy was not tenable in law. For this purpose, reliance was placed, on behalf of the petitioners on Article 34.2 of the PSC, which, according to them, prohibited amendments, modifications, variations or even having the PSC supplemented in any respect without the parties agreeing to it.

51.7 Therefore, the submission advanced was that respondent No.1/GOI could not abuse its position as a sovereign and unilaterally amend the terms of the contract.

51.8 In support of its principal argument that extension of tenure of the PSC had to occur on the subsisting terms and conditions, it was argued that such an approach, if adopted, would impart business efficacy to the PSC. It was contended, on behalf of the petitioners, that based on the PSC, they had irreversibly altered their position and, therefore, the respondents could not change their position at this juncture as it would adversely affect their

interest. In this behalf, petitioners sought to rely upon the doctrine of promissory estoppels and legitimate expectation.

51.9 Furthermore, it was contended that certainty was the bulwark of such like contracts, and, therefore, the State like any other prudent businessmen should adhere to its commitment and honour its obligations. Reference was also made to the fact that respondent No.1/GOI was committed to creating an atmosphere of 'ease of doing business' in the country and, thus, consistent with that principle, it should extend the tenure of the contract as it was in sync with the principles of good governance, stability and consistency.

51.10 The petitioners also adverted to the fact that Article 2.1 of the PSC could not be linked to the area under the commercial production of natural gas. It was stated that the extension was mandatory, if commercial production of natural gas was expected to continue beyond the term of the PSC—which, according to the petitioners, was the relevant consideration rather than the surface/on-ground area. For this purpose, reliance was placed on the affidavit dated 19.09.2017 filed on behalf of respondent No.1/GOI, wherein, while recognizing the fact that commercial production of natural gas had occurred, it was stated that it was confined to a smaller area.

52. Furthermore, the petitioners contend that revenue maximization cannot be the sole or overriding objective of respondent No.1/GOI. For this purpose, reference was made to the judgment of the Constitution Bench of the Supreme Court in Special Reference No.1/2012 **(2012) 10**

**SCC 1.** This apart, in support of their other submissions, the petitioners relied upon the following judgments: -

- (i) ***A. Ayyasamy Vs. A Paramashivam and Ors.*, (2016) 10 SCC 386;**
- (ii) ***Vodafone International Holdings BV Vs. Union of India*, (2012) 341 ITR 1 (SC);**
- (iii) ***The State of Bihar and Anr. Vs. P.E.C. Ltd and Others.*, (2004) 3 PLJR 741; and**
- (iv) ***UP Power Corporation Ltd. and Anr. Vs. Sant Steel and Alloys Pvt. Ltd. and Ors.* (2009) 13 SCC 55.**

53. On behalf of respondents No. 1 & 2, it was contended that the writ petition need not proceed further as respondent No.1/GOI had taken a decision in the matter. In other words since a decision had been taken by respondent No.1/GOI, which, had been conveyed to the petitioners, nothing would survive in the instant writ petition. For this purpose, reliance was placed not only on the New policy, but also, on the subsequent communication dated 12.04.2017, whereby, the petitioners were called upon to apply under the New policy. In support of this submission, as indicated above, reliance was placed on behalf of respondents No. 1 & 2 on the observations made by the Court at the time of issuing notice via its order dated 14.12.2015.

53.1 Besides this, it was contended that since the dispute fell within the realm of a contract, this Court ought not entertain the writ petition. The emphasis was, on the fact that since the dispute raised was in the realm of contract remedy under Article 226 of the Constitution was not warranted.

Furthermore, it was submitted that Article 2.1 of the PSC clearly indicated that the tenure of the contract was only up to 14.05.2020 and that beyond this period, extension can be granted based only on 'mutual agreement' arrived at between the parties.

53.2 In this context, it was stated the fact that a New Policy had been approved and a framework had been provided for grant of extension qua all Pre-NELP PSCs, the extension could take place based only on what was provided in the said policy.

53.3 It was, thus, emphasized that as communicated by respondent No.1/GOI in its letter dated 12.04.2017, the contractors would have to submit a formal application for seeking approval of extension of tenure of the PSC. In support of submissions made on behalf of respondent No.1 and 2, reliance was placed on the following judgments: ***Arun Kumar Aggarwal Vs. Union of India, 2013 (7) SCC 1***; and ***Joshi Technologies International Inc. Vs. Union of India & Others, (2015) 7 SCC 728***.

54. On behalf of respondent No.3, it was argued that since the New policy had come into play, the reliance placed by the petitioners on Article 2.1 of the PSC was meaningless as the extension was to be granted on mutually agreed terms. It was submitted that in the absence of the Policy for extension of pre-NELP exploratory block PSC, respondent No.3 had agreed for extension on the subsisting terms and conditions, which was conveyed vide communication dated 08.07.2016.

54.1 According to respondent no.3, this position had undergone a change with the New policy coming into force on 07.04.2017. It was stated that

respondent No.3 being a nominee of respondent No.1/GOI, it was required to abide by the decision of respondent No.1/GOI. In this context, it was sought to be highlighted that the New Policy had been issued before the expiry of the subsisting terms of the PSC, that is, prior to 14.05.2020 and hence it would apply to the PSC in issue.

54.2 In this context, on behalf of respondent No.3, it was argued that once respondent No.1/GOI had formulated its New Policy, its Board of Directors held a meeting on 28.12.2017 and took the following decision:

*".....ONGC being a Government nominee in RJ-ON-90/1 Block to seek extension of PSC term by 10 years as per terms and conditions mentioned in GOI Policy for Grant of Extension to the Production Sharing Contracts in Pre-New Exploration Licensing Policy (Pre-NELP) Exploration Blocks vide notification no. O-19025/07/2014-ONG-D-V dated 07.04.2017....."*

### **Reasons**

55. I have heard the learned counsel for the parties and perused the record.

56. What emerges from the record and qua which, there is possibly no dispute is as follows:-

(i) Rajasthan Block was not a discovered field at the point in time the PSC in issue was signed between the parties.

(ii) The PSC was executed on 15.05.1995.

(iii) For the first seven (7) years of the contract (i.e. between 1993 and 2003), petitioner No. 1's predecessor-in-interest could not make any

commercial discovery, even though substantial amounts were invested in the Rajasthan Block. This resulted in a change being brought about in the participants' interest, to which, I have made a reference above.

(iv) The subsisting tenure of the PSC, if not extended, would come to an end on 14.05.2020.

(v) On 25.05.2015, respondent No.3 in a letter to respondent No.1/GOI conveyed to it that at its Board of Directors' meeting held on 28.04.2015, a decision had been taken to seek a extension of tenure of the PSC in issue, albeit, on the subsisting terms and conditions.

(vi) In the interregnum, on 15.09.2014, the OC, concerned with the Rajasthan Block had approved the revised FDP for RDG. This was placed for approval before the MC, which, at its meeting held on 23.12.2014, also approved the revised FDP for RDG.

(vii) Interestingly, at a meeting convened by respondent No.2, on 18.06.2015, where representatives of petitioner No. 1 and respondent No.3 were also present, a query was addressed to the representative of respondent No.3, whereby, it was sought to be ascertained as to why it had changed its view and agreed to the request of the petitioners to extend the tenure of the PSC. Crucially, the representative of respondent No.3, in response, gave a cogent answer, which was, that respondent no.3 had not only sought a legal opinion from an outside legal expert but had also examined the commercials, and thereafter, reached a considered decision that the tenure of the PSC had to be extended and that too on subsisting terms and conditions.

57. Clearly, the stand of respondent No.1 that it wanted a higher share of petroleum profits got articulated at the joint meeting held on 18.06.2015. Thereafter, there was back and forth on the technical and financial information sought by respondent No.2 from petitioner No. 1/respondent No.3. The details of how correspondence was exchanged on this aspect, has been dealt in detail, by me, while narrating the facts of the case. Therefore, despite the fact that respondent no.3 had conveyed its decision to respondent No.1, not once, but on two occasions, that the tenure of the PSC had to be extended on the same terms and conditions, an attempt was made to delay the final decision by seeking information with regard to additional investments, which would be required to be made for the extended period of the PSC and the benefit that would accrue thereof in terms of the production of oil and gas.

58. It was in the background of these facts and circumstances that the petitioners approached this Court by way of the instant writ petition. As alluded to above, while narrating the factual scenario that it was only upon the Court nudging respondent No.1 and respondent No.3 to move in the matter that a decision was taken qua extension of tenure of the PSC. While the matter was in Court, on 08.07.2016, respondent No.3 conveyed to respondent No.1/GOI that its Board of Directors had taken a decision to seek extension of the PSC on the subsisting terms and conditions on 8.7.2016.

59. It was only, thereafter, that this aspect of the matter got reflected in the proceedings of the Court held on 07.11.2016. The relevant parts of the said order have been extracted hereinabove by me..

59.1 A close perusal of order dated 07.11.2016 would show that even though respondent No.1/GOI conveyed to the Court that it was in the process of framing policy guidelines for extension of the Pre-NELP PSCs, the Court made it clear that respondent no.1/ GOI could not link its policy guidelines with its decision in the matter as that was not contemplated by the order of 14.12.2015. Accordingly, the Court on 07.11.2016 gave time till 06.01.2017 to respondent No.1/GOI to comply with the order dated 14.12.2015.

59.2 Respondent No.1, concededly, did not chose to challenge, either the directions contained in the order dated 14.12.2015 or, those which were contained in the order dated 07.11.2016.

60. Despite the aforesaid situation obtaining, respondent No.1/GOI sprung upon the petitioners, the New Policy which was framed on 07.04.2018 and consequent thereto, told the petitioners via letter dated 12.04.2017 to apply under the New policy for seeking extension of the PSC.

61. Given this foreground, the issues which, to my mind, arise for consideration are as follows:

### **Issues**

I. Did the order dated 14.12.2015, passed by this Court, foreclose a final examination by the Court as to whether a remedy by way of a writ is maintainable in the facts and circumstances of this case?

II. If the answer to issue No. I is in the affirmative, did a remedy by way of writ petition lie in the instant case?

III. If the answers to issues No. I & II are in the affirmative, can the petitioners seek extension of the existing tenure of the PSC beyond 14.05.2020 i.e. till 14.05.2030 unimpeded by the fact that a New Policy has come into play?

IV. What is the scope and effect of Article 2.1, which obtains in the PSC in issue?

V. If Article 2.1 entitles the petitioners to extension of tenure of the PSC, is the refusal to extend the tenure by the respondents arbitrary and unfair?

### **Issue No. I**

62. A careful perusal of the order dated 14.12.2015 would show that the Court had not foreclosed the issue with regard to whether or not in the instant case, a remedy by way of writ would be available to the petitioners. The observations made were tentative in nature. The Court, at that juncture, was of the view that notwithstanding the objections taken qua the maintainability of a writ, the procrastination displayed by the respondents qua the issue of extension of tenure of the PSC, necessitated its intercession in the matter. The idea was to nudge the respondents to take a call in the

matter in terms of its obligation under PSC. At that stage, clearly, the legal tenability of a wrong call could not have been tested.

62.1 Therefore, the argument advanced on behalf of the respondents, in particular, respondent No.1/GOI, that since a decision had been taken, the writ petition had worked itself out and consequently, rendered infructuous, to my mind, is a submission which is completely unsustainable. In any event, in my view, the order dated 14.12.2015 was only an interim order which could not have precluded further arguments that the petitioners would have wanted to advance in the matter. In fact, right from inception, the stand of the petitioners has been, (given the construct of Article 2.1 of the PSC) that the respondents have no choice but to extend the tenure for the PSC for another 10 years, once, the stage of commercial production of gas is reached. Further, there are no such observations in the order which would prevent examination of the issue, that is, whether or not a writ petition would lie in matter of like nature.

## **Issue No. II**

63. The answer to this question would be in the affirmative, only if one were to come to the conclusion that though the dispute is in the realm of a contractual field, the State has acted in a manner which is arbitrary, unreasonable and unfair manner.

63.1 Before I proceed further, I may advert to the decision of the Supreme Court in *ABL International Ltd. And Another Vs. Export Credit Guarantee Corporation of India Ltd & Others.*, (2004) 3 SCC 553.

63.2 The broad facts which obtained in *ABL* were as follows:

63.3 A company by the name of Rassik Woodworth Limited ('RWL') entered into a contract with a State-owned Corporation of Kazakhstan for supply of for supply of 3,000 metric tons of tea.

63.4 This agreement was entered into between them in and about 26.08.1993. As per the terms of the agreement, payment for tea exported was to be made by Kazakhstan Corporation by barter of goods mentioned in the schedule to the agreement, albeit, within 120 days of the date of delivery by the exporter.

63.5 The agreement was guaranteed by the Government of Kazakhstan. Evidently, on the very same day, when, the agreement was signed, clause 6 of the agreement which provided for payment by barter of goods came to be amended by way of an addendum. By virtue of the amendment, it was agreed that if the barter of goods could not be finalized for any reason, then, the Kazakhstan Corporation was to pay to the exporter for the goods received by it in US Dollars within 120 days of delivery.

63.6 Such payment was required to be remitted by Kazakhstan Corporation to the bank account of an exporter at Delhi. The amended agreement also received the backing of the Kazakhstan Government.

63.7 After RWL had entered into the said agreement with Kazakhstan Corporation, it assigned a part of the said export contract to ABL, albeit, on the same terms and conditions.

63.8 Upon a direction issued by the Reserve Bank of India, the appellants before the Supreme Court, in order to insure the risk arising out of export of tea, approached the Export Credit Guarantee Corporation of India

Limited ('ECGC'), on 23.09.1993. Accordingly, ECGC issued a comprehensive risk policy on 30.09.1993, which was effective for the period spanning between 23.09.1993 and 30.09.1995.

63.9 Kazakhstan Government also furnished an irrevocable guarantee, which was that, in the event Kazakhstan Corporation was unable to meet its payment obligations, it would make the payment to the exporter in US Dollars upon delivery of tea.

63.10 Evidently, payment of consideration, by way of barter of goods, did not materialize. Therefore, the Kazakhstan Corporation agreed to pay the consideration in US Dollars. Some amounts were paid. However, the balance money was not paid.

63.11 The Kazakhstan Government also did not fulfill its obligation due to lack of funds.

63.12 Consequently, the appellants called upon ECGC, which had covered the risk to compensate them for the loss suffered by them.

63.13 The ECGC repudiated the insurance contract on the ground that the appellants had rejected the barter offer made by the Kazakhstan Corporation and instead opted for payment in US Dollars.

63.14 It is, in this background, that the appellants had approached the High Court for quashing the letter of repudiation issued by the ECGC. Consequential, relief was also sought that ECGC should be called upon to make payment of dues to the appellants under the contract of insurance.

63.15 The learned Single Judge of the Calcutta High Court allowed the writ and came to a conclusion that though the dispute arose from a contract, the ECGC being a State under Article 12 of the Constitution was bound by the terms of the contract. In other words, the writ was held maintainable and consequential relief was also granted. However, the Division Bench in appeal reversed the judgment of the learned Single Judge on the ground that it involved disputed questions of fact which could not be adjudicated upon in a writ petition. It is, in these circumstances, that the matter reached the Supreme Court.

63.16 In paragraph 8 of the judgment, the Supreme Court observed that one of the questions which fell for its consideration was whether a writ petition under Article 226 was maintainable to enforce the contractual obligation of the State or its instrumentality, by an aggrieved party. The Supreme Court, in this context made the following apposite observations in paragraphs 13 & 20 to 24:

*"....13. We do not think this Court in the above case has, in any manner, departed from the view expressed in the earlier judgments in the case cited hereinabove. This Court in the case of Life Insurance Corporation of India (Supra) proceeded on the facts of that case and held that a relief by way of a writ petition may not ordinarily be an appropriate remedy. This judgment does not lay down that as a rule in matters of contract the court's jurisdiction under Article 226 of the Constitution is ousted. On the contrary, the use of the words "court may not ordinarily examine it unless the action has some public law character attached to it" itself indicates that in a given case, on the existence of the required factual matrix a remedy under Article 226 of the Constitution will be available...."*

20 The learned counsel for the respondent then placed reliance on a judgment of this Court in the case of *VST Industries Ltd. vs. VST Industries Workers' Union & Anr.* In the said case, this Court held: (SCC p.306, para 8)

*"In Anadi Mukta case this Court examined the various aspects and the distinction between an authority and a person and after analysis of the decisions referred in that regard came to the conclusion that it is only in the circumstances when the authority or the person performs a public function or discharges a public duty that Article 226 of the Constitution can be invoked. In the present case, the appellant is engaged in the manufacture and sale of cigarettes. Manufacture and sale of cigarettes will not involve any public function."*

21 Placing reliance on the observations of this Court in the said case, learned counsel contended, unless the action challenged in the writ petition pertains to the discharge of a public function or public duty by an authority, the courts will not entertain a writ petition which does not involve the performance of said public function or public duty. Learned counsel argued in the instant case while repudiating the contract, the first respondent was not discharging any public function or public duty.

22 We do not think the above judgment in *VST Industries Ltd. (supra)* supports the argument of the learned counsel on the question of maintainability of the present writ petition. It is to be noted that *VST Industries Ltd.* against whom the writ petition was filed was not a State or an instrumentality of a State as contemplated under Article 12 of the Constitution, hence, in the normal course, no writ could have been issued against the said industry. But it was the contention of the writ petitioner in that case that the said industry was obligated under the statute concerned to perform certain public functions;

failure to do so would give rise to a complaint under Article 226 against a private body. While considering such argument, this Court held that when an authority has to perform a public function or a public duty, if there is a failure a writ petition under Article 226 of the Constitution is maintainable. In the instant case, as to the fact that the respondent is an instrumentality of a State, there is no dispute but the question is: was first respondent discharging a public duty or a public function while repudiating the claim of the appellants arising out of a contract ? Answer to this question, in our opinion, is found in the judgment of this Court in the case of Kumari Shrilekha Vidyarthi vs. State of U.P. wherein this Court held : SCC pp.236-37, paras 22 & 24)

"The impact of every State action is also on public interest... It is really the nature of its personality as State which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters."

23 It is clear from the above observations of this Court, once State or an instrumentality of State is a party to the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the above said requirement of Article 14, then we have no hesitation that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent. In this context, we may note that though the first respondent is a company

*registered under the Companies Act, it is wholly owned by the Government of India. The total subscribed share capital of this company is 2,50,000 shares out of which 2,49,998 shares are held by the President of India while one each share is held by the Joint Secretary, Ministry of Commerce and Industry and Officer on Special Duty, Ministry of Commerce and Industry respectively. The objects enumerated in the Memorandum of Association of the first respondent at Para 10 read:*

*"To undertake such functions as may be entrusted to it by Government from time to time, including grant of credits and guarantees in foreign currency for the purpose of facilitating the import of raw materials and semi-finished goods for manufacture or processing goods for export."*

*Para 11 of the said object reads thus :*

*"To act as agent of the Government, or with the sanction of the Government on its own account, to give the guarantees, undertake such responsibilities and discharge such functions as are considered by the Government as necessary in national interest."*

*24 It is clear from the above two objects of the company that apart from the fact that the company is wholly a Government owned company, it discharges the functions of the Government and acts as an agent of the Government even when it gives guarantees and it has a responsibility to discharge such functions in the national interest. In this background it will be futile to contend that the actions of the first respondent impugned in the writ petition do not have a touch of public function or discharge of a public duty. Therefore, this argument of the first respondent must also fail...."*

63.17 The Court summarized the principles in paragraph 27 of the said judgment, which, for the sake of convenience, is extracted hereafter:

*"27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition :-*

*(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.*

*(b) Merely because some disputed questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.*

*(c) A writ petition involving a consequential relief of monetary claim is also maintainable... "*  
*(emphasis is mine)*

64. Therefore, if the aforesaid indices are applied to the facts of this case, one cannot but come to the conclusion that a writ petition would lie.

65. Thus, the principles which emerge upon consideration of the judgment in *ABL* and *Kumar Shrilesh Vidyarathi* qua the aspect which arises in this case are:

(i) Firstly, it is nature of the respondents' personality which is significant and not the nature of its function, which could be contractual or otherwise.

(ii) Second, the State does not shed its personality just because it enters the contractual arena.

(iii) Third, there is nothing in Article 14 which indicates that the State and/or its instrumentality need not act reasonably or fairly or sans arbitrariness, when it operates in the contractual field.

66. The distinction drawn earlier by the Supreme Court that a writ against a State would lie only prior to the firming up of a contract and not thereafter, has been done away after it rendered the judgment in the matter of *Kumari Shrilekha Vidyarthi Etc. vs State Of U.P. And Ors.*, (1991) 1 SCC 212.

66.1 In the instant case, the aforementioned principles would apply with greater force as there is an element of a public law involved in the subject transaction. Therefore, whether one applies the narrower *Kumar Shrilekha Vidyarathi* test or the braoder *ABL* test, a writ petition would lie in the instant case.

66.2 Thus, as in the *ABL* case, there is a contract in subsistence i.e. the PSC. The PSC is executed between a private party and a State. The fact that it deals with the natural resources is not in dispute. Furthermore, the fact that the extension of the contract would impact public interest is also not in doubt. The contract involves exploration of gas and oil over which the State has complete control for the reason that slightest error could have exponential impact on the country's economy. Therefore, to contend that no public law element is involved, in my view, is a contention which cannot be accepted. This apart, the allegation that there is manifest arbitrariness in the respondents refusing to extend the tenure of the PSC leaves doubt in my mind that the action is amenable to writ jurisdiction of this Court.

67. Given these facets, what, I am required to examine is whether respondent No.1/GOI in this case is acting unfairly and/or arbitrarily in denying extension under Article 2.1 of the PSC to the petitioners. In other words, is there a violation of Article 14 of the Constitution.

67.1 This part of the inquiry will be made by me, while discussing issue No. III & IV. Suffice it to say that so far as issue No. II is concerned, a remedy by way of a writ petition would lie. Before I conclude my view, on this issue, I may also refer to the judgment of the Supreme Court in ***Joshi Technologies International Inc.***, wherein, once again, the Supreme Court has considered the entire gamut of case law on the issue including the decision in ***ABL***.

67.2 In that case, the Court was called upon to consider as to whether the deduction under Section 42 of the Income Tax Act, 1961 (in short 'IT Act') would be available to the appellant. The contract arrived at between the appellant and the State, it appears, inadvertently or otherwise, did not make a reference to that aspect of the matter. The appellant, in fact, in the assessment years prior to 2005-2006 had obtained deduction under Section 42 of the I.T. Act till it was pointed out that necessary ingredients in that behalf were not incorporated in the agreement entered into between the appellant and the respondent. Unfortunately, even though, the Ministry of Petroleum and Natural Gas supported the case of the appellant, the Ministry of Finance did not issue the necessary clarification, vis-à-vis, the contract.

67.3 The Supreme Court denied relief to the appellant in that case, principally, on the ground, that in order to obtain a deduction under Section

42 of the I.T. Act, a clear stipulation in that behalf had to be provided in the contract as these were special allowances, which otherwise were not available, since the expenses incurred resulted in bringing into the existence assets of enduring nature or, were in the nature of initial expenditure which set the profit earning machinery in motion. In other words, but for Section 42 under ordinary principles of income tax law allowances claimed would not have been available as they were in the nature of capital expenditure. What is important, though, is that, the Supreme Court in paragraphs 68, 69 & 70 had made the following observations while citing with approval the **ABL** case:

*"68. The Court thereafter summarized the legal position in the following manner:*

*"27. From the above discussion of ours, following legal principles emerge as to the maintainability of a writ petition :-*

*(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.*

*(b) Merely because some disputed questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.*

*(c) A writ petition involving a consequential relief of monetary claim is also maintainable.*

*28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the*

*fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power (See: Whirlpool Corporation vs. Registrar of Trade Marks,). And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the court thinks it necessary to exercise the said jurisdiction.*

*69. The position thus summarized in the aforesaid principles has to be understood in the context of discussion that preceded which we have pointed out above. As per this, no doubt, there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised. At the same time, discretion lies with the High Court which under certain circumstances, can refuse to exercise. It also follows that under the following circumstances, 'normally', the Court would not exercise such a discretion:*

*69.1 The Court may not examine the issue unless the action has some public law character attached to it.*

*69.2 Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration.*

69.3 *If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination.*

69.4 *Money claims per se particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.*

70 *Further legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to the contracts entered into by the State/public Authority with private parties, can be summarized as under:*

70.1 *At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.*

70.2 *State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practice some discriminations.*

70.3 *Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 of the Constitution could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases court can direct the aggrieved party to resort to alternate remedy of civil suit etc.*

70.9 *The distinction between public law and private law element in the contract with State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract, this Court has maintained the position that writ petition is not maintainable. Dichotomy between public law and private law, rights and remedies would*

*depend on the factual matrix of each case and the distinction between public law remedies and private law, field cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision making process or that the decision is not arbitrary.*

*70.10 Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness."*

(emphasis is mine)

67.4. Therefore, as indicated above, given the facts and circumstances of the case, there would be no bar in entertaining a writ petition, even though the dispute arising between the parties falls within the realm of a contract.

**Issue No.III, IV & V:**

68. The answer to these issues depends primarily upon the conclusion that one would reach *vis-à-vis* the scope and effect of Article 2.1. In the preceding part of my judgment, I have already set out Article 2.1 in extenso. A close perusal of Article 2.1 of the PSC would show that its initial tenure is twenty five (25) years, commencing from the effective date—which, unless it is terminated earlier, in accordance with its terms,

could be extended upon mutual agreement between the parties by a further period not exceeding five (5) years. This is the first part of Article 2.1.

68.1 The second part of Article 2.1 which is contained in the proviso to the first part incorporates a situation, which is that, if the event adverted therein i.e., Commercial Production of Natural Gas, were to take place and that event was expected to continue beyond the initial term of the contract, then, the contract was mandatorily required to be extended for a further period, though not exceeding thirty five (35) years from the effective date. To this part, a limb, in a manner of speech, has been added which provides that there should mutual agreement between the parties, sufficient to permit the contractor to maximize production of natural gas in accordance with the good petroleum practice. The mandatoriness qua extension in this part is spelled out from the use of the expression “*shall*”.

68.2 The last part of Article envisages that if the production of crude oil or the natural gas is expected to continue beyond the end of the relevant period referred to above, the party '*may*' agree to extend the contract for a further period upon such terms as they may mutually agree.

68.3 Therefore, as alluded to above, Article 2.1, broadly, has three parts to it. The first part encapsulates the initial term which is to run for twenty five (25) years unless an early termination brings the contract to an end. This part also provides that the contract could be extended for a further period of five (5) years, based on mutual agreement arrived at between the parties. The use of the word '*may*' gives leverage to the parties qua the aspect of the extension of the contract.

68.4 The second part of the contract gets triggered, once, commercial production of the gas takes place and the production is expected to continue

beyond the end of the term of the contract. In such a situation, the Article envisages mandatory extension of the contract for a period upto but not exceeding thirty five (35) years. This aspect gets emphasized by the use of the term 'shall'. There is an element of mutuality provided to the extension to the extent that the extension should be sufficient to permit the contractor to maximize production of natural gas in accordance with good petroleum industry practice.

68.5 The last part of Article 2.1, to my mind, is open ended inasmuch as after thirty five (35) year period is over, if the production of crude oil or natural gas is expected to continue beyond the said period, the parties are at liberty to extend the contract on mutually agreed terms. In this part, the term 'may' is used, in a sense, as a suffix, both in respect of the decision to be taken, *that is*, as to whether or not the contract should be extended, and also, as to the terms on which extension is to be made.

69. In the instant case, there is, as indicated above, no dispute that commercial production of natural gas has taken place and that the MC which also comprised of the representatives of respondent No.1 and respondent No.2 have come to a conclusion that its production is expected to extend to further period of ten years i.e. till 2030. If that be the situation, then, to my mind, the contract, as contended by the petitioners, is mandatorily required to be extended for a period of ten (10) years beyond the current tenure of the PSC. The argument advanced on behalf of respondent No.1/GOI that it cannot be on the same terms and conditions would have to be repelled as mutuality which is envisaged in Article 2.1 is to be such that permits the contractor to maximize production of natural gas in accordance with the good petroleum industry practice. The intent,

evidently, was that the oil and natural gas contracts need a long terms perspective since investments are heavy and, therefore, once an expectation is created, based on the verifiable data, then, the terms and conditions of engagement ought not be changed qua the extended period. The fact that there is a reference to good petroleum industry practice, only fortifies this view.

69.1 CII in its representation brought to fore this view generally for the benefit of all pre-NELP PSC Contractors. Certainty is the hallmark of good petroleum practice. I may also indicate herein that the petitioners are right in their contention that the subject PSC is different from the Model pre-NELP PSC inasmuch as the wordings contained in the proviso to the Model Article 2.1 are clearly different from those obtaining in the corresponding article in the PSC in issue.

70. Therefore, having regard to the aforesaid, I am of the view that the petitioners are right in contending that they are entitled to the extension of the tenure of the PSC in issue. The contra argument of the respondents that since the New policy has come into play, the extension, can only be on the terms stipulated therein, according to me, is without merit for two reasons. (i) First, the New Policy cannot be used to repudiate the plain terms of the contract to the detriment of the petitioners. The execution of the PSC occurred prior to formulation of the New Policy. The New Policy was firmed up and notified during the pendency of the writ petition. The New Policy, therefore, cannot govern the terms of the PSC. (ii) Second, despite the fact the Court in its order dated 07.11.2016 had observed that the respondents' decision with respect to extension could not be linked to any

policy guidelines, the respondents have attempted to do exactly the opposite without assailing the orders of this Court.

70.1 Therefore, answer to all three issues has to be in favour of the petitioners and against the respondents. The petitioners are not only entitled to seek an extension, as indicated hereinabove, by me, but would be entitled to the same, based on the existing terms and conditions, that is, *dehors* the terms stipulated in the New Policy.

70.2 Given the circumstances, as discussed above, which, show that the petitioners fall within the ambit of Article 2.1, the refusal by the respondents to extend the tenure is both arbitrary and unfair; hence, violative of Article 14 of the Constitution.

71. Thus, for the foregoing reasons, the writ petition is allowed. Respondent No.1/GOI will extend the PSC dated 15.05.1995, pertaining to the Rajasthan Block, for a period of 10 years beyond its current term i.e. till 14.05.2030 as envisaged in Article 2.1 of the PSC, on the same terms and conditions. Since, the decision of the Board of Directors of respondent No.3, taken at its meeting held on 28.12.2017, was arrived at, in the backdrop of the New Policy being notified, the same would be disregarded. Respondent No.3's earlier decision dated 08.07.2016 will hold the field.

72. Thus, respondent No.1/GOI will convey its decision, formally, to the petitioners, within two weeks of the date of the receipt of a copy of the order. No costs.

**RAJIV SHAKDHER  
(JUDGE)**

**MAY 31, 2018**  
Cks/A