

**BEFORE THE NATIONAL GREEN TRIBUNAL  
EASTERN ZONE BENCH,  
KOLKATA**

.....  
**Appeal No.08/2020/EZ**

**IN THE MATTER OF:**

**1. MRIDU PABAN PHUKON**  
Milan Nagar Naharkatia,  
P.O. Naharkatia,  
Dist.-Dibrugarh,  
Pin-786610,  
Assam, India

**2. BIMAL GOGOI,**  
Chandmari, Majar Ali,  
P.O. – Golaghat,  
Dist. - Golaghat,  
Assam - 785621

....Appellant(s)

**Versus**

**1. UNION OF INDIA**  
Ministry of Environment, Forests and Climate Change  
(Through the Secretary),  
Indira Paryavaran Bhawan, Jor Bag Road,  
New Delhi-110003;

**2. OIL INDIA LIMITED**  
Through its Chairman cum Managing Director,  
Corporate Office, Plot No.19,  
Near Film City, Sector – 16A,  
Noida – 201301, U.P.;

**3. STATE OF ASSAM,**  
Through its Chief Secretary,  
Assam Sachivalaya Complex,  
Dispur, Assam – 781006;

**4. ASSAM STATE BIODIVERSITY BOARD,**  
Through the Member Secretary,  
Aranya Bhawan, 2<sup>nd</sup> Floor,  
Near Srimanta Sankaradeva Kalakshetra  
Panjabari, Guwahati – 781037,  
Assam;

**5. ASSAM STATE POLLUTION CONTROL BOARD,  
Through its Member Secretary,  
Bamunimaidan,  
Guwahati – 781 021, Assam;**

**6. ASSAM STATE WETLAND AUTHORITY,  
Through the Assam Forest Department,  
Aranya Bhawan, Panjabari,  
Guwahati, Kamrup (Metropolitan)  
Pin – 781037,**

**....Respondent(s)**

**COUNSEL FOR APPELLANT:**

**Mr. Kaustav Dhar, Advocate**

**COUNSEL FOR RESPONDENTS:**

**Mr. Soumitra Mukherjee, Advocate for R-1,  
Mr. Samrat Sen, Sr. Advocate for R-2,  
Ms. Malabika Roy Dey, Advocate for R-3, 4 & 6,  
Mr. Shayamvar Deb, Advocate for R-5**

**JUDGMENT**

**PRESENT:**

**HON'BLE MR. JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)  
HON'BLE DR. ARUN KUMAR VERMA (EXPERT MEMBER)**

---

**Reserved On: - 11<sup>th</sup> October, 2023  
Pronounce On: - 20<sup>th</sup> October, 2023**

---

1. Whether the Judgment is allowed to be published on the net? **Yes**
  2. Whether the Judgment is allowed to be published in the NGT Reporter? **Yes**
- 

1. This Appeal seeks to assail Environmental Clearance (EC) dated 09.04.2020 granted by the MoEF&CC in favour of M/s. Oil India Ltd. (OIL) for the proposed Onshore Oil & Gas Development Drilling and Production in Mechaki Area covering Mechaki, Mechaki Extension, Baghjan and Tinsukia Extension PMLs (Petroleum

Mining Lease) in District Tinsukia (Assam) by OIL. The proposed project is stated to be in an ecologically sensitive and fragile area, where the Mechaki Block is located in close proximity to the Dibrus-Saikhowa National Park, the Maguri-Motapung wetland complex and is part of the Dehing Patkai Elephant Reserve.

2. It is alleged that the EC has been granted in violation of the EIA Notification, 2006 in as much as the project proponent has concealed material information in Form-1 regarding requirement of cumulative impact assessment as well as the location in a highly ecologically sensitive and biodiversity rich landscape which includes a National Park, an important Bird Area (IBA) as well as an Elephant Reserve. It is contended that the project is an expansion project, with an addition of 16 new wells for exploration as well as laying of pipelines. The Mechaki Block PML is stated to be in close proximity of other PMLs where the project proponent has separate projects with respect to oil and gas exploration and hydrocarbon exploration and, according to the Appellant, none of the projects have been considered for cumulative impact. In the section on environmental sensitivity, all questions have been answered in the negative thereby concealing the fact that the Dibrus-Saikhowa National Park as well as the Maguri-Motapung Wetlands are within close proximity of the proposed project location. The National Park is also stated to be at a distance of about 4 km and, therefore, clearly within the study area of 15 km radius of the proposed project in question. The entire Mechaki Block is said to fall within the Dehing-Patkai Elephant Reserve notified by the State of Assam

in 2003. Further, there are several reserved forests within the Mechaki Block. The area is also said to be a rich habitat of rare fauna like Leopard, Hoolock, Gibbon, Capped Langur, Rhesus Macaque, Pittailed Macaque, Slow Loris, Malayan Giant Squirrel, Red Giant Flying Squirrel, Barking Deer and a small herd of Wild Water Buffalo. These critical informations, according to the Appellant, have not been furnished in Form-1 by the project proponent.

3. It is also contended that exemption from conducting public hearing for the project which would have large scale impact on the health of the local communities, was unjustified. Moreover, such exemption was granted on the ground that public hearing had already been conducted earlier which was an incorrect piece of information as the said public hearing was held for another project.

4. It is further alleged that the EIA Report prepared by the project proponent is deficient and faulty in many aspects in as much as the Ambient Air Quality (AAQ) monitoring is a copy-paste content of other projects, the EIA report lacks proper impact assessment on terrestrial, avian and aquatic ecology, the risk assessment carried out in respect of the project is shoddy, erroneous and fails to highlight the actual risk posed from incidents of oil spills and oil well blow out fire and has been carried out as a mere formality in a mechanical manner.

5. Further, the noise impact has not been properly assessed and is not in conformity with the technical EIA Guidance Manual for Oil

and Gas Exploration Industry and overlooks the fact that the Oil and Gas development activities generate noise during all phases of development including the seismic surveys, construction activities, drilling and production, aerial surveys and/or road transportation.

6. Cumulative impact assessment has not been undertaken even when the proposed project is located close to several other existing projects of oil and gas as well as hydro carbon exploration. The entire landscape is rich in biodiversity and is highly ecologically sensitive.

7. The Tribunal took up the matter and considering the issues, directed the Appellant to implead the Assam State Biodiversity Board, Assam State Pollution Control Board and the Assam State Wetland Authority in the array of Respondents as Respondent Nos.4, 5 & 6. Notices were issued to the respondents for filing their counter-affidavits.

8. Affidavit dated 09.11.2020 has been filed by Respondent No.1, Ministry of Environment, Forests and Climate Change stating therein that the Terms of Reference (ToR) for the Project was granted by the respondent on 31.05.2017. It is also stated that Public Hearing for the proposed project was exempted as per para-7 (ii) of the EIA Notification, 2006 which reads as under: -

***“7(ii) Prior Environmental Clearance (EC) process for Expansion or Modernization or Change of product mix in existing projects:***

*All applications seeking prior environmental clearance for expansion with increase in the production capacity beyond the capacity for which prior environmental clearance has*

*been granted under this notification or with increase in either lease area or production capacity in the case of mining projects or for the modernization of an existing unit with increase in the total production capacity beyond the threshold limit prescribed in the Schedule to this notification through change in process and or technology or involving a change in the product –mix shall be made in Form I and they shall be considered by the concerned Expert Appraisal Committee or State Level Expert Appraisal Committee within sixty days, who will decide on the due diligence necessary including preparation of EIA and public consultations and the application shall be appraised accordingly for grant of environmental clearance.”*

9. It is stated that the proposal of EC was considered by the Expert Appraisal Committee (Industry-2) in its meeting held on 20-22 November, 2019, wherein the Project Proponent and their accredited consultant presented the EIA/EMP Report. The EAC constituted under the provisions of the EIA Notification, 2006 and comprising of Expert Members/domain experts in various fields, have examined the proposal submitted by the Project Proponent in Form-2 along with EIA/EMP Report prepared and submitted by the consultant accredited by the QCI/NABET on behalf of the Project Proponent. The Committee found the EIA/EMP Report to be satisfactory, complying with the ToR, and recommended the Project for grant of Environmental Clearance. It is also submitted that the EIA/EMP Report includes noise, ground water, surface water and soil monitoring. The Environmental Clearance has been granted to the Project in question, on specific conditions, which cover the air, noise and water standards to be maintained. It is also stated that

the Committee noted that the EIA/EMP Report is in compliance of the ToR issued for the project, reflecting the present environmental concerns and the projected scenario for all the environmental components. The EAC has deliberated the proposal and has made due diligence in the process as notified under the provisions of the EIA Notification, 2006, as amended from time to time. Based upon the recommendations of the EAC, the Ministry granted the Environmental Clearance on 09.04.2020, as per the provisions of the EIA Notification, 2006 to the project, subject to compliance of specific terms and conditions.

10. Affidavit dated 27.07.2021 has been filed by Respondent No.2, Oil India Limited, stating therein that the Govt. of India and State Govt. of Assam has awarded Petroleum Mining Lease ('PML' for short), namely Mechaki, Mechaki Extension, Baghjan and Tinsukia Extension PMLs to Oil India Limited in Tinsukia districts for exploration and development of oil & gas. Mechaki EC Block originally belongs to Tinsukia PEL (1665 sq. km) which was awarded to Oil India Limited in 1987. On the basis of subsequent geo-scientific studies, major part of this PEL was converted into PML areas such as Baghjan, Tinsukia Extension, Mechaki and Mechaki Extension PML areas. Environmental Clearance for drilling 6 nos. of exploratory wells at Mechaki area, District Tinsukia, Assam was obtained in the year 2011 vide F.No.J-11011/1260/2007-IA II (I) dated 02.11.2011. The Project Proponent further affirmed that the office memorandum dated 09.08.2018 empowers the Expert Appraisal Committee (EAC) to

modify, delete and add conditions laid down therein, based on project specific requirement after due diligence.

11. The Respondent-company had submitted online proposal to MoEF&CC on 16.02.2017 along with project documents including Form-I, Pre-feasibility Report and draft 'Term of Reference' as per the EIA Notification, 2006 following the procedure prescribed under EIA Notification, the 21<sup>st</sup> Expert Appraisal Committee (Industry-2) held during the meeting on 27<sup>th</sup>-29<sup>th</sup> March, 2017 and discussed the draft Terms of Reference (TOR) and prescribed specific and additional Terms of Reference in addition to generic one for the preparation of EIA/EMP Report. The Project Proponent made a detailed presentation before the 21<sup>st</sup> Expert Appraisal Committee (Industry-2) Meeting held on 27.02.2017-29.02.2017 where it was informed that public hearing has been conducted in Tinsukia District for another proposal falling under this area on 26.12.2016. It is stated that public hearing was also held in this area earlier on 07.07.2011 & 23.08.2011 for Tinsukia District. Since the instant proposal falls in the same district wherein detailed public hearing had been conducted earlier, the Project Proponent requested that they may be granted exemption from public hearing for the instant proposal. It is stated that the EAC noted the submissions made by the Project Proponent and after detailed deliberations prescribed the additional Terms of Reference in addition to standard Terms of Reference and accepted the request of the OIL i.e. Oil India Ltd., and granted exemption from public hearing under para 7 (ii) of the EIA Notification, 2006. It was also recommended that 'TORs'



without public consultation prescribed by the Expert Appraisal Committee (Industry) should be considered for preparation of EIA/EMP Report for the above mentioned project in addition to all the relevant information as per the 'Generic Structure of 'EIA' given in Appendix III and IIIA in the EIA Notification, 2006. The Additional Terms of Reference is reproduced as under: -

*“i. Public Hearing is exempted under para 7 (ii) of the EIA Notification, 2006.*

*ii. Stage-1 FC shall be submitted.*

*iii. Environmental Sensitivity within 1 KM radius of each drilling location shall be separately mentioned in the EIA Report.”*

12. Pursuant to Expert Appraisal Committee recommendation dated 27/29.03.2017, MoEF&CC vide letter dated 31.05.2017 granted Terms of Reference in favour of Oil India Ltd. for the purpose of onshore Oil & Gas Development Drilling of 18 wells (6 exploratory wells & 12 development wells) & setting up of 4 nos. of production installations and laying of gas pipeline from Mechaki to Borhapjan; Gas pipeline from Borhapjan to Hapja, assorted Oil & Gas flow lines/delivery lines in Mechaki Block covering Mechaki, Mechaki Extension, Baghjan and Tinsukia Extension PMLs in Tinsukia District of Assam. The Respondent-company was asked to submit the final EIA/EMP prepared as per standard TORs and additional TOR after incorporating all the issues raised during public hearing/public consultation to the Ministry for considering the proposal for EC within 3 years as per the MoEF&CC office memorandum dated 08.10.2014. The EIA study has been

conducted as per the approved TOR by a NABET-QCI accredited firm and the Respondent-company submitted the proposal for the grant of Environmental Clearance along with EIA/EMP Report vide its proposal dated 24.09.2019.

13. It is also stated that the EAC considered at length the proposal of the Respondent-company and evaluated the EIA/EMP Report and noted that the EIA/EMP Report was in compliance of the TOR issued for the project, reflecting the present environmental concerns and the projected scenario for all the environmental components. Accordingly, the Expert Members of the EAC after deliberations, found the proposal in order and recommended for grant of Environmental Clearance exempting public hearing. However, the EAC also laid down certain terms and conditions for compliance of the Respondent-company.

14. It is submitted that during EAC discussions, the respondent dropped two proposed drilling locations falling in the forest land as the Forest Clearance proposal was still in process and 1<sup>st</sup> Stage Approval was not granted at that time. It is also submitted that Environmental Clearance has been granted by MoEF&CC for 16 wells against 18 wells, which were located outside the forest area. All the proposed locations are outside of the declared Eco-sensitive Zone from Dibru-Saikhowa National Park. Hence, there is no question of impact on biodiversity of that area.

15. It is further submitted that the EIA study covers in detail the prevailing ecologically sensitive and biodiversity rich areas

surrounding the Mechaki Block. It is stated that Annexure-2.1 of the EIA Report provides details of all sensitive locations including National Park, Reserve Forests, existing facilities and settlements prevailing within one kilometer from surrounding each well proposed to be drilled in the Mechaki Block.

16. It is reiterated that the public hearing was exempted considering that public hearings have already been held in Tinsukia Districts in the month of July and August, 2011 and in December, 2016, for proposals falling within the Mechaki area and accordingly for the Mechaki Block Expansion Project which is also falling in Tinsukia District public hearing was exempted. Other existing projects are in the nearby area for which Environmental Clearance for drilling six exploratory wells at Mechaki area, District Tinsukia, Assam was obtained in the year 2011 and presently no project activity is being carried out in those drilling locations since 2017 and hence, the question of cumulative impact due to proximity to other existing projects does not arise. The MoEF&CC vide S.O. 460(E) dated 28.01.2020 notified an area to an extent varying from 0 Km to 8.7 Km around the boundary of Dibru-Saikhowa National Park as the Eco-sensitive Zone and consequent upon the said notification, the proposed drilling wells fall outside the Eco-sensitive Zone.

17. It is further submitted that data presented in Form-I is preliminary information only and the respondent also gave a detailed presentation before the Expert Appraisal Committee where the information related to environmental sensitivities in the Block

were discussed in details and TOR was approved by the MoEF&CC for the EIA Study. Environmental sensitivities with respect to Mechaki Block, has been presented in detail in the Mechaki EIA Report.

18. Additional affidavit dated 23.07.2022 has been filed by Respondent No.2, Oil India Limited, bringing on record the amendment in Environmental Clearance granted by MoEF&CC vide letter dated 20.04.2022 which reads as under: -

*“3. The project proponent has requested for amendment in the EC with the details are as under:*

<b>Sl. No.</b>	<b>Para of EC issued by MoEF&amp;CC</b>	<b>Details as per the EC</b>	<b>To be revised/read as</b>	<b>Justification/ reasons</b>
1.	Para No.6	Application for Forest Clearance (FC) has been submitted for two wells (MKD & MKE). It has now proposed to drop the two location from the scope of the present project.	In-Principle/ Stage-I approval for forestland for MKD and MKE wells has been obtained from MoEF&CC. Therefore, the two wells are included within the scope of the present project.	OIL submitted application for ToR for drilling of 18 wells and 4 production installations in Mechaki Block, MoEF&CC issued approved ToR vide No.IA-J-11011/105/2017-IA-II(I) dated 31 <sup>st</sup> May, 2017. EIA study conducted for 18 wells and 4 production installations against the TOR for Mechaki
2.	Para No.13	Based on the proposal submitted by the Project Proponent and	Based on the proposal submitted by the Project	

		<p>recommendation of the EAC (Industry-2), in its meeting held during November 20-22, 2019, the Ministry of Environment, Forest and Climate Change hereby accords environmental clearance to the project for Onshore Oil &amp; Gas Developmental Drilling and Production from 16 wells and setting up 4 production installations and laying of gas pipeline in an area of 82 ha. in Mechaki area covering Mechaki, Mechaki Extension, Baghjan and Tinsukia Extension PMLs in District Tinsukia, Assam.</p>	<p>Proponent and recommendation the EAC (Industry-2), in its meeting held during November 20-22, 2019, and after obtaining of In-Principle/Stage-I approval for diversion of forestland for MKD and MKE wells, the Ministry of Environment, Forest and Climate Change hereby accords environmental clearance to the project for Onshore Oil &amp; Gas Developmental Drilling and Production from 18 wells (with addition of wells MKE and MKE) and setting up 4 production</p>	<p>Block. At the time of EAC, two well locations out of 18 wells viz. MKD and MKE were dropped from the proposal as forest clearance was not available at that time. OIL obtained EC for 16 wells and 4 production installations vide letter No.IA-J-11011/1260/2007-IA-II(I) dated 9<sup>th</sup> April, 2020. Now, MoEF&amp;CC granted in-Principle/Stage-I approval for diversion of forestland for MKD and MKE wells. OIL complied all the stipulated conditions of the 1<sup>st</sup> Stage forest clearance and submitted the compliance report to the IRO, MoEF&amp;CC, Guwahati. IRO office advised OIL to submit the Environmental Clearance of MKD &amp;</p>
--	--	--	--	--

			installations and laying of gas pipeline in an area of 82 ha. in Mechaki area covering Mechaki, Mechaki Extension, Baghjan and Tinsukia Extension PMLs in District Tinsukia, Assam.	MKE wells for grant of Final Forest Clearance.
--	--	--	---	--

*Co-Ordinates of Proposed Wells:*

<b>#</b>	<b>Well Name</b>	<b>Latitude</b>	<b>Longitude</b>	<b>Village</b>	<b>District</b>
1.	MKD	27°43'22.59 6" N	95°38'55.65 6" N	Mechaki RF	Tinsukia
2.	MKE	27°42'41.60 9" N	95°41'20.93 2" N	Mechaki RF	Tinsukia

4. The proposal was appraised by the Expert Appraisal Committee (Industry-2) in the Ministry in its 02<sup>nd</sup> meeting held during 29<sup>th</sup> -30<sup>th</sup> March, 2022. The EAC, after detailed deliberations found the justifications satisfactory and recommended the amendment in EC as proposed by the project proponent with all other terms and conditions remain unchanged.

5. Based on recommendations of the EAC, the Ministry of Environment, Forest and Climate Change hereby accords approval to

*the proposed amendment in EC granted by the Ministry vide letter No.IA-J-11011/1260/2007-IA-II(I) dated 9<sup>th</sup> April, 2020 for the project “Onshore Oil & Gas Development Drilling and Production in Mechaki Area covering Mechaki, Mechaki Extension, Baghjan and Tinsukia Extension PMLs in Tinsukia District of Assam” in favour of M/s Oil India Limited. All other terms and conditions stipulated in the EC shall remain unchanged.”*

19. The Project Proponent has filed further additional affidavit dated 14.08.2022. Along with this affidavit, a copy of the full EIA Report has also been filed. The Respondent No.2 has filed additional affidavit again dated 10.04.2023 stating that para-50 of the Appeal also refers to the Hon’ble Supreme Court order dated 07.09.2017 in the matter of T.N. Godavarman Thirumulpad vs. UOI (I.A. No.3934 in W.P. (C) No.202 of 1995), wherein the Hon’ble Court had directed for carrying out Biodiversity Impact Assessment Study through State Biodiversity Board in relation to a similar project of the Project Proponent, with respect to drilling for exploration of hydrocarbons in close proximity to the Dibru Saikhowa National Park. It is also stated that subject matter of this litigation pertains to the issuance of Environmental Clearance dated 09.04.2020 for carrying out additional onshore Oil and Gas Development Drilling and Production from 16 wells and setting up of additional production installations and laying of gas pipelines in area of 82 ha. in Mechaki area in the district of Tinsukia, Assam. The area of operation in this Mechaki Block is therefore, in and around the boundary of Dibru-Saikhowa National Park itself and certain other

adjourning areas around 10 km of land mass overlapping with the similar project of OIL India Limited known as the Extended Reach Drilling (ERD) Wells beneath Dibru-Saikhowa National Park, Assam. With regard to the said Extended Reach Drilling (ERD) Project, the Assam State Biodiversity Board has proceeded to carry out a Biodiversity Impact Assessment Study and has submitted a Report. The Report clearly indicates that even after the Baghjan blow-out and other continued oil drilling activities, there has been a reporting of extensive and varied flora and fauna, which therefore, goes to suggest that oil drilling activities had never created any significant impact on the flora and fauna diversity of the area.

20. It is once again reiterated that in para-4 of the Memo of Appeal the Appellant has raised a controversy alleging that the Project Proponent had concealed information in Form-I which was submitted to the Ministry in 2017. The case of the Project Proponent on the other hand is that it is the appellants who have suppressed the fact that office memorandum dated 20.04.2018 was issued by the MoEF&CC, introducing a Form-II for providing detailed information and it is the said Form-II which is material in the process of granting the Environmental Clearance. Thus, there is no question of any concealment of materials by the Project Proponent from the Authority. The stand taken by the appellant that non providing of all information in Form-I would be a ground for setting aside of the Environmental Clearance, does not survive after the introduction of the office memorandum dated 20.04.2018.



21. It is further contended that the Project Proponent had engaged an approved consultant i.e., ERM India Pvt. Ltd. for preparation of the Environmental Impact Assessment Report and certain objections against the EIA Report has been projected by the Appellant. It is, however, stated that the Project Proponent had undertaken certain rounds of discussions with ERM India Pvt. Ltd. and on 23.02.2023, a detailed report has been provided by ERM India Ltd. in response to the allegations pertaining to the EIA Report and the same has been submitted to the Project Proponent on 23.02.2023. The said Report provides point by point clarification to the allegations raised by the appellant. The Report clearly indicates that there have been no anomalies in the study conducted by the ERM India Pvt. Ltd. Along with this affidavit, the Biodiversity Impact Assessment Study for the Proposed 7 Extended Reach Drilling Wells beneath Dibru-Saikhowa national Park (DSNP), Assam has also been filed.

22. Affidavit dated 15.11.2021 has been filed by Respondent No.3, State of Assam through the Department of Environment and Forest, stating therein that the boundary of ESZ of Dibru-Saikhowa National Park was reduced from a uniform 9.144 km to a range of 0.0 km to 8.7 km around the boundary of the National Park having a total area of the ESZ as 658.251 sq. km. As per the final notification of ESZ by the Ministry of Environment, Forests and Climate Change vide S.O. No.460(E) dated 28.01.2020, it was stated as follows-*“Zero extent of Eco-sensitive Zone was justified as-*

*Existence of crude oil and natural gas in the immediate vicinity of the southern side of the National Park Boundary.”*

23. It is further mentioned that for the purpose of managing the ESZ, the State Government is required to prepare a Zonal Master Plan. According to para 2 (4) of the draft notification dated 21.05.2018 and subsequently the final notification of the ESZ of Dibru-Saikhowa National Park dated 28.01.2020, it is stated that-  
*“The Zonal Master Plan shall not impose any restriction on the approved existing land use, infrastructure and activities, unless so specified in this notification and the Zonal Master Plan shall factor in improvement of all infrastructure and activities to be more efficient and ecofriendly.”* Since the existing crude oil drilling site was already in existence towards the southern boundary of the National Park, and the ESZ notification would not have modified the existing land use, therefore, it was kept outside the notified ESZ.

24. Affidavit dated 04.12.2020 has been filed by Respondent No.4, Assam State Biodiversity Board, stating that para-50 of the Appeal refers to “Biodiversity Impact Assessment and Public Consultation under the Biological Diversity Act, 2002, where the Appellant has referred to Section 36(4) of the Biological Diversity Act, 2002 which reads as under: -

*“(4) The Central Government shall undertake measures-*

*(i) Wherever necessary, for assessment of environment impact of that project which is likely to have adverse effect on biological diversity, with a view to avoid or minimize such effects and where appropriate provide for public participation in such assessment.”*

However, it is not an obligatory requirement that such study has to be conducted through State Biodiversity Boards, in the present case, through the Assam State Biodiversity Board.

25. It is stated that para-50 of the Appeal refers to the Hon'ble Supreme Court order dated 07.09.2017 in the matter of T.N. Godavarman Thirumulpad vs. UOI (I.A. No.3934 in W.P. (C) No.202 of 1995), wherein the Hon'ble Court had directed for carrying out Biodiversity Impact Assessment Study through State Biodiversity Board in relation to a similar project of the Project Proponent, with respect to drilling for exploration of hydrocarbons in close proximity to the Dibru Saikhowa National Park.

26. It is further submitted that the Board had received an official communication from the Oil India Limited on 28.01.2017 regarding 'Biodiversity Impact Assessment' for the proposed area of 7 Extended Reach Drilling (ERD) wells beneath Dibru-Saikhowa National Park (DSNP), seeking budgetary offer for such a study. In response, Board sent a budgetary offer of Rs.21.23 lakh for the 'Biodiversity Impact Assessment Study' to the General Manager (HSE) & Nodal Officer, Oil India Limited, Duliajan on 12.05.2017. After the submission of the budgetary offer on 12.05.2017, the Assam State Biodiversity Board, neither received any confirmation letter nor any kind of communication in this regard, from the Oil India Limited till 05.08.2020. It is further stated that the Assam State Biodiversity Board received an email communication from General Manager (HSE), S & E Department, Oil India Limited,

Duliajan on 21.08.2020 requesting to submit a fresh budget for Biodiversity Impact Assessment Study for Drilling of the Proposed 7 Extended Reach Drilling Wells Beneath the Dibru-Saikhowa National Park, Assam.

27. Another affidavit dated 07.09.2021 has been filed by Respondent No.4, Assam State Biodiversity Board, stating that upon acceptance of the proposal for the Biodiversity Impact Assessment Study by the Oil India Limited, the Assam State Biodiversity Board sought to partner with the International Union for Conservation of Nature (IUCN) for the study, in view of the fact that the said organization is an internationally reputed organization having expertise in the area of conservation of rare, threatened & endangered species of flora and fauna, across the world.

28. A Tripartite MoU was finally signed on 04.05.2021 between the Assam State Biodiversity Board, International Union for Conservation of Nature and Natural Resources (IUCN) and the Oil India Limited. As the Board had limited resources, manpower, technical tools at its disposal due to budgetary constraints and a Biodiversity Impact Study Assessment is a vast, lengthy, technically challenging and manpower intensive exercise, which would require the study to be carried out over a couple of seasons, therefore, the Board partnered with the International Union for Conservation of Nature (IUCN) for the study.

29. One more affidavit dated 15.12.2021 has been filed by Assam State Biodiversity Board, stating therein that the work for

Biodiversity Impact Assessment Study has been started at the identified sites after signing of the Tripartite Agreement on 04.05.2021 and the study comprises of the following major activities as per agreement:

- i. Undertake biodiversity assessment in and around the identified site;
- ii. Prepare Biodiversity inventory for the identified site;
- iii. Undertake Ecosystem Services Review (ESR) in and around identified drilling site;
- iv. Undertake impact and risk assessment as per IUCN standards in and around the identified site;
- v. Develop biodiversity mitigation and management plan for the sites;
- vi. Provide support and guidance in implementation of the Biodiversity Management Plan.

30. The study with tentative timeline as per the agreement is as under: -

<b>Sl. No.</b>	<b>Description of Deliverables</b>	<b>Timeline (with the signed contract date i.e. 04.05.2021)</b>	<b>Tentative Date of deliverables (as per timeline)</b>
1	Development of Project Plan Schedule and completion of 2 seasons on site Biodiversity assessment	7 months	04.12.2021
2	Rapid Biodiversity	11 months	04.04.2022

	Impact Assessment Report as per ASBB Guidelines		
3	Comprehensive Biodiversity & Ecosystem Inventory	16 months	04.09.2022
4	Biodiversity Management Plan (BMP) for the identified sites	22 months	04.03.2023
5	Biodiversity Action Plan (BAP) as per the BMP	25 months	04.06.2023
6	Technical Evaluation Report of the Biodiversity Action Plan	38 months	04.07.2024
7	Short Film on OIL Journey on integrating Biodiversity Conservation into its Business	40 months	04.09.2024

31. The Respondent No.5, Assam State Pollution Control Board has filed affidavit dated 28.12.2020 emphasizing that no material allegation and pleading has been made and filed by the Appellant against them. It is also stated that no public hearing was conducted while granting the Environmental Clearance for the proposed onshore oil gas development drilling and production in Mechaki area covering Mechaki, Mechaki Extension, Baghjan and Tinsukia extension in Tinsukia District of Assam.

32. It is further stated that public hearings were held on 07.07.2011 and 23.08.2011 for Tinsukia. A public hearing was held

on 26.12.2016 for Khagarijan Oil and Gas Steel Project, for the purpose of granting Environmental Clearance for the same. It is stated that the notice for public hearing was published on 22.11.2019 for conducting the public hearing on 24.12.2019 for proposed Khagorijan, North Hapjan, Tinsukia, Dhola, Doomdoma, Pendgree, Jorajan, Nahakatia-deohal-Bogapani, Nagajan and ERD Baghjan but due to prevailing situation (Anti CAA Agitation), it was postponed and re-fixed on 12.03.2020. Except ERD Baghjan, presentation of other locations was made by M/s Oil India Ltd. Hence, public hearing of ERD Baghjan was not held and no public hearing was held for Mechaki area covering Mechaki, Mechaki extension. It is further stated that apart from those public hearings, for the aforesaid areas, no other public hearing has been conducted by the respondent.

33. Affidavit dated 10.12.2020 has been filed by Respondent No.6, Assam State Wetland Authority, stating that no commission or omission on part of the Assam State Wetlands Authority has been brought out in Appeal. It is stated that the Assam State Wetlands Authority has been impleaded as a respondent, perhaps due to the fact that the incident of blowout of Baghjan-5 Oil Well has reportedly caused damage to the Maguri-Motapung Wetland that exists in proximity of the Dibru-Saikhowa National Park. It is further stated that Rule 3 of the Wetland (Conservation and Management) Rules, 2017 provides that *“these rules shall not apply to the wetlands falling in areas covered under the Indian Forest Act, 1927, the Wildlife (Protection) Act, 1972, the Forest (Conservation)*

*Act, 1980, the State Forest Acts, and the Coastal Regulation Zone Notification, 2011 as amended from time to time”.*

34. It is, fairly, stated that the Ministry of Environment, Forests and Climate Change vide its Notification dated 28.01.2020, notified the Eco-sensitive Zone (ESZ) of the Dibru-Saikhowa National Park. The Maguri-Motapung wetlands, which is the area of concern in the present Appeal and which was reportedly affected by the blowout of Baghjan-5 well, falls within the Eco-sensitive Zone of Dibru-Saikhowa National Park. In the Eco-sensitive Zone Notification at para-4 under the heading ‘List of activities prohibited or to be regulated within Eco-sensitive Zone’ it has been mentioned that *“All activities in the Eco-sensitive Zone shall be governed by the provisions of the Environment Act and the rules made thereunder including Coastal Regulation Zone, 2011 and the Environmental Impact Assessment Notification, 2006 and other applicable laws including the Forest (Conservation) Act, 1980 (69 of 1980), the Indian Forest Act, 1927 (16 of 1927), the Wildlife (Protection) Act, 1972 (53 of 1972) and amendments made thereto and be regulated in the manner specified in the Table below...”*.

35. It is further stated that in para-5 of this Eco-sensitive Zone Notification a Monitoring Committee for monitoring the Eco-sensitive Zone has been notified. This Committee comprises of sixteen members including the Commissioner Upper Assam Zone, Jorhat as the Chairman (ex officio). The detailed Terms of Reference of the Monitoring Committee are elaborated at para-6 of the Eco-



sensitive Zone Notification. The Management of the activities in the Maguir-Motapung wetlands, that falls within the Eco-sensitive Zone, would lie with the notified Monitoring Committee and not with the Assam State Wetlands Authority.

36. Per contra, the Appellant has filed a joint rejoinder affidavit dated 05.01.2022 to the affidavits of the Respondents and summarized the main contentions of the Respondent Nos.2, 4 and 6 as under: -

*“a) Exemption from public hearing was granted since detailed public hearing for another project had been conducted in the same area and EAC is empowered to grant exemption from public hearing.*

*b) Upon notification by Respondent No.1, S.O.460(E) dated January 28, 2020 the impugned project does not fall within Eco Sensitive Zone of Dibru-Saikhowa National Park.*

*c) No need for cumulative impact due to proximity with other existing projects in the area.*

*d) Form-I was based only on preliminary data and full details provided in Form-2, presentation before EAC and EIA Report.*

*e) Interim Report of Expert Committee constituted by NGT in OA No.44 of 2020 (EZ) cannot be relied upon.*

*f) Mismatch in coordinates of ambient air quality monitoring stations is because of geographic unit related representation error and the data does not alter the outcome of impact assessment.*

*g) EIA Report adequately deals with issues related to pipe laying.*

*h) EIA Report covers Risk Assessment Study and prevention and mitigation measures related to blow outs.*

*i) EIA Report contain measures regarding impact of noise due to project on wildlife.*

*j) Respondents area in the process of conducting detailed Biodiversity Assessment.*

*k) Management of activity in Mapuri-Motapung Wetland lies with Notified Monitoring Committee and not Assam State Wetlands Authority.”*

37. The learned Counsel for the Appellant reiterated that public consultation is a mandatory requirement under the EIA Notification, 2006 and should be separate for each project. The EIA Notification nowhere contemplates substitution of public hearing for one project with another. There is no provision in the said notification regarding the possibility of substituting public hearing for one project with the public hearing for another project. Therefore, public hearing conducted for Respondent No.2, Project, cannot be considered to be public hearing for the present impugned project even if they are in the same district. It was also submitted that grant of exemption from public hearing completely defeats the object and purpose of public consultation under the EIA Notification, 2006 which is to ascertain the material concerns of local affected persons and others who have a plausible stake in the environmental impacts of the impugned project. Learned Counsel submitted that a bare perusal of the 21<sup>st</sup> EAC Minutes of Meeting shows that the EAC has not applied its mind in granting exemption from public hearing; that paragraph 21.07.8 of the said meeting

shows that the EAC has granted exemption from public hearing without giving any reasons for the same except a bare statement that it was pursuant to “detailed deliberations” and a simpliciter exemption being granted under paragraph 7 (ii) of the EIA Notification. It is contended that Respondent No.2 seeks to bypass statutory provisions under various pretexts to the detriment of local communities and others who have a stake in the environmental effects of Respondent No.2, Project. It is submitted that violation of statutory provision with respect to public consultation before grant of EC to any project would lead to irreparable loss and damage and would defeat the entire purpose of the EIA Notification, 2006.

38. It is further contended that the Respondent No.2 is relying on a restrictive reading of the EIA Notification, 2006 in contending that para 7 (i) and para (ii) are to be read without any reference to each other and in isolation with each other. It is submitted that it is a basic rule of interpretation of a statute that the same has to be read in its entirety. Para 7 (i) gives details of the necessity of public consultation and the manner in which the same is to be conducted. Para 7 (ii) deals with expansion projects or projects where there is increase in production capacity and requires examination by EAC or SEAC to decide after due diligence necessary, including preparation of EIA and public consultations. It is submitted that the two paragraphs have to be read together to understand the reasons, method and manner in which public consultation ought to be done. Thus, the mode, method and manner of public consultations will have to be as laid down in para 7 (i) which necessitates that para 7

(i) and para 7 (ii) be read together to give full effect to the EIA Notification and its objectives. Thus, the contention of Respondent No.2 that para 7 (ii) has to be read in isolation with para 7 (i) is denied. It is submitted that a conjoined reading of the same is necessary. If the contention of the Respondent No.2 is accepted, it would completely defeat the purpose of EIA Notification, 2006.

39. The Appellant has again denied all contentions raised by Respondent No.2, Project Proponent, to the effect that upon notification by MoEF&CC vide S.O. 460(E) dated 28.01.2020 the impugned project does not fall within Eco-sensitive Zone of Dibru-Saikhowa National Park. It is alleged that the Notification dated 28.01.2020 issued by Respondent No.1 was passed due to the pressure exerted by Respondent No.2. It is submitted by the learned Counsel for the Appellant that the purpose of declaration of Eco-sensitive Zones around protected areas is to create a 'shock absorber' and a transition zone between highly protected areas and areas requiring less protection. Irrespective of the notification and the reduction of the area notified as Eco-sensitive Zone around Dibru-Saikhowa National Park the activity of Respondent No.2 is in such close proximity to an ecologically sensitive area that it will disturb the environment including the wildlife which treats the area as its habitat.

40. It is further contended that the stand of the State Government Respondent No.3 that since existing crude oil drilling site was already in existence towards the southern boundary of the National

Park and the Eco-sensitive Zone notification would not have modified the existing land use, therefore, it was kept outside the notified Eco-sensitive Zone is not correct. It is reiterated and alleged that the notification dated 28.01.2020 issued by MoEF&CC was passed due to the pressure exerted by Respondent No.2. It is contended by the Appellant that previous draft notifications in this regard expressly sought to maintain a 9.144 km Eco-sensitive Zone around Dibru-Saikhowa National Park, but due to pressure by Respondent No.2, as was recorded in 37<sup>th</sup> Meeting of the Expert Committee for declaration of Eco-sensitive Zones, the Eco-sensitive Zone at the southern boundary of Dibru-Saikhowa National Park was reduced to 0 km.

41. The appellant emphasized the necessity to do a cumulative impact assessment of the multiple drilling projects in an area which is ecologically sensitive. It is submitted that the additional projects along with the present impugned project collectively create an impact on the wildlife and ecology by the mere fact of their existence in admittedly ecologically sensitive area. The presence of construction, heavy machinery etc. already create impediments in an area which is adjacent to a National Park, covers the Dehing Patkai Elephant Reserve and is close to the Mapori-Motapung Wetlands.

42. The Appellant once again contended that Form-1 forms the basis of the entire appraisal process and concealment of information therein cannot be countenanced especially if such

information could and should have been produced at the time of filing of Form-1 with proper and due diligence. It is also stated that Form-1 is the basis for the entire scoping aspect of environment impact assessment and any deficiencies in the scoping process renders the entire subsequent process to be of no practical use.

43. It is contended by the learned Counsel for the Appellant that the Respondent No.1 has ignored the deficiencies and outright falsities in the Form-1 submitted by Respondent No.2 even though the Respondent No.2 admits in paragraph 34 of the reply that noise impact of impugned project has been rated as 'Major' on account of presence of sensitive wildlife habitats in the Mechaki Block. The Appellant asserts that the mitigation measures proposed by Respondent No.2 are inadequate in as much as the project will be within a kilometer range of the Dibru-Saikhowa National Park and thus, no amount of mitigation can be sufficient to prevent the irreparable damage to the wildlife species in the area, their habits and existence. It is also stated that the impact of the noise on birds is also not denied by Respondent No.2. Other respondents have not responded to the said issue of deficiency in EIA Report regarding impact of noise.

44. The Respondent No.5, Assam State Pollution Control Board has stated in paragraph 6 (f) of their affidavit that no public hearing was conducted for Mechaki area covering Mechaki, Mechaki Extension. It is also stated that Respondent No.5 has not been

directed by Respondent No.1 to conduct public hearing regarding the impugned project.

45. The case was finally heard on 11.10.2023 and during the hearing, learned Counsel for the Respondent No.4 submitted that Status Report/Final Technical Report on Biodiversity Impact Assessment Study is ready. The Tribunal therefore, directed the Respondent No.4 to file the same on affidavit which has been submitted in the office of the Tribunal on 13.10.2023. Along with this affidavit, the Biodiversity Impact Assessment Study for the proposed 7 Extended Reach Drilling wells beneath Dibru-Saikhowa National Park, Assam has also been filed.

46. We have heard the learned Counsel for the Appellants as well as learned Counsel for the Respondents and perused the documents on record.

47. During the hearing the Appellant has argued vehemently that concealment of facts in Form-I makes the EIA Report erroneous and Environmental Clearance based on erroneous EIA Report should be quashed. The Appellant has relied on the judgment passed by Hon'ble Supreme Court in (2019) 15 SCC 401, *Hanuman Laxman Aroskar vs. Union of India & Ors.* The relevant paragraph of the judgment reads as under: -

*“72. .... The disclosure in Form 1 constitutes the very foundation of the process which is initiated on the basis of the information supplied by the project proponent. Following the disclosure in Form 1, ToR are formulated, and this leads to the preparation of the EIA report. A duty is cast upon the*

*project proponent to make a full, complete and candid disclosure of all aspects bearing upon the environment in the area of study. The project proponent cannot profess an ignorance about the environment in the study area. The project proponent is bound by the highest duty of transparency and rectitude in making the disclosures in Form 1.”*

48. Per contra, the Respondent No.2, the Project Proponent, has contended that the ToR is not given only on the basis of details provided in Form-1 but a detailed presentation was also made before the Expert Appraisal Committee where the information related to environmental sensitivity in the block were discussed and ToR was approved by the MoEF&CC for the EIA Study. The Respondent No.2 further contends that MoEF&CC has streamlined the process of submission of details for ToR/EC under the Environmental Impact Assessment Notification, 2006 vide its Office Memorandum F.No.22-8/2018-IA.III dated 20.04.2018. In accordance with this Office Memorandum, application seeking prior Environmental Clearance of the Petroleum Project has been submitted in the prescribed Form-II. Learned Counsel for the Project Proponent has submitted that all information has been given in Form-2 which is available at page no.1652 to 1657 of the paper-book, therefore, neither ToR nor the Environmental Clearance is based on deficient data or inadequate details. From the details of the case it is quite apparent that ecologically sensitive aspects of the project area have been discussed at length in EIA Report. In addition to that 'Biodiversity Impact Assessment' Study for the proposed 7 Extended Reach Drilling (ERD) Wells beneath



Dibru-Saikhowa National Park, Assam, has been prepared by the State Biodiversity Board in association with the International Union for Conservation of Nature & Natural Resources (IUCN), New Delhi. Based on the secondary literature review and primary observations, the study takes into consideration the impacts and risks associated with all phases of OIL's exploration activities on biodiversity and ecosystem service. Management Plan has also been recommended to mitigate each impact and risks identified by the asset. The risks, impact and their associated action are summarized in the following table: -

<b>Mitigation Hierarchy</b>	<b>Management Plan</b>	<b>Impacts mitigated</b>	<b>Impact Category</b>	<b>Biodiversity Risk</b>
<i>Avoidance</i>	<i>Action 1: Construction of a green wall along the boundary of the ERD surface locations</i>	<i>Impact 1: There will be an increase in the ambient noise levels in and around the drill sites due to the project activities, which will lead to changes in species abundance, and disruption of species communication, breeding, nesting and roosting patterns.</i>	<i>High</i>	<i>Moderate</i>
	<i>Action 2A) Identification and Monitoring of Fish</i>	<i>Impact 2: Increase in underwater</i>	<i>Medium</i>	<i>Minor</i>

<p><i>breeding and pools site</i></p> <p><i>Action 2B) Identification and Monitoring of river turtle species</i></p> <p><i>Action 2C) Third-Party Monitoring of Ganges River Dolphin using Passive acoustic monitoring (PAM)</i></p>	<p><i>noise and vibration in the river water by the equipment and machinery used during the drilling would be immediate surrounding area and would hamper the natural movement of dolphins, fishes, and turtles, which would prevent them from meeting their biological requirements. It may also affect the echolocation properties of dolphins.</i></p>		
<p><i>Action 3a) Use of retrofitted emission control equipment for DG sets with duel fuel technology</i></p> <p><i>Action 3b) Water sprinkling for the vehicular dust and fugitive emissions during operations</i></p> <p><i>Action 3c) Minimal use of routes passing through Bherjan Borajan</i></p>	<p><i>Impact 3: Air pollutants can affect wildlife through the disruption of endocrine functions, organ injury, Increased vulnerability to stresses and diseases; lower Reproductive success, and possible</i></p>	<p><i>Medium</i></p>	<p><i>Minor</i></p>

<p><i>Podumoni Wildlife Sanctuary Action 3d) Regular care and maintenance for vehicles and drilling equipment</i></p>	<p><i>mortality.</i></p>		
<p><i>Action 7: Increasing the High-Density Polyethylene (HDPE) lined pit wall's height</i></p>	<p><i>Impact 8: Surface runoff during monsoon season from the construction site, construction material &amp; waste storage area and spillage area have the potential to degrade soil quality due to deposition of foreign materials, hydrocarbon and other hazardous waste.</i></p>	<p><i>Medium</i></p>	<p><i>Minor</i></p>
<p><i>Action 9: Construction of floating treatment wetlands and reusing the top soil</i></p>	<p><i>Impact 12: Site clearance and stripping of top soil during site construction may result in increase in soil erosion and loss of fertile soil.</i></p> <p><i>Impact 13: Increase in load in the surface run-off</i></p>	<p><i>Low</i></p>	<p><i>Minor</i></p>
		<p><i>Medium</i></p>	<p><i>Minor</i></p>

		<i>will in turn increase the suspended solids load on Immediate surroundings, which may affect local floral and ecosystems.</i>		
<i>Action 11: Prevention of animal - human conflict</i>	<i>Impact 15:</i>	<i>Decreased habitat use and increase in the</i>	<i>Very high</i>	<i>Severe</i>
<i>Action 11a) Minimal use of routes passing through Bherjan Borajan Podumoni Wildlife Sanctuary</i>	<i>Impact 16:</i>	<i>Road kill of native fauna/ livestock. Damage to existing nearby flora</i>	<i>Very high</i>	<i>Severe</i>
<i>Action 11b): Studying animal mortality due to collision with vehicles</i>				
<i>Action 11c) Installation of reflective signboards</i>				
<i>11d) Installation of reflective speed breakers and adding speed limit regulations</i>				
<i>Action 11e) Preventive measures to minimize Human-Animal conflict on</i>				

	<i>encountering wild animals</i>			
	<i>Action 12: Safe practices using groundwater resources</i>	<i>Impact 17: Over ground water may lower the ground water table</i>	<i>Low</i>	<i>Minor</i>
		<i>Impact 18: During drilling activity, different aquifer will be intersected which may get contaminated by chemicals, lubricants, oil etc.</i>	<i>Medium</i>	<i>Minor</i>
<i>Avoidance and Minimization</i>	<i>Action 10: Use of dark sky friendly lighting practices</i>	<i>Impact 14: Illumination with artificial lighting as drilling is conducted continuously for 24 hours and thus may cause significant effects on local faunal species like 1) they might abandon breeding or roosting. 2) Change in migratory patterns 3) Biological stress on animals</i>		

<p><i>Minimization</i></p>	<p><i>Action:4</i> <i>Construction of floating treatment wetlands</i></p>	<p><i>Impact 4:</i> <i>Wastewater and formation water will be Generated during drilling activity and the domestic wastewater from the labor camps, which may contain chemical and biological contaminants. If discharged untreated may adverse affect the surface water quality.</i></p>	<p><i>Medium</i></p>	<p><i>Minor</i></p>
		<p><i>Impact 5:</i> <i>Surface runoff from drilling waste (cuttings and drilling mud) storage areas, hazardous waste (waste oil, used oil, etc.) storage areas and chemical storage areas is likely to be contaminated and have the potential to impact the water quality of the receiving</i></p>	<p><i>Medium</i></p>	<p><i>Minor</i></p>

		<p><i>water body. This will affect the ecologically sensitive areas water body like migratory and resident birdhabitats, breeding and nursing ground for fishes, and the habitat Dolphin.</i></p> <p><i>Degradation of water quality will affect the primary productivity of the river.</i></p>		
	<p><i>Action 5: Solid waste management plan for the ERD locations</i></p>	<p><i>Impact 6: Contamination of soil due to spillage of hazardous waste, chemicals, cement, fuel, lubricants, (spent batteries, and e-waste and municipal waste affects the soil microbes and bacterial growth and can affect the soil quality</i></p> <p><i>Impact 9: Kitchen Waste from Labor camps if not</i></p>	<p><i>Medium</i></p> <p><i>Low</i></p>	<p><i>Minor</i></p> <p><i>Minor</i></p>

		disposed properly can attract rodents, Snakes, monkeys etc. that may lead to human wildlife conflict on the site.		
	Action 6: Preventive measures for contamination due to accidental spillage	Impact 7: Spillage of drill cuttings, drilling mud and drilling fluid during storage on the nearby open soil may lead to change Characteristics due to chemical contamination.	Low	Minor
	Action 13: Construction for underpass below the approach road	Impact 19: Alteration of onsite micro drainage pattern leading to potential problems of water logging in the agricultural land and low-lying areas, which may affect habitats of reptiles, and mortality of floral species.		
Restoration	Action 14: Restorative Practices after	Impact 10: Change in Land use and species	Very high	Severe



	<i>decommissioning</i>	<i>composition alongwith loss of native vegetation.</i>		
<i>Offset</i>	<i>Action 8: Offset plantations with Native species and offset monitoring.</i>	<i>Impact 10: Change in Land use and species composition along with loss of native vegetation.</i> <i>Impact 11: Faunal dispersal and loss of feeding ground.</i>	<i>Very high</i>	<i>Severe</i>
<i>In case of extreme events</i>				
<i>Action 15: Formation of wildlife rescue teams and creating a network of veterinary hospitals and refuge sites</i>				
<i>Action 16: Clean-up of Oil spill on surface water</i>				
<i>Additional Conservations Efforts</i>				
<i>Action 17: Connecting fragmented forests and homestead plantations for Hoolock Gibbon populations.</i>				

*As three of the identified risks, i.e. Impact 10, Impact 15, and Impact 16 fall in the ‘Severe category’ in the biodiversity risk matrix, it can be concluded that the overall risk for the given study on Biodiversity is ‘HIGH’.*

*In case of extreme events such as blowouts, as four of the identified risks, i.e. Impact 23, Impact 24, Impact 26, and Impact 29 fall in the Severe category in the biodiversity risk matrix, along with above mentioned three impacts, it can be concluded that the overall risk for the given study on Biodiversity is ‘HIGH’.*

*With the implementation of the actions in the management plan recommended, the anticipated impacts can be minimized.”*

49. The impugned Environmental Clearance dated 09.04.2020 itself entails certain general and specific conditions which take care of oil spillage, prevention and mitigation; action plan for cleaning the oil spillage and contamination. Therefore, the Environmental Clearance does not appear to be deficient due to the lack of information in Form-I.

50. The Appellant has opposed the exemption from public hearing recommended by EAC. The Appellant has based his arguments on the judgment of Hon'ble Supreme Court in case of Hanuman Lakshman Aroskah (supra), in (2016) 9 SCC 300, Electrotherm (India) Ltd. vs. Patel Vipulkumar Ramjibhai, and the Hon'ble High Court in Writ Petition (Civil) No.9317 of 2009 and contends that the public hearing is a mandatory requirement of EIA Notification, 2006. The learned Counsel further contended that no executive order can bypass the statutory provision and public hearing is a statutory provision in the EIA Notification, 2006.

51. The Respondent No.2 in this regard has brought to our notice that public hearing was exempted considering that public hearings had already been held in Tinsukia District in the month of July and August, 2011 and in again December, 2016 for proposals falling within the Michaki area and accordingly, for the Michaki Block Expansion Project falling in Tinsukia District public hearing was exempted. The Project Proponent has referred to MoEF&CC Office Memorandum dated 09.08.2018 at page no.508 of the paper-book, under which the EAC has been authorized to modify, delete and

add conditions in the enclosed standard EC condition based on the Project specific requirements after due diligence. Public hearing and human health issues is also included in the enclosed condition at page no.515 of the paper-book.

52. The learned Counsel for the Project Proponent submitted the full Minutes of the 21<sup>st</sup> EAC (Industry-2) Meeting held on 27<sup>th</sup> to 29<sup>th</sup> March, 2017 and argued that under the Agenda No.21.7.3 public hearing was exempted under para 7(ii) of EIA Notification, 2006 in the same meeting for similar project of the M/s ONGC, and thus, it is not a favour granted to this Project and is in line with the consistently established practice by the EAC for other similar projects. The learned Counsel further argued that under Office Memorandum No.J-11013/41/2006-IA-II (I) (Part) dated 29.08.2017 the validity period of ToR is three years. In Tinsukia District, the public hearing was done for similar project on 26.12.2016 and this project was submitted for Environmental Clearance on 24.09.2019, thus, it was within the period of three years and therefore, the exemption of public hearing is in order. The project area is part of the same oil bearing area and public hearing has happened in the past within the period of three years as well. The EAC has recommended that at least Rs.5 crores shall be allocated for Corporate Environment Responsibility (CER) and item-wise details proposed with time bound action plan shall be properly implemented and occupational health surveillance of the workers shall be carried out as per the prevailing Acts and Rules. Thus, adequate safety for the health conditions of the employees and also

obligation under corporate environmental responsibility have been envisaged in the EAC recommendations as well as EC conditions. Therefore, the project takes care of the health and social issues of local people and employees as well despite exemption from public hearing.

53. The Appellant has also alleged lack of cumulative impact assessment study. The MoEF&CC in its affidavit has affirmed that Ministry has issued earlier EC vide letter No.F.No.J-1101/1260/2007-IA II (I); dated 02.11.2011 to the existing project Drilling of Exploratory Well (6 Nos.) at Mechaki Area, District Tinsukia, Assam in favour of M/s Oil India Limited. Certified compliance report has been forwarded by Ministry's Regional Office (site visit during 7<sup>th</sup>, 14<sup>th</sup> June, 2016), vide letter dated 05.07.2016 and presently there is no project activity/operations being carried out in the drill locations.

54. The MoEF&CC has further affirmed in its affidavit that EAC has deliberated on the ambient air quality monitoring which was carried out at 8 locations during October-December, 2017 and the baseline data indicates the ranges of concentrations as: (PM<sub>10</sub>) 77-89 µg/m<sup>3</sup> (PM<sub>2.5</sub>) 39-48 µg/m<sup>3</sup> (SO<sub>2</sub>) 5.4-6.2 µg/m<sup>3</sup> and (NO<sub>2</sub>) 19-24 µg/m<sup>3</sup> AAQ modeling study for point source emissions indicates that the maximum incremental Ground Level Concentrations (GLCs) after the proposed project would be 0.167 µg/m<sup>3</sup>, 13.01 µg/m<sup>3</sup> and 30.994 µg/m<sup>3</sup> with respect to PM<sub>10</sub>, SO<sub>x</sub> and NO<sub>x</sub>. The Committee found the AAQ monitoring to be satisfactory and noted

that the resultant concentrations are within the National AAQ Standards. As projects approved under earlier EC are not in operations, consideration of the baseline data in terms of environmental parameters and incremental change to be made by the project should be within the permissible limit. Thus, the allegations of adverse cumulative effect does not hold good.

55. The Appellant has raised the issue of reduction in the distance of environmental sensitive zone from the project area and alleged that this has been done on the pressure of the Respondent No.2. The allegation is not supported by any evidence. The learned Counsel for the Project Proponent has countered the allegation of the Appellant stating that draft ESZ Notification is uploaded in the public domain by the MoEF&CC for inviting comments from all stakeholders and after consideration of those comments, the final ESZ is notified. Therefore, the allegation is baseless. Even the State of Assam in its affidavit has clearly affirmed that the boundary of the ESZ of Dibru-Saikhowa National Park was reduced from uniform 9.144 km to a range of 0.0 km to 8.7 km around the boundary of the National Park due to existence of crude oil and natural gas drills in the immediate vicinity of the southern side of the National Park Boundary. Further, for efficient management of ESZ, the State Government is required to prepare a Zonal Master Plan and the ESZ Notification requires that the Zonal Master Plan shall not impose any restriction on the approved existing land use, infrastructure and activities, unless so specified in this notification and the Zonal Master Plan shall factor in improvement of all

infrastructure and activities to be more efficient and eco-friendly and therefore, as the crude oil drill inside were already in existence towards the southern boundary of the National Park the ESZ Notification would not have modified the existing land use and the Project activity was kept outside the notified ESZ area. We may also observe that the Notification of ESZ area is altogether a separate issue other than impugned EC and is not a part of the Environmental Clearance of this Project and it is not open for the Appellant to assail the same in the present proceedings.

56. The Appellant has quoted various discrepancies and alleged that EIA Report is just a copy paste from EIA Report of Bhagjan Project and does not take into consideration the impact on rich biodiversity of the landscape of the present project. It is alleged that the risk assessment is shoddy and erroneous and considers the project risks As Low as Reasonably Practicable (ALAP) using SINTEF Offshore Blowout Database 2010 Report of Scandpower Risk Management for blowout frequency analysis. According to the Appellant this model is highly problematic. Similarly with respect to gas pipeline failure frequency assessment the EIA consultant has relied on data from the European Gas Pipeline Incident Data Group (EGIG) database to get data on primary gas pipeline failure frequencies over the entire period of 1970-2013, which may not even be really applicable in the present case.

57. The MoEF&CC in its affidavit has attached the Minutes of the EAC. The EAC is constituted under the provisions of the EIA

Notification, 2006 and comprises of Expert Members/domain experts in various fields who have examined the proposal submitted by the Project Proponent along with EIA/EMP Report prepared and submitted by the Consultant accredited by the QCI/NABET on behalf of the Project Proponent. The EIA Report for this Project has been prepared by ERM India Pvt. Ltd. which is a NABET approved EIA Consultant. The EAC while recommending the grant of Environmental Clearance has subjected the same to compliance of certain terms and conditions. The conditions of the EAC Report reads as under: -

*“14.5.4.2 The EAC, after deliberations, recommended the project for grant of environmental clearance, subject to compliance of terms and conditions as under: -*

- (i) The environmental clearance is subject to obtaining prior clearance from the wildlife angle, including clearance from the Standing Committee of the National Board for Wildlife, a applicable. Grant of environmental clearance does not necessarily imply that Wildlife Clearance shall be granted to the project and that their proposals for Wildlife Clearance will be considered by the respective authorities on their merits and decision taken.*
- (ii) As committed no drilling shall be carried out in the forest areas.*
- (iii) Necessary permission as mandated under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, as applicable from time to time, shall be obtained from the State Pollution Control Board.*

(iv) To control source and the fugitive emissions, suitable pollution control devices shall be installed to meet the prescribed norms and/or the NAAQS. The gaseous emissions shall be dispersed through stack of adequate height as per CPCB/SPCB guidelines.

(v) Necessary authorization required under the Hazardous and Other Wastes (Management and Trans-Boundary Movement) Rules, 2016, Solid Waste Management Rules, 2016 shall be obtained and the provisions contained in the Rules shall be strictly adhered to.

(vi) Ambient air quality shall be monitored at the nearest human settlements to ensure conformity with the National Ambient Air Quality Emission Standards issued by the Ministry vide GSR No.826(E) dated 16<sup>th</sup> November, 2009 for PM<sub>10</sub>, PM<sub>2.5</sub>, SO<sub>2</sub>, NO<sub>x</sub>, CO, CH<sub>4</sub>, HC, Non-methane HC etc.

(vii) During exploration, production, storage and handling, the fugitive emissions of methane, if any, shall be monitored using Infra-red camera/appropriate technology.

(viii) The project proponent also to ensure trapping/storing of the CO<sub>2</sub> generated, if any, during the process and handling.

(ix) Approach road shall be made pucca to minimize generation of suspended dust.

(x) The company shall make all arrangements for control of noise from the drilling activity. Acoustic enclosure shall be provided for the DG sets along with the adequate stack height as per CPCB guidelines.



(xi) Total fresh water requirement shall not exceed 40 cum/day/well proposed to be met through tankers. Mobile ETP shall be installed to treat the waste water and efforts shall be made for gradual reduction in daily intake of water (to reduce fresh water foot print) by suitable mechanism or by putting RO facility in place coupled with onsite mobile ETP. Size of the waste shall be equal to the hole volume+volume of drill cutting and volume of discarded mud if any. Two feet free board may be left to accommodate rain water. There shall be separate storm water channel and rain water shall not be allowed to mix with waste water. Alternatively, if possible pit less drilling be practiced instead of above.

(xii) The company shall construct the garland drain all around the drilling site to prevent runoff of any oil containing waste into the nearby water bodies. Separate drainage system shall be created for oil contaminated and non-oil contaminated. Effluent shall be properly treated and treated wastewater shall conform to CPCB Standards.

(xiii) Drill cuttings separated from drilling fluid shall be adequately washed and disposed in HDPE lined pit. Waste mud shall be tested for hazardous contaminants and disposed according to HWMH Rules, 2016. No effluent/drilling mud/drill cutting shall be discharged/disposed off into nearby surface water bodies. The company shall comply with the guidelines for disposal of solid waste, drill cutting and drilling fluids for onshore drilling operation notified vide GSR.546(E) dated 30<sup>th</sup> August, 2005.

(xiv) Oil spillage prevention and mitigation scheme shall be prepared. In case of oil spillage/contamination, action plan shall be prepared to clean the site by

*adopting proven technology. The recyclable waste (oily sludge) and spent oil shall be disposed of to the authorized recyclers.*

*(xv) The Company shall take necessary measures to prevent fire hazards, containing oil spill and soil remediation as needed. Possibility of using ground flare shall be explored. At the place of ground flaring, the overhead flaring stack with knockout drums shall be installed to minimize gaseous emissions during operation.*

*(xvi) The company shall develop a contingency plan for H<sub>2</sub>S release including all necessary aspects from evacuation to resumption of normal operations. The workers shall be provided with personal H<sub>2</sub>S detectors in locations of high risk of exposure along with self containing breathing apparatus.*

*(xvii) Blow Out Preventer System shall be installed to prevent well blowouts during drilling operations.*

*(xviii) Emergency Response Plan shall be based on the guidelines prepared by OISD, DGMS and Govt. of India.*

*(xix) After completion of drilling process, suitable measures shall be taken for well plugging and secured enclosures, and drilling site shall be restored to the original condition. In case of the hydrocarbon not found economically viable, a full abandonment plan shall be implemented for the drilling site in accordance with the applicable Indian Petroleum Regulations.*

*(xx) At least Rs.5 crores shall be allocated for Corporate Environment Responsibility (CER) and item-wise details*

*proposed with time bound action plan shall be properly implemented.*

*(xxi) Occupational health surveillance of the workers shall be carried out as per the prevailing Acts and Rules.*

*(xxii) Company shall prepare operating manual in respect of all activities, which would cover all safety & environment related issues and measures to be taken for protection. One set of environmental manual shall be made available at the drilling site/project site. Awareness shall be created at each level of the management. All the schedules and results of environmental monitoring shall be available at the project site office. Remote monitoring of site should be done.*

*(xxiii) The project proponent shall strictly comply the sector specific conditions as mentioned in the Ministry's Office Memorandum No.22-34/2018-IA.III, dated 9<sup>th</sup> August, 2018. The said OM is available at the Ministry's website (PARIVESH portal i.e. [www.parivesh.nic.in](http://www.parivesh.nic.in)). The grant of Environmental Clearance is further subject to compliance of generic conditions as mentioned in the Ministry's Office Memorandum No.22-34/2018-IA.III, dated 9<sup>th</sup> August, 2018."*

58. These conditions take care of various risks involved in the present Project. Though the Appellant has questioned the weaknesses of the models used by the consultant but he did not indicate any alternative for better model and therefore, there is no reason to not agree with the recommendations of the Expert Committee constituted for the purpose.

59. The Appellant disputed the geographical coordinates of the monitoring stations and it is stated that the consultant has used degree minutes second format in EIA Report to describe the latitude and longitude of the monitoring stations. The value of longitude ranges from  $0^{\circ}$  to  $180^{\circ}$  East or West and latitude from  $0^{\circ}$  to  $180^{\circ}$  North or South. Each degree can be divided into 60 minutes and each minute into 60 seconds. Therefore, the value of any coordinate will be always have value less than 60 for minutes and seconds while reporting any coordinates in degree, minutes and seconds format. However, out of 23 monitoring stations (10 for Noise, 4 for Ground Water, 4 for Surface Water and 5 for Soil), the coordinates of 19 monitoring stations have been given incorrectly in the EIA Report and it shows the manipulation of data without application of mind.

60. Arguing the issue, the learned Counsel for the Project Proponent submitted that during the preparation of the EIA Report the officials have periodically visited the block to check the progress of onsite of primary environmental monitoring. The locations of the monitoring stations have been accurately depicted on the map given in the figure 3.5 and 3.12. In these figures, the locations have been depicted by unique legends as well as the longitude and latitude value of locations is also given on the horizontal and vertical axes. The Project Proponent has submitted that the discrepancies are basically in the representation of the decimal point so it is because of the degree-decimal confusion that the values appear incorrect. Reading from the figures 3.5 and 3.6 of the EIA Report, the

locations are accurately described. Figure 3.5 depicts the Air, Noise, Metrological and Traffic Monitoring locations whereas figure 3.12 described Soil, Ground Water and Surface Water locations. The explanation put forth by the respondent appears reasonable and the same has been corroborated by the EIA Consultant.

61. India is an energy deficient country. Energy statistics 2023 published by Ministry of Statistics and Programme Implementation details that 33.2% of total crude oil reserve of India is found in western offshore whereas Assam is supposed to have 22.8% of the total estimated 651.77 million tonnes of crude reserve. Similarly, the maximum reserve of natural gas is in the western offshore (29.6%) followed also by eastern area (22.6%). Availability of and access to energy source are particularly essential for poverty reduction and for improvement of quality of life of the people in India. 31% of the energy consumption of India is from crude oil and 7% of the energy consumption is met by the natural gas. However, India is dependent on import for 85% of its crude oil requirement and around 50% of its natural gas requirement<sup>1</sup>. Import bill for crude oil was estimated to be around \$ 1,19,000 million in FY-22.

62. In such circumstances, increasing crude oil production is essential for India. Crude oil is a site specific mineral and therefore, cannot be drilled out from any other place except where it is found. Incidentally larger parts of oil bearing area fall in ecologically fragile zone of the country and therefore, utmost care for the

---

<sup>1</sup> <https://www.livemint.com/economy/domestic-crude-oil-production-up-2-1-to-2-5-mmt-in-july-imports-decline-6-3-yoy-ppac-11692702658786.html> dated 22.08.2023

environmental conservation is also necessary. Energy security is one among 15 Sustainable Development Goals (SDGs) globally agreed to be achieved by 2030. India is chasing the target very fast and therefore, modern energy is also necessary for the sustainable development of the country.

63. In the light of foregoing discussion, we dismiss the Appeal with the directions that the all environmental safeguards prescribed in the Environmental Clearance as well as recommendation and mitigation measures described in Biodiversity Impact Assessment Study referred above should be implemented strictly by the Project Proponent.

64. The MoEF&CC as well as the Monitoring Committee constituted to monitor Master Zonal Plan for Eco-sensitive Zone around the Dibru-Saikhowa National Park should regularly monitor and take necessary action to avoid any adverse environmental impact in the landscape of the Project site.

65. Interlocutory Applications, if any, stand disposed of accordingly.

66. There shall be no order as to costs.

.....  
**B. AMIT STHALEKAR, JM**

.....  
**DR. ARUN KUMAR VERMA, EM**

**Kolkata**  
**October 20, 2023**  
**Appeal No.08/2020/EZ**  
**MN**