

NIKO RESOURCES (BANGLADESH) LTD.
V.
BANGLADESH PETROLEUM EXPLORATION & PRODUCTION COMPANY LIMITED
(“BAPEX”)
AND BANGLADESH OIL & GAS MINERAL CORPORATION (“PETROBANGLA”)
(ICISD CASE NOS. ARB/10/11 AND ARB/10/18)

Procedural Order No 24
(Procedural Calendar – Quantum Phase)

1. The Tribunal thanks the Parties for their replies of 26 March 2020 to its questions of 23 March 2020. These replies, together with the Parties’ submissions on 11 to 16 March and 20 March 2020, provided the information required for the Tribunal to organise the next steps in these proceedings without there being a need for a procedural consultation by video or telephone. These submissions lead the Tribunal to the following considerations:
2. Further to the procedure for the quantification of Niko’s liability, as agreed by the Parties at the end of the November 2015 Hearing and recorded in the Tribunal’s summary minutes of that Hearing, the Respondents filed BAPEX’s Memorial on Damages on 25 March 2016. The next steps in this agreed procedure is the filing of the Claimant’s Counter-Memorial on Damages, for which slightly over four months were provided; a five-day hearing was scheduled to follow a month later.
3. The Claimant requested that the approach adopted in November 2015 be respected but announced its intention to assert a set-off.
4. The Respondents quantified in BAPEX’s Memorial on Damages the losses of BAPEX and the gas losses of the Government. With respect to the environmental losses, the Respondents requested that Niko be ordered to pay expenses of monitoring, surveying and abatement and that the proceedings be held *“open until such time as a complete survey and monitoring of the Tengratila area can be conducted and BAPEX can provide the fullest possible accounting of environmental and health related losses.”* Following the Decision on Liability the Respondents requested that the agreed procedure be modified to accommodate a *“full assessment of environmental damage”* by their experts; they stated that this assessment required nine months and could start only once the present travel restrictions are lifted and its experts can travel to Bangladesh.

5. The Respondents object to the introduction of a set-off by the Claimant and the Claimant objects to the extension of the proceedings to new quantifications. Both Parties intend to address the consequences that have to be drawn from the Decision on Liability on the heads of loss and damage for which Niko is liable (“heads of recoverable loss”).
6. Considering the number of witnesses and experts, the Claimant suggested that more than five days may be required for the evidentiary hearing; it planned for seven days. The Tribunal is of the view that, for the full scope of the heads of loss as now quantified or announced, the time for the evidentiary hearing can hardly be less than seven days.
7. The recent consultation concerning the availability of the Parties and the members of the Tribunal showed that a seven-day evidentiary hearing cannot be held before late June 2021.
8. The Tribunal, therefore, has examined how any of the controversial issues which do not require an evidentiary hearing can be considered and decided in advance of that hearing in the hope of a more efficient approach and a more focused evidentiary hearing. The Tribunal considers it is sufficiently briefed to decide the matters in relation to the procedural calendar for the damages phase of these arbitration and that no further consultations by teleconference is necessary at this time. The Tribunal also concluded from the Parties’ explanations that submissions and argument on the relevant legal and procedural issues will be affected only marginally by the present Covid-19 situation.

The Tribunal therefore decides on the following steps:

9. **By 17 August 2020**, the Claimant shall file its **Counter-Memorial on Damages**, as provided by the November 2015 programme, presenting also its argument concerning the effect of the Decision on Liability on the recoverable heads of loss. In that memorial the Claimant may provide argument on the justification of the intended set-off claim.
10. **Also by 17 August 2020**, the Respondents shall file their **Amendment to the 2016 Memorial on Damages** as proposed in the alternative approach at page 3 of their 11 March 2020 submission. The time allowed for this amendment is slightly above the requested time to allow for disruptions due to the Covid-19 pandemic.
11. In these submissions, the Parties shall identify with specificity which heads of recoverable loss presented in the Memorial on Damages of 25 March 2016 (including the environmental damage reserved for subsequent quantification) satisfy the requirements of the Tribunal’s findings on Niko’s liability for the Chattak 2 blowout and the limitations of such liability. The Respondents shall also address the admissibility and justification of the requested changes from the November 2015 agreed procedure.

12. A hearing for oral argument on the issues addressed in these submissions will be held in September/October 2020 at a date to be agreed forthwith. In particular the Parties will be given an opportunity to respond to their opponent's argument identifying the recoverable heads of loss in light of the Tribunal's findings. The Tribunal expects that 1 day will be sufficient for this argument, but proposes to reserve a second day. The Tribunal invites each Party to indicate, within 10 days of this Procedural Order, its availability for such a hearing.
13. The Tribunal is of the view that, following the submissions of 17 August 2020, the issues identified for the hearing may adequately be addressed at this hearing for oral argument without the need for prior written rebuttal submissions: this approach had been agreed in the November 2015 programme for the Respondents' rebuttal to the Claimant's Counter-Memorial on Damages and the Tribunal sees no reason why the a different approach should be followed for the Claimant's rebuttal to the Respondents' Amendment. Moreover, the issues to be argued concern essentially legal analysis which each Party will have performed for itself in its 17 August 2020 written submissions. Other issues, requiring factual evidence and expert opinion will be addressed subsequently.
14. To the extent possible, the Tribunal intends to determine after that hearing which heads of loss are recoverable in principle, applying the Tribunal's rulings in the Decision on Liability. It also intends to decide the other requests that it has identified above for the Parties' submissions. The decision will be rendered in no more than three months following the hearing.
15. The decision will set the agenda for the procedure leading up the evidentiary hearing, for which July 2021 is set as target. The Tribunal will also decide whether and to what extent further argument and evidence will be allowed in a second exchange of memorials, dealing with the quantification of the heads of loss recoverable in principle.
16. At the evidentiary hearing argument and evidence concerning the quantification of the recoverable heads of loss will be heard. Depending on the scope of the heads of loss accepted in principle, seven days or less will be required for this evidentiary hearing.

On behalf of the two Arbitral Tribunals

[signed]

Michael E. Schneider
President
3 April 2020