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REPORT ON SPECIAL AUDIT OF PUDUCHERRY PORT DEVELOPMENT

**ISSUED BY
DEPARTMENTAL AUDITING ORGANIZATION
MINISTRY OF HOME AFFAIRS,
NEW DELHI**

CONTENTS

Sl. No.	Particulars	Pages
01.	Background	3 - 4
02.	Objective & Scope	5
03.	To examine whether due diligence has been exercised in selection of a private developer for development of Pondicherry Port on BOT basis and the procedure laid down by the Union Government in this regard has been followed by Government of Pondicherry.	6 - 9
04.	To examine whether Concession Agreement signed by Government of Pondicherry with the private developer has adequately safeguarded / secured interests of the Union Government / Government of Pondicherry.	10 - 13
05.	To examine whether adequate safeguards had been taken by Government of Pondicherry before transferring the land to the private developer.	14
06.	To examine whether the private developer has adhered to all the conditions put by Government of Pondicherry in Concession / Lease Agreement and any other Agreements and to report the development / construction activity, if any, which may have taken place over the land handed over to him	15
07.	Any other issue which may be relevant to the transfer of land to the private developer without prior approval of the Union Government.	16 - 19
08.	Conclusion	20 - 21
09.	Annexures	

Report on an Audit of Puducherry Port Trust

1. Background

1.1 The Pondicherry Port is a minor Port situated about 160 Km south of Chennai and comprises of an Old and New Port. The functioning of these ports is governed by Indian Port Act 1908 and is under the overall jurisdiction and control of Government of Puducherry. The traffic / cargo handled at port during last 15 years comprises of rice, wheat, molasses, cement, sugar, fluorspar, palmolein, timber etc. With the existing port facilities, only lighterage operations could be done. The lighterage operations are not possible round the year due to open sea conditions. Users with large volumes of cargo would prefer round the year operation. Therefore, the Government of Puducherry took a decision to develop the existing Pondicherry Port into deep water all weather port. Developing the existing port into a deep water port would require the construction of one or more breakwaters, Capital dredging as well as Navigational aids and therefore would involve huge capital investment.

1.2 During the year 1998 the Government of Puducherry (GOP) decided to develop Puducherry port with direct ship berthing facilities totally through private sector participation as per the liberalization policy adopted by the Government of India. The decision to engage private agencies was taken also because of the large investment required for the development of the port, which neither the Government of India nor the Government of Puducherry could provide. The privatisation of the Port being a new concept, involved preparation of the Tender document, Analysis of various offers, Evaluation of the best offer, Drafting of Memorandum of Understanding with the successful tenderer, which the officials of Government of Puducherry could not independently deal with. The subject being highly technical and specialized in nature, the Government decided to engage a suitable Consultant for the same. The Government engaged M/s RITES, New Delhi (a Government of India enterprise) for the consultancy services based on their previous experience in similar projects. Their offer was considered on single quotation basis and the Memorandum of Understanding between the Port Department, Pondicherry and M/s. RITES was executed in February 2000.

1.3 M/s. RITES called Expression of Interest (EOI) for Development of the Puducherry Port from Private Parties by publishing advertisements in various Newspapers during March 2000. In all, 48 parties indicated their interest in the project. The document for seeking "Initial Proposals" for short listing of parties was issued to all interested parties and they were requested to submit their Initial Proposals. Several parties requested extension of date for submission of the same to enable them to form consortiums. On the last date for submission of Initial Proposals, 5 parties/Consortiums submitted their proposals. These parties were then required to submit their "Detailed Proposals" for Evaluation based on which the final selection could be made. M/s RITES provided the report on Evaluation of Initial Proposals as well as the Invitation document for Detailed Proposals. They finally short-listed 4 private sector participants. Out of the 4 firms, only 2 firms namely (1)M/s Ashok

Leyland, Chennai (2) M/s Durgeshwari Shipping Limited, Chennai submitted their detailed proposal but failed to submit the valid Bank Guarantee of Rs. 10 Crores as Bid Security as per requirement. Therefore, the proposals were not accepted and the privatization of the port could not materialize. Subsequently the port was re-activated with the setting up of a Liquid Cargo Handling facility in August 2000 by a private export company, in the Old port after many years of non-usage. The firm utilized the Old Port facilities and exported about 1.00 lakh tonnes of molasses fetching revenue to the tune of Rs 23 lakhs, besides earning the much-needed Foreign Exchange. The Department also took up various important and need based works within the allocated budget to improve the Infrastructure facilities of the Port to provide better service to the ships and Port users.

1.4 In the third week of March 2003, the department again invited Expression of Interest (EOI) from private parties for the development of the Port by issuing advertisements in the all India editions of leading newspapers viz The Hindu, Indian Express and The Economic Times. Thirteen firms responded to the EOI and all these firms were asked to give a detailed presentation on their capabilities. Six firms gave their presentations on various dates during July and August 2003. The Port Privatisation Committee shortlisted two private firms namely M/s Ipco Menang, Singapore & M/s Larsen & Toubro, Chennai and the first firm was asked to conduct a Feasibility Study and submit a Detailed Project Report (DPR) for the development of Pondicherry Port. The private investor sought Extension of Time many times but did not submit the report as required. Therefore, the opportunity to develop the port was awarded to the second firm which also failed to deliver any result. Therefore the second effort by the Government to develop the port did not materialize.

1.5 Since the earlier two attempts on privatization did not succeed, the GOP during October 2004, issued an advertisement in the All India Editions of leading National dailies viz The Hindu, The New Indian Express and The Economic Times inviting "Expression of Interest" from Consultants to prepare a Feasibility Study Report for the development of Puducherry port. This was followed by a tendering process to select a firm for developing the port which resulted into the award of work to M/s SPML which had also prepared the project feasibility report.

2. Objective and Scope:

2.1 As per the directions of Union Home Minister, a Special Audit was carried out by a team of officers headed by CCA(MHA) and consisting of Deputy Secretary(ANL)/MHA and Deputy Secretary from the Ministry of Shipping. The Terms of Reference for the audit (Annexure I&II) was as follows:

1. To examine whether due diligence has been exercised in selection of a private developer for development of Pondicherry Port on BOT basis and the procedure laid down by the Union Government in this regard has been followed by Government of Pondicherry.
2. To examine whether Concession Agreement signed by Government of Pondicherry with the private developer has adequately safeguarded / secured interests of the Union Government / Government of Pondicherry.
3. To examine whether adequate safeguards had been taken by Government of Pondicherry before transferring the land to the private developer.
4. To examine whether the private developer has adhered to all the conditions put by Government of Pondicherry in Concession / Lease Agreement and any other Agreements and to report the development / construction activity, if any, which may have taken place over the land handed over to him.
5. Any other issue which may be relevant to the transfer of land to the private developer without prior approval of the Union Government.

3. To examine whether due diligence has been exercised in selection of a private developer for development of Pondicherry Port on BOT basis and the procedure laid down by the Union Government in this regard has been followed by Government of Pondicherry.

3.1 With the Indian coastline extending over 6000kms, the ports can play an important role in overall growth of economy in general and industries situated near it in particular. Further, with 95% of the country's transportation of goods is by sea, the development of ports would be very critical for nation's progress. A recent research made by CRISIL expects a traffic growth at a CAGR of 9 per cent over the next five years. Also, non-major ports are expected to witness a faster growth as compared to major ports. The Indian government has planned to increase the cargo management capability of all ports to 1.5 billion metric tons (MT) by the year 2012. This would be made feasible by investing 25 billion dollars by way of public private partnerships. Further, CRISIL also estimates an investment of Rs. 733 billion in the ports sector from 2008-09 to 2013-14. In this scenario, it becomes imperative for the Union Government and also for the Government of all the States to adhere to highest standards of transparency and professionalism to ensure that Private Partners across the globe are attracted to the proposition of investment in the Indian port sector. As can be seen from the data above there is a strong business case for private players, and would definitely attract best players available in the industry but the governments would need to be more transparent and professional in their approach towards such dealings. **Otherwise, such kind of projects would run a risk of red tapism, favouritism etc which would be detrimental to the overall prospects of the sector. In the case of Puducherry Port Trust as well, what is noticed is that the Government of Pondicherry has been trying for quite a long time for Port Development but has not been able to get the desired results in this regard.**

3.2 A fair and competitive bidding process, involving transaction of such a large scale, should begin with formation of an IMG for monitoring the project. This should be followed by invitation of Expression of Interest from reputed firms by advertising it into Newspapers. The EoI should clearly spell out the prequalification criteria for eligibility. The EoIs received from various firms should be evaluated on the basis of pre-qualification criteria and those who qualify it should be provided with the detailed Terms of Reference for the project and should be called for a pre-bid Conference to make both the parties aware of the requirements. This should be followed by submission of bids under two bid system (Technical and Financial Bid). The technical bid is evaluated first and then amongst the technically qualified bidders, the best financial bid is selected for entering into contract. In this case, **no pre-qualification criteria such as financial status, work experience etc. was analyzed before selecting the developer.** Even the bids were not properly evaluated by the Committee. The criteria of selection of M/s. Subhash projects & Marketing Ltd, (SPML) New Delhi was based on the **first come first serve basis. The due diligence and justification in considering the financial status and technical potential of M/s SPML Ltd was not taken care of.** In fact no analysis has been made in selection of the Firm for the development of the Pondicherry port.

The criteria of first come first serve in award of such a big contract cannot be taken as valid criteria. The Government of Pondicherry should have followed standard bidding procedure prescribed by GFR. **Even RITES in its earlier study conducted for which the GOP paid Rs. 14 lakhs, clearly recommended that the evaluation of the financial and technical bid is a must. But in the present case no technical as well as financial bid process took place.**

3.3 In the instant case, the Government of Pondicherry has mentioned that **since no tenders were called for the development of Puducherry Port, the question of bid value did not arise and the firm mentioned above was short listed by the Port Privatisation Committee on the basis of presentation made by various firms.** The Government of Puducherry accorded approval in February 2006 for the development of Puducherry Port through a private investment at a cost of Rs. 1867 Crore on BOT basis for a period of 30 years by entrusting the project to M/s SPML (Annexure III). **Thus, taking up a project of such a mega scale even without going through the appropriate tendering and bidding process is inappropriate and contrary to the established procedure and norms. The Government of Pondicherry, in this case failed to exercise due diligence and proper care in selecting the private partner for the project with appropriate credentials.**

3.4 In selection of private partners as well, the Consultant who has prepared the Project Report is the same who has been given the task of actual task of development. Thus, **there is clear case of Conflict of Interest between the two jobs as for as government's objective of selecting an appropriate developer is concerned. It is an internationally accepted practice that the agency which would prepare the project report would not participate in the bidding process.** The bidding process, in fact should have been managed by the Government of Pondicherry along with an independent Consultant to select an appropriate developer. **The firm which had prepared the DPR should not have been allowed to even participate in the bidding process, leave alone the award of contract to the agency. There is a clear risk that the bidding process was not fair and the Controls which are required to be there in any procurement process were circumvented.**

3.5 The Government of Pondicherry should have gone for Environmental Impact Assessment before undertaking the selection of private player. Conducting this exercise as late as February, 2006 was not of much relevance for the project. The project should have taken Environmental clearance from Ministry of Environment and Forest (MoEF) and also from MoEF under CRZ regulation. Not taking such clearances at the beginning of the project would also have restricted some of big players to come for bidding in the project as they would not be sure that the project would be able to sail through after getting all the clearances. **The due diligence exercise conducted before undertaking the bidding process should have considered the Environmental aspect as well.**

3.6 The bidding process has resulted into selection of a Developer with doubtful credentials which itself is an indicator that the Due diligence in the process has not been followed. **The antecedents of M/s SPML, New Delhi was not verified whereas the SEBI vide its order dated 18.8.2004 (Annexure IV) prohibited the company from accessing the security market and dealing in securities for two years for its active involvement in creating an illusion that the rights issue of SPML has been genuinely received mandatory subscription of minimum 90% which had been brought after the closure of the issue by way of applications from the associates of SPML, including SPMLIL, in order to show 90% subscription. Further, as per the guidelines issued by the Department of Disinvestment,(Annexure XVIII) any company against which an adverse order has been issued by a regulatory authority would not be allowed to participate in the bidding process or even act as an advisor in the process of disinvestment. Going by the spirit of this O.M., the government should deal with the companies of appropriate credentials. But in this case, a company has been selected as consultant and developer with adverse credentials for a mega development project which is not a healthy indicator of the overall bidding process.**

3.7 **The project of this magnitude should have invited global players for getting the best option available internationally. The project should have been globally advertised and global tendering should have been resorted to. In this case no global tender enquiry as provided in the guidelines on Private Investment i.e. development of the Pondicherry Port was made. In fact for wide publicity GOP should have sent the copy of the advertisement to Foreign Embassies/Consulates in India to attract the competitive revenue generation but no such efforts were made.**

3.8 An analysis of overall Due Diligence made by the Government of Pondicherry reveals several discrepancies in the process. As per Section 3(1) of the Indian Port Act 1908 the supervision and control of Minor Ports is under the State Government. However as per the Regulations the State Government mentioned in the Indian Ports Act, 1908 in the context of Pondicherry must mean the central Government and not the Government of Pondicherry. All property and assets within Pondicherry which immediately before the appointed day, vested in the Government of the French Republic shall, save as otherwise expressly provided in Treaty of cession vest in the Union." **But in present case no approval of Union of India has been taken while dealing with the assets of the Port.** The then Director Port Shri S.D. Sunderesan wrote to the Under Secretary, Industrial Development (Port) that the report prepared by Rites in 1991 is very old and fresh appointment of consultant is very much essential as the Project is highly technical and involves a huge investment which would have a bearing on the economical and ecological influence on the Union Territory future. The advise of the then Director, Port was not given any heed, though it was quite a valuable input. This can be seen in the light of "Guidelines for Formulation, Appraisal and Approval of Central Sector Public Private Partnership Projects" which mandatorily requires environmental appraisal and evaluation. This clearly indicates that the Government of

Pondicherry did not exercise appropriate level of checks in processing the proposal of Port development.

3.9 The Public Private Partnership Contracts are normally undertaken because involving Private Sector can complement government efforts and can even give a better management. Also, this can help in minimizing commercial risks of the government and can lead to substantial revenues. These are undertaken when there is an acute need of infrastructure and the resources available with the government are limited while the private sector has got the necessary liquidity for the project. These kinds of projects are normally viable in highways, roads, airports, sea ports, social housing sectors. The projects should involve professional advisors and well worked out transparent bidding procedures and precise time-lines. Further, the project should be promoted properly and generate adequate competition. The proposition mentioned above are some of the important features of PPP projects as prescribed by the Ministry of Finance. The most important amongst these is the commercial viability of the projects as the private sector would come only when it can see good returns in the project. **In this case, NIPM consultant appointed to submit the Detail Project Report (Annexure V) on the development of the Pondicherry Port clearly stated in his report submitted Govt. of Pondicherry vide his letter No. NIPM/Trg./103/DGP/001/2005-06 dated 13.09.2005 (Annexure VI) that the IRR of the Project is very low even after the Govt. providing the share of the project such as Power, Road Connectivity & Water, Project carry a significant risk to the developer. The Government of Pondicherry, with the help of some professional Consultants, should have tried to develop a better business case to attract better players from the market. Further, following a more transparent and well laid out procedure for the entire process would have lead to better results in the project.**

3.10 The Government of India has also issued a Guideline for financial support to Public Private Partnerships in infrastructure under the **Viability Gap Funding Scheme**. The Scheme would provide financial support to the essential infrastructure projects which may not be financially viable and may require support from the Union Government. The Scheme is under the Department of Economic Affairs and is regulated by its guidelines. **One of the mandatory conditions for Viability Gap Funding (Annexure XVI) is the selection of the Private Sector Company by the Government or Statutory entity through a transparent and open competitive bidding. In the case, since the Government of Pondicherry did not follow the standard procedure and has not invited any bid, it would not qualify for this funding as well.** The project should have been processed according to DEA guidelines (Annexure XVII) and the Gap funding would have made it more viable and would have attracted more reputed Private Players.

4. To examine whether Concession Agreement signed by Government of Pondicherry with the private developer has adequately safeguarded / secured interests of the Union Government / Government of Pondicherry.

4.1 The Concession Agreement (Annexure VII) in a PPP project should have certain essential features. From the government's side every effort should be made to protect the interest of the government and to ensure that the Private players work according to priorities prescribed by the Government. The agreement should have representations and warranties by PP (private partner) to GE (Government Entity) and by GE to PP and also should have an undertaking that full disclosures have been made. Further, the agreement should clearly spell out general obligation of PP on construction/development, operation and management and also about management and control. There should be provisions for Oversight Committee for the Project, Performance Bond, Service quality requirements and development standards, Maintenance of records, Provision of accounts, Financing arrangements and security, Force Majeure etc. These provisions should form an essential part of any agreement. While entering into the agreement, the interest of the government should be properly taken care of. In the present agreement, **effective clause for safeguarding / securing interest of union Govt./Govt. of Pondicherry was not incorporated in the Concession Agreement signed by the Govt. of Pondicherry and developer of Pondicherry Port as GOP and Govt. of India have no role in the management of the PPT, the firm registered for the development of Pondicherry Port.**

4.2 As per the Guidelines issued by Ministry of Finance, Department of Economic Affairs for PPP project Concession Agreement, there are certain essential requirements which these agreements **must address to such as provision for an independent engineer for the project, Provision for Environmental Audit and Report etc. The Concession Agreement signed between the developer and GOP is found lacking in all these aspects.** The provision of independent engineer would have definitely helped in ensuring quality at optimum cost at various stages and would have served as a Control Mechanism for ensuring the quality in the project. The project of this magnitude in fact should have a team of independent engineers or even an engineering consultancy firm to monitor the progress of the project. Further, the provision of Environmental Audit in the Concession Agreement would have ensured the Environmental aspects are being properly taken care of during the project development. This is particularly significant in the light of an article published on 8th February 2007 Environment, India 4 "Pondicherry's Sandy Beaches Imperiled by New Port Development" (Annexure VIII). In the article it has been stated that "Pondicherry's beautiful sandy beach along the main promenade of the town has completely disappeared leaving a rough coastline of riprap boulders, brought in with heavy equipments to staunch further erosion.... And now the Government of Pondicherry is trying to compound the damage." **Therefore, with these environmental apprehensions, the provision of Environmental Audit in the Concession Agreement should have been essentially kept. Therefore, it is felt that the agreement has not been properly drafted and is found lacking in several aspects.**

4.3 The Concession Agreement (Annexure VII) does not address certain other essential elements of such kind of Transaction Agreement entered by the Government in PPP Projects. **The agreement has not specifically mentioned anything about Development Standards, Maintenance of records, Provision of Accounts etc. In the agreement the provision for Right of Inspection by the Government of Pondicherry in the middle of project development stage has not been kept.** This is a major discrepancy in the agreement as no check on the activities of developer can be exercised after the award of contract. The provisions would have helped in protecting the interest of the Government and would have helped in ensuring a proper execution of the project. Further, in the Agreement, though a provision of Performance Guarantee of Rs. 50 lakhs has been kept, but it again appears to be insignificant for such a large project. A guarantee of Rs. 50 lakhs in a project of more than Rs. 1800 Crores would not be able to enforce performance by the developer. **There should have been a performance bond in the Contract with appropriate penal provision to guarantee performance by the developer. Therefore, the agreement is lacking in these important aspects as well, particularly not having a performance bond and right to inspect by GOP can be quite detrimental to the overall process of project implementation.**

4.4 In the present agreement, the Concession Fee shall be payable, as a percentage of Gross Income of the PPL, each year for the duration of the Concession Period at a rate of 2.6% for first 30 years of operation. The Concession Fee shall be paid to GOP in the form of four equal instalments based on annual revenue projections. Any surplus or shortage shall be adjusted with the instalments for the subsequent year and for the last year of the Concession Period within 3 months of the End Date. Further, it has been mentioned in the agreement that the PPL shall not pay Concession Fee to GOP in respect of any year where PPL does not have Profit. **This clause appears to be quite unfavourable to GOP because the Profit needs to be clearly defined otherwise this ambiguity may be used by the developer for charging various types of inadmissible expenditure to the Port's account. In the clause 13.2.3, the word should be Gross Profit instead of Profit.**

4.5 In para 7.8 of the Concession Agreement related to Land Lease rentals provides that the Lease Rent would be paid @ Rs.2000 per acre per year which means the total revenue through Lease Rent to GOP shall be $153 \times \text{Rs.}2000 = \text{Rs.}3.06$ lakhs, whereas the Lease rent in case of Krishnapatnam Port (Andhra Pradesh) has been charged fixed @ 2% of the fair market value of the land, Out of 153 acres, 10 acres relates to prime location and the rate of which is Rs. 10,000/- per sq.foot. and the rate of remaining land is Rs.500/- per sq.ft. Hence the fair market value of the land is = $\text{Rs. } 10,000 \times 10 \times 42306 + 143 \times \text{Rs. } 500 \times 42306 = \text{Rs. } 725.00$ Crores **and will fetch revenue if charged @ 2% of the fair market value i.e. Rs. 14.5 crores per annum, resulting in a recurring loss to the GOP. Therefore, it can be clearly seen that the interest of GOP have been compromised and the developer has been favoured unduly by the agreement.**

4.6 As per Clause 18.4 (A)(i), in case of Compensation on Account of Force Majeure Event, the GOP shall pay compensation at Fair Market value determined by Experts of Port Assets (except land) as on date of Termination notice. **The clause should include depreciation consideration so that the Government's interests may be safeguarded.** Government of India's Guidelines for Lease of Land to any BOT operator is 30 years whereas in the instant case the licence period has been fixed for an initial period of 30 years and a further period of 20 years for Port development and 50 years for tourism related activities from the date of certificate of completion of project. Also, tourism is a subsidiary activity not at all related to Port Development. So, inclusion of this in the initial advertisement may have made few other larger players interested in the project. (Annexure XV)

4.7 Further, in the Concession Agreement nothing has been mentioned about the financing arrangement. This is significant because, the source of financing the Project has been stated through equity and raising debt in the ratio of 30:70 whereas SEBI has prohibited the company M/s. Subhash Projects & Marketing Ltd., New Delhi from assessing the security market and dealing in securities for a period of two years for their active involvement of the SPML and its Director in creating an illusion that the rights issue of SPML had genuinely received mandatory minimum subscription of 90% under the regulation 11 of the (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) vide its Order dated 18.8.2004. (Annexure IV). Therefore, the basic project financing in this case itself is not specifically mentioned in the Concession Agreement and therefore, the agreement prima facie does not generate confidence that the project would be able to sail through. Further, an analysis of financials of SPML (Annexure IV(A)) reveals that its gross income from operations itself is Rs. 1257.22 Crores while its Net Worth is Rs. 358.52 Crores and a Net Profit Rs. 53.17 Crores which clearly implies that the developer will have to approach Capital Market for raising funds for the project. With SEBI's decision regarding the Company in 2004, it would not be easy for the company to arrange for finances. Therefore, the source of finance for the project itself is not secured which would mean that the project may run into rough weather. The Concession Agreement should have clearly addressed this aspect and GOP should have ensured these aspects in the Agreement.

4.8 Further, as provided in clause 3 (D) of the letter dated 13.06.2005, (Annexure IX) consultant was to be consulted and the draft concession agreement as well as lease agreement were to be got approved by the consultant i.e. NIPM. **The fact is that the consultant appointed for the purpose was not consulted before the finalization/signing of the Concession Agreement/Lease agreement. This is a significant Control weakness in this case as this has clearly exposed the GOP to the risk of inappropriate Concession Agreement which may put Government of Pondicherry at serious disadvantage as compared to the developer. The Concession Agreement may expose the Government of Pondicherry to commercial risk.**

4.9 The Concession Agreement should also have a provision for Independent Auditor for the project which was not found in the present Concession Agreement. Thus, this statutory requirement has not been adequately complied with in the agreement.

4.10 The Concession Agreement is basically made to safeguard Government's commercial interest in any project and to ensure that all the statutory requirements according to the law of the land is adhered to and complied with. But in this case, the agreement appears to be an incomplete and hastily drafted document with a lot of discrepancies which may put the project's future at risk and may also put the Government of Pondicherry and Government of India at disadvantage. The document would need to be thoroughly analyzed and may be redrafted for appropriate safeguard of the Government's interests.

4.11 The Government of Pondicherry should have ensured that the Government's interests are adequately safeguarded. The SPV created for the Port development should have been according to the guidelines issued by the Ministry of Finance and the funding arrangement should have been adequately clarified. Further, the Viability Gap Funding would make the project economically more viable and would have attracted better Private Players from the market. Further, the concept of Golden Share should have been included in the Agreement so as to ensure Government's control in the management of the Port development. The present agreement is not able to guard Government's interest completely.

5. To examine whether adequate safeguards had been taken by Government of Pondicherry before transferring the land to the private developer.

5.1 The land is yet to be physically transferred to the developer though technically the same has been transferred to the developer. Government of Pondicherry has to safeguard its commercial interest and get the appropriate rent from the developer. In para 7.8 of the Concession Agreement related to Land Lease rentals provides that the Lease Rent would be paid @ Rs.2000 per acre per year which means the total revenue through Lease Rent to GOP shall be $153 \times \text{Rs.}2000 = \text{Rs.}3.06$ lakhs, whereas the Lease rent in case of Krishnapatnam Port (Andhra Pradesh) has been charged fixed @ 2% of the fair market value of the land, Out of 153 acres, 10 acres relates to prime location and the rate of which is Rs. 10,000/- per sq.feet. and the rate of remaining land is Rs.500/- per sq.ft. Hence the fair market value of the land is = Rs. $10,000 \times 10 \times 42306 + 143 \times \text{Rs.} 500 \times 42306 = \text{Rs.} 725.00$ Crores **and will fetch revenue if charged @ 2% of the fair market value i.e. Rs. 14.5 crores per annum, resulting in a recurring loss to the GOP. Therefore, it can be clearly seen that the interest of GOP have been compromised and the developer has been favoured unduly by the agreement.**

5.2 It may be therefore ensured by the Government of Pondicherry that the lease agreement may be revised before the land is unfavourably transferred to the developer. In fact, even Government of India may take immediate steps to stall the implementation of this project as it is going to cause continuous loss to the Government of Pondicherry with the present terms and conditions.

6. To examine whether the private developer has adhered to all the conditions put by Government of Pondicherry in Concession / Lease Agreement and any other Agreements and to report the development / construction activity, if any, which may have taken place over the land handed over to him.

6.1 Though the land has been technically transferred to the developer, the physical possession is yet to be given. No construction activity could be seen at the time of audit. (Annexure X)

7. Any other issue which may be relevant to the transfer of land to the private developer without prior approval of the Union Government.

7.1 The project has come under litigation in which Supreme Court has given its judgement dated 14.05.2009, (Annexure XI) in which it has inter-alia observed that - "an attempt was made to demonstrate that - in terms of section 5 of the Pondicherry (Administration) Act, 1962 (Annexure XII) all properties and assets in the State of Pondicherry vest with the Union and, therefore, the Government of Pondicherry has no right to deal with the same in any manner." The Honourable Supreme Court has come to the conclusion in para 23 that the development and privatization of minor ports can be undertaken by respective State government after formulating its own guidelines and modalities. Further the definition of government as stated in clause 3(9) government is defined as "for all purposes and, as respect of other ports, for the purpose of making rules under clause (p) of section 6(1) and of the appointment in control of port health officers under section 17, means the Central government and save aforesaid, means the State government." On the other hand clause 6(b) reads as "any reference to the State Government shall be construed as a reference to the Central government and also as including a reference to the administrator". The Honourable Supreme Court in its judgement has wrongly interpreted regulation 6(b) of the Pondicherry Act 1962. It has been stated in the judgement in Page No. 113 that though regulation 6(b) provides that reference to the State government shall be construed as a reference to the Central Government, it also provides that reference to the State government shall be construed as reference to Chief Commissioner. It has further been stated that "the learned counsel for the appellants have failed to take note of the words "and also as reference to the Chief Commissioner". **The Honourable Supreme Court after reading the above mentioned regulation and the relevant portion of the Indian Ports Act had come to a conclusion that the power in respect of Pondicherry port necessarily vests in the government of Pondicherry and not in the Central Government.**

7.2 In this regard it can be stated that the plain reading of regulation 6(b) of the Pondicherry Act, 1962 clearly means that any reference to the State Government shall be construed as reference to the Central Government. This is the correct interpretation of the regulation. Because of this interpretation, of the abovementioned regulation a considerable damage to the powers and the responsibilities of the Central Government has been caused. This is because they would be henceforth, debarred from having any control over the Pondicherry port. **This seems totally against the intention of the legislature. The above situation may be because of the reason that the correct facts in this regard were not brought before the Hon'ble Supreme Court by the Government of Puducherry.**

7.3 Even Government of Pondicherry while seeking ex-post-facto approval of the Central Government have also cited Rule 5(1) of the Rules of Business of Government of Puducherry, 1963 (Annexure XIII) which provides that all contracts in connection with the Administration of the Union shall be expressed to be made by the President and shall be executed on behalf of the President by such person and in such a manner as he may direct or authorize under Article 299 of the Constitution. The Government of Puducherry have further referred to Rule 5(2) of the said Rules which provides that "where the person authorized to execute the contracts is the Administrator. He shall exercise that authority with previous approval of the Central Government in all cases involving exercise of financial powers in excess of those delegated to him from time to time by the Central Government. **Also, the law department of the Government of Puducherry has opined that, specific financial powers with reference to the administration of immovable properties of the Union Territory of Puducherry vests with the Union and have not yet been conferred on the Administrator. Powers have also not been conferred on the Administrator so far under Article 239(1) of the Constitution of India (Annexure XIV) to administer the properties of the Union Territory of Puducherry vesting in the Union of India. Therefore, the very fact that GOP has approached Union Government for approval and also as per the opinion of Law Department of GOP, the power in this regard vests with the Union Government.**

7.4 From the environment perspective it is felt that unsustainable development practices in Pondicherry are endangering Auroville's beach communities. They face the prospect of being either washed away or needing protection by massive seawalls to prevent an erosion disaster. **As part of the New Harbour two long breakwaters- rocky wall like structures that protrude from the shore into the sea were built. These breakwaters interfere with the coastal currents and processes. As a result a very significant process of coastal erosion was triggered off. It started south of Pondicherry, from the mouth of the New Harbour, and grew gradually towards the north. Every year another large chunk of beach was lost to the sea. In little more than a decade, all six kilometers of the beach of Pondicherry town disappeared.** Today a rocky seawall extends all the way from Aryankuppam from the south of Pondicherry to Kottakuppam at the North. The Kottakuppam beach is next in turn to be washed away. From February to October sand grains move from South to North from November to January they move from North to South. Nature, left to itself, has established a state of dynamic equilibrium in which that which has naturally gone is replaced naturally. The two breakwaters at the mouth of the New Harbour interfered with the dynamic equilibrium. These structures, acting like a dam, interrupted the flow of sand from South to North. As a result the beaches south of the New Harbour have grown immensely at the cost of the beaches to the north, which are now being starved of sand and are therefore perishing. Auroville's beach erosion has already started. In the last decade the Auroville beaches have changed considerably. There used to be a sandbar, a so-called "underwater island" about 15-30 meters away from the shore. It no longer exists. The beach itself has become more and more steep. The beach sand is now coarse

as the finer grains were gradually washed away while the heavier larger ones have been left behind. These are the first symptoms of beach erosion. The next thing to happen is that the beach will start receding. And this will go from bad to worse as long as the problem caused by the New Harbour breakwaters is not rectified or mitigated. But instead of tackling the problem where it originates, the GOP is planning to protect its coast and restore the beaches along the town by constructing about 30 "groynes"- rocky structures similar to breakwaters that stick out like fingers into the sea perpendicular to the shore. **Pondicherry Port is classified as a minor Port. Since New Harbour was completed in 1989 not a single commercial ship docked there until the month of September 2002 when one ship anchored and New Harbour was used for the first time ever. During the last two years only 16 ships came to Pondicherry, but they used the "New" pier opposite the Ashram Park Guesthouse instead of New Harbour:**

7.5 The Detailed Project Report prepared by Halcrow Consulting India Ltd. For SPML has been analyzed by National Institute of Port Management Chennai and has questioned the credibility of the report on several grounds. The Consultants have indicated a number of places requiring a detailed study before the final design may be ascertained. Also, the traffic forecast has not been carried out methodologically, nor proper analysis has been made to estimate the possible/probable traffic through the port. This would be an important risk factor having a bearing on the success of the project. The cost estimates and the power requirement projected in the DPR have been evaluated to be on the higher side by NIPM. The revenue projections made in the DPR are also on the higher side when compared with the charges levied by the ports in the southern region. Therefore, the revenue projection would also need to be revised for the project. Also, in the DPR, the entire land of 260 Acres would need to be transferred to the developer within 90 days of the signing of the Concession Agreement. Even though, the development is initially in Phase 1 only, which does not require the entire land. The proposed construction would have an impact on the sediment transport as well leading to the erosion on the Northern side of the port. An alternative solution which is environmentally acceptable and socially adoptable would need to be worked out for the project and a Scheme in this regard would need to be evolved.

7.6 The financial analysis made by the DPR reveals that the project is not very sound financially. The value of Internal Rate of Return has also been calculated for the project. The Consultant reported that if the phase 1 development is considered separately and the financial analysis is made, it is found that the project is not viable financially. If all the five phases of development are considered together and financial analysis is carried out, the IRR values are found to be 12.32% which is very low indicating that the project is not a financially sound project. Further, the analysis has been carried out by the consultant for the following two scenarios - i) The capital cost during the construction phase increases by 15% and ii) The revenue decreases by 15%. For both the Scenarios the IRR Values become still poor. The entire financial evaluation has been carried out with the cost of the project as estimated by the

Consultant. In the analysis, it has been presumed that the various concessions indicated in the report are given by the Government, besides carrying out the infrastructure work such as capital dredging and operations and maintenance of the sand bypass system, beach nourishment, port connectivity to the rail and road making available the required quantity of water and electricity and others mentioned in the report. **In this context, the role of Viability Gap Funding Scheme would have become very important as it would have ensured financial viability of the project. This would have helped in attracting better private players from the market with appropriate credentials required for such a mega project. The Government of Pondicherry, in its Due Diligence exercise should have approached the Union Government to get technical help and guidance for the project which would have implied that the lessons learnt in other PPP projects would have been applied in this project. The project, should have been processed according to guidelines issued by Department of Economic Affairs, Ministry of Finance, which would have ensured that the project becomes economically viable for private investor and would have led to a systematic development of port infrastructure in the Union Territory.** Because of not following the guidelines of Ministry of Finance, the project became ineligible for Viability Gap Funding, which in turn led to selection of firm for development with inappropriate credentials.

7.7 The Government of Pondicherry, should have realized the importance of this project in the overall context of development of infrastructure in the country. The infrastructure development in the Port sector is essential in light of an evaluation made by CRISIL which expects a traffic growth at a CAGR of 9 per cent over the next five years. Also, non-major ports are expected to witness a faster growth as compared to major ports. **The Indian government has also planned to increase the cargo management capability of all ports to 1.5 billion metric tons (MT) by the year 2012. This would be made feasible by investing 25 billion dollars by way of public private partnerships. Further, CRISIL also estimates an investment of Rs. 733 billion in the ports sector from 2008-09 to 2013-14.** In this context, the Government of India would have extended its full support for the project implementation and would have provided the resources required for the project. The Government of India is quite positive in extending this support by gap funding and can resort to funding of different types, which includes Capital Grant, subordinated loans; O&M support grants or interest subsidy. A mix of capital and revenue support is also considered in this Scheme (Annexure XVIII). Therefore, it is felt that, the Government of Pondicherry, should have processed this important case of infrastructure development with care and after going through necessary due diligence to ensure that project yields a better result.

8. Conclusion:


8.1 Special Audit of development of Puducherry Port Trust has revealed several discrepancies in the process followed for selecting the developer; the contract agreement entered into by the developer and the Government of Puducherry. Further, it is felt that, the Government of Pondicherry, did not exercise the due diligence required for making the project economically viable. It has failed to apply lessons learnt from the other infrastructure development project of the Government of India into the current Port Development project. Due to non-adherence to the guidelines of Government of India the project has become economically unattractive. **Further, the selection of a firm as developer which has been adversely adjudicated by a regulator also gives an indication that the procedure followed was not transparent as the basic objective of any procurement process of selecting a vendor with appropriate credentials could not be ensured.**


8.2 The discrepancies noted are quite serious and process appears to be flawed to an extent that award of project of more than Rs. 1800 Crores has been given even without calling any bid for the purpose. Also, there is a clear case of Conflict of Interest as the same firm has been asked to prepare the project report as well as develop the port. Further, the Concession Agreement has also been found lacking in several aspects and has failed to secure Government's interests in the project. **The Concession Agreement has got no clause for having GOP's control over the port management and inspection during the development stage. Also, the agreement does not have any provision regarding Independent Engineer for the project, development standards required for the project etc, which is contradictory to the guidelines issued by the Ministry of Finance in this regard.** The lease rent is also quite a meagre amount and has got a direct revenue loss of Rs. 14.50 Crores per annum. The financial viability of the project is also quite low and the projected IRR with full cooperation from all the stakeholders and assuming favourable situation is quite low.


8.3 There are many success stories in Public Private Partnerships in the highways, aviation and port sectors. The PPP model has worked well in the development of infrastructure and has been beneficial for all the stakeholders. The Government is benefitted as requisite infrastructure is created without huge budgetary burdens required for such kind of heavy investment and long gestation projects. Further, the private sector is also benefitted as they get favourable returns in the project with good IRR and NPV etc. **This was much needed in the instant case as well, because there is a felt need for enhancing port capacity in the Government of India. The processing of proposals according to well laid out guidelines of the Ministry of Finance would have automatically ensured all these aspects and would have made this project technically feasible and economically viable for the developer. A proper Due Diligence exercise with adequate guidance from the Department of Economic Affairs would have made this project a model for other initiatives in this area by the Union Territory of Pondicherry and other Union Territories.**


8.4 Also, the projects implemented through the PPP route requires meticulous preparation with elaborate consultation with the stake holders. In the contract design, a fair sharing of risks and returns are required. An effective regulatory oversight mechanism is also essential. These elements seem to be missing in the projects audited.

8.5 Therefore, it is concluded that the GOP has not done due diligence and exercised appropriate controls in the design and management of the process of "Development of Puducherry Port through a Private Developer". The risk exposure for the process is significantly high as several violations of Government of India's guidelines have been noted. The exposure has resulted into a selection of developer which has been adversely adjudicated by SEBI for such a mega project. The Government of India would need to look into this case in sufficient detail and would also have to evaluate the system of design, development and implementation of PPP projects in infrastructure sector.in the Government of Puducherry to ensure that such kind of situation does not recur in future.


(P.K. GAUR)
Senior Accounts Officer, IAW, MHA


(S.K. JAIN)
Accounts Officer (A) (MHA)


(M.L. VARMA)
Deputy Secretary (ANL) MHA


(ASHWANI KUMAR)
Deputy Secretary, M/o Shipping

ANNEXURE

LIST OF ANNEXURES

Sr. No.	Particulars	Annexure No.	Page No. (From - to)
1.	Ref No. U-13034/22/07-GP dt.16.10.09 conveying directions of Union Home Minister for carrying out Spl. Audit of Puducherry Port Development alongwith terms of reference.	Annexure - I	22-23
2.	CCA (MHA) OM No. 35012/CCA/IAW/MHA/Spl Audit/09-10/70 dt. 19.10.09 conveying the MHAs directions for Spl. Audit of Puducherry Port to Chief Secretary, Govt. of Puducherry.	Annexure-II	24-26
3.	Ref. Dated 21.01.06 of Govt. of Puducherry (Port Deptt.) reg. Cabinet approval of DPR submitted by M/s SPML New Delhi and their partner M/s Om Metal Ltd., New Delhi for development of Puducherry Port on BOT basis and also for concession agreement to be entered into between GOP and M/s SPML with their consortium/partner M/s Om Metals Ltd.	Annexure-III	27
4.	Securities and Exchange Board of India (SEBI) Order dated 18.08.04 on M/s SPML New Delhi under regulation 11 & 11B of SEBI Act, 1992	Annexure-IV	28-47
5.	Financial Overview/Financial Highlights report of M/s SPML	Annexure-IV A	48
6.	Ref No. K-11011/7/2005-Post dt. 13.06.05 from GOP (Port) reg. appointment of NIPM as consultant for development of Puducherry post through private investment on BOT basis.	Annexure-V	49-51
7.	NIPM Chennai No.NIPM/TRG/103 DGP/001/2005-06 dt.13.09.05 comments of NIPM on the DPR for the development of Puducherry Port.	Annexure-VI	52-74
8.	Concession Agreement dtd. 21.01.06 made between Lt. Governor of UT of Pondicherry (GOP) and M/s SPML New Delhi and M/s Om Metals Ltd. (PPL)	Annexure-VII	75-124
9.	Article dtd. 08.02.07 published in magazine Environment, India 4 reg. Pondicherry's Sandy Beaches Imperiled by New Port Development.	Annexure-VIII	125-133
10.	Govt. of Puducherry letter dtd.13.06.05 addressed NIPM, Chennai reg. development of Puducherry Port through private investment on BOT basis.	Annexure-IX	134-135

11.	GOP (Port Deptt.) Ref No. 5/SS (Port)/2009 dtd. 04.11.09 confirming the real estate activity/construction/physical possession of Port by the developers.	Annexure-X	136
12.	Extract of Judgement of the Hon'ble Supreme Court of India dtd.14.05.09 (Para No. 23 from page 111 to 129)	Annexure-XI	137-149
13.	Extract of Pondicherry (Admn) Act-1962 - Section 5 & 6	Annexure-XII	150
14.	Extracts of Rule of Business of the Govt. of Pondicherry, 1963- Rule 5 (1) & 5 (2)	Annexure-XIII	151-152
15.	Extracts of Constitution of India – Article 239 (1)	Annexure-XIV	153
16.	GOI Guidelines for lease of land to any BOT operator	Annexure-XV	154-167
17.	MOF, (DEA) Ref No. 1/4/2005-PPP dtd. 04.09.06 Guidelines for proposals for financial support to PPP in infrastructure under Viability Gap Funding Scheme.	Annexure-XVI	168-170
18.	Guidelines for MOF (DEA) formulation, appraisal and approval of Central Sector Public Partnership Project (PPP).	Annexure-XVII	171-214
19.	(a)GOI, Deptt. of Disinvestment, OM. No. 6/4/2001-DD-II dtd. 13.07.01 reg. guidelines for qualification of Bidders seeking to acquire stake – Public Sector Enterprises through the process of disinvestment. (b)GOI, Department of Disinvestment OM No. 6/4/2001-DD-II dtd. 13.07.01 reg. guidelines of Advisors for disinvestment process.	Annexure-XVIII	215-216 217-220
20.	Names & Details of the members of the Port Privatization Committee during 2004-05.	Annexure-XIX	221
21.	GOP (Port Deptt.) Invitation of "Expression of Interest" (EOI) from consultants for the preparation of Feasibility Study Report for the Development of Pondicherry Port.	Annexure – XX Annexure-XX -A Annexure-XX- B	222-223 224 225

North Block, New Delhi
Dated the 16th October, 2009

To

The Chief Secretary
Government of Puducherry
Chief Secretariat
Goubert Avenue
Puducherry.

Sub: Development of Puducherry Port through private developer-
request for ex-post-facto approval for handing over of land
belonging to the Port Department to the private developer.

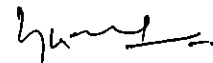
Sir,

I am directed to refer to the request of the Government of Puducherry for ex-post-facto approval of the Union Government to the transfer of 153 acres of land belonging to the Port Department, Government of Puducherry to the private developer for development of Puducherry Port on BOT basis and to say that it has been decided with the approval of Union Home Minister that a Special Audit be carried out by a team of officers headed by CCA(H)/MHA and consisting of DS(ANL)/MHA (Convener) and a representative of the Ministry of Shipping with the following "Terms of Reference":-

- (a) To examine whether due diligence has been exercised in selection of a private developer for development of Puducherry Port on BOT basis and the procedure laid down by the Union Government in this regard has been followed by Government of Puducherry.
- (b) To examine whether Concession Agreement signed by Government of Puducherry with the private developer has adequately safeguarded/secured interests of the Union Government/Government of Puducherry.
- (c) To examine whether adequate safeguards had been taken by Government of Puducherry before transferring the land to the private developer.
- (d) To examine whether the private developer has adhered to all the conditions put by Government of Puducherry in Concession/Lease Agreement and any other Agreements and to report the development/construction activity, if any, which may have taken place over the land handed over to him.
- (e) To examine any other issue which may be relevant to the transfer of land to the private developer without prior approval of the Union Government.

2. The Special Audit Team will submit its report within a week.
3. It is requested that all records/documents as may be required by the Special Audit Team may please be made available to it and all necessary cooperation may be extended to the Team to accomplish its assignment in a week's time.

Yours faithfully,



(Gopal Krishna Shukla)

Under Secretary to the Government of India

Tel: 23093575

Telefax: 23094376

Copy to :

1. The Secretary, Ministry of Shipping, Transport Bhawan, New Delhi with the request that an Officer of appropriate status and well versed with the matter relating to development of Puducherry Port may please be nominated, on priority, to be associated as a Member of the Special Audit Team. The Officer so nominated may please be advised to contact Shri M.L. Varma, Deputy Secretary(ANL) (Convener), Ministry of Home Affairs.
2. Shri Sanjeev Mishra, Chief Controller of Accounts(H), Ministry of Home Affairs, North Block, New Delhi.
3. Shri M.L. Varma, Deputy Secretary(ANL), Ministry of Home Affairs, North Block, New Delhi to coordinate for necessary action.

*Mr. Ramesh Guvvaraine
JS (Port)*

Internal Audit Wing
Ministry of Home Affairs
2/10, Jam Nagar House
New Delhi- 110002

No.F.35012/CCA/IAW/MHA/Special Audit/09-10/70 Dt: 19.10.2009

OFFICE-MEMORANDUM

Subject: Development of Puducherry Port through private developer request for ex-post facto approval for handing over of land belonging to the Port Department to the private developer - Reference No.U-13034/22/07-GP/MHA dated 16th October, 2009

The undersigned is directed to say that a Special Audit will be carried out of UT of Puducherry Administration on the subject of transferring of 153 acres of land belonging to the Port Department, Government of Puducherry to the private developer for development of Puducherry Port on BOT basis. The Audit will be headed by CCA (Home) and consisting of DS (ANL)/MHA (Convenor) and a representative of the Ministry of Shipping with the following Terms of Reference:-

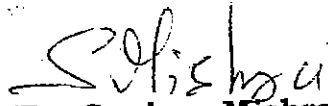
- (a) To examine whether due diligence has been exercised in selection of a private developer for development of Puducherry Port on BOT basis and the procedure laid down by the Union Government in this regard has been followed by the Government of Puducherry.
- (b) To examine whether Concession Agreement signed by Government of Puducherry with the private developer has adequately safeguarded/secured interests of the Union Government/Government of Puducherry.
- (c) To examine whether adequate safeguards had been taken by Government of Puducherry before transferring the land to the private developer.
- (d) To examine whether the private developer has adhered to all the conditions put by Government of Puducherry in Concession/Lease Agreement and any other Agreements and to report the development/construction activity, if any, which may have taken place over the land handed over to him?
- (e) To examine any other issue which may be relevant to the transfer of land to the private developer without prior approval of the Union Government?

(23)

Further a team has been deputed to support the Special Audit during 20th to 22nd October, 2009 at Puducherry under the supervision of CCA (H). This team would consist of

1. Shri. P.K. Gaur, Sr.AO (IAW), MHA : Member
2. Shri. S.K. Jain, AO, Pr.AO (A) : Member
3. Shri E.Chandramoses, AAO, RPAO (Chennai): Member

In order to carry out the Special Audit of the relevant records, it may be ensured that the relevant records/documents/information, as per enclosed annexure, is provided to the Audit Team at one place at Puducherry on 20th October, 2009. **In this regard, one nodal officer may also be nominated to assist the special audit. Necessary arrangements may also be made for typing/photocopy etc.**


(Dr. Sanjeev Mishra)
Chief Controller of Accounts (H)

Encl : As above

Copy to:-

1. Chief Secretary, Govt. of Puducherry, Chief Secretariat, Goubert Avenue, Puducherry for information & n/a
2. Dy. Secretary (ANL), UT Division, MHA, North Block, New Delhi for information & n/a

The list of records/document required in connection with the special audit of UT of Puducherry regarding handing over of land belonging to the Port Department to the private developer on BOT basis.

1. Government of Puducherry letter dated 14.3.2009
2. The Pondicherry (Administration) Act, 1962
3. Rules of Business of Government of Puducherry, 1963
4. CWP No. 12337 of 2006 filed in Madras High Court
5. CWP No. 3304 of 2006 filed in Madras High Court
6. Order dated 10.8.2006 of Madras High Court
7. Rule 21 of Delegation of Financial Power Rules
8. Rules 278 & 279 of General Financial Rules, 2005
9. Goa, Daman & Diu Re-organization Act, 1987
10. The Pondicherry (Alternation of Name) Act, 2006
11. The Government of Union Territories Act, 1963
12. Statement indicating the Financial Powers delegated to the UTs (with Legislature)
13. Copy of Hon'ble Supreme Court order dated 14.5.2009
14. All record/information/files regarding calling for tenders, procedure adopted in selection of private developer decisions taken for development of Puducherry Port on BOT basis.
15. Any other related record/information/files regarding procedure adopted by UT of Puducherry
16. Present status of development and construction activity being undertaken by Private Developer over the land handed over to the developer.
17. Minutes of inter-departmental/intra-departmental meetings on the subject during the period 2005-06 to 2008-2009
18. Certified copy of the last 4 years audited accounts, tax return and annual reports of the Subhash Projects Marketing Limited (SPML) (concessionaire) and SPV, if any
19. Copy of Detailed Project Report (DPR)
20. Copy of the Minutes of the meetings of Board of Directors of M/s SPML for the period of 2005-06 to 2008-09
21. Any other record/information relevant in the matter

(d.t)

GOVERNMENT OF PONDICHERRY

Abstract

DID (Port) – Approval for the Development of Pondicherry Port on Build, Operate and Transfer (BOT) basis – Orders - issued.

DEPARTMENT INDUSTRIAL DEVELOPMENT (PORT)

G.O.Ms.No.1

Pondicherry, the 21-01-2006.

READ: Cabinet approval vide No.44/JS/COM/2006(M.39)
dated 21.1.2006

&&&

Approval of the Lieutenant Governor of Pondicherry is hereby accorded to the Detailed Project Report (Second Revised dated 16.11.2005) submitted by M/s Subhash Projects and Marketing Limited, New Delhi and their Partner M/s Om Metals Limited, New Delhi for the development of Pondicherry Port on Build, Operate and Transfer (BOT) basis. Approval is also granted for the concession agreement to be entered into between the Government of Pondicherry and M/s Subhash Projects and Marketing Limited with their consortium/Partner M/s Om Metals Limited alongwith their affiliates for the development of the Pondicherry Port and all related and ancilliary/other activities.

/By order of the Lieutenant Governor/

V. Kannabiran
(V. KANNABIRAN) 21/1/2006

UNDER SECRETARY TO GOVERNMENT(PORT)

To

The Director of Stationery and Printing
Pondicherry

With instructions to publish
the same in the next issue
of Gazettee and supply 50 copies
to this office urgently.

Copy to:

- 1) The Secretary to Lt. Governor, Rajnivas, Pondicherry
- 2) The PS to Hon'ble Chief Minister, Pondicherry
- 3) The PSs to All Ministers, Pondicherry
- 4) The Secretary to Government (Revenue), Pondicherry
- 5) The Director of Survey and Land Records, Pondicherry
- 6) The Director, Science, Technology and Environment Dept., Pondicherry
- 7) The Director of Ports, Pondicherry
- 8) The Finance Department, Government of Pondicherry
- 9) The District Collector, Pondicherry
- 10) The Deputy Secretary (Law), Pondicherry
- 11) The Chairman cum Managing Director
M/s Subhash Projects & Marketing Limited, New Delhi
- 12) The Chairman cum Managing Director, - } for information and
M/s Om Metals Limited, New Delhi } necessary action.

67

ANNEXURE P-4

MO / 58/IVD/08/04

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER REGULATION 11 OF THE (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003 READ WITH SECTION 11B OF THE SEBI ACT, 1992

1. M/s Subash Projects & Marketing Limited (hereinafter referred to as 'SPML') is a listed company, whose shares are listed for trading on the Stock Exchange, Mumbai, the Calcutta Stock Exchange, the Delhi Stock Exchange, the Bangalore stock Exchange, the Guwahati Stock Exchange and the Uttar Pradesh Stock Exchange (for brevity's sake, hereinafter referred to as 'BSE', 'CSE', 'DSE', 'BgSE', 'GSE' and 'USE' respectively).
2. SPML India Limited (hereinafter referred to as 'SPMLIL') is an associate of SPML and also a listed company.
3. SPML came out with two simultaneous (but not linked) rights issues of:
 - i. 36,52,612 equity shares of Rs.10/- each at a premium of Rs.190/- per share, aggregating Rs.73,05,22,400/- (Rs.50/- payable on application,

SEBI
p86

68

the aggregate amount payable on application being Rs.18,26,30,600), and

- ii. 24,35,074 17% secured non-convertible redeemable debentures of Rs.150/- each for cash at part with a detachable warrant aggregating Rs.36,52,61,100/- (Rs.20/- payable on application, aggregate amount payable on application being Rs.4,87,01,480).

The rights issues opened for subscription on October 6, 1995 and closed on November 6, 1995. The issue was lead managed by M/s Hinduja Finance Corporation Ltd. and Canara Bank, Merchant Banking Division (for brevity's sake referred to as 'HFCL' and 'Canbank' respectively).

4. As per the three day post issue monitoring report dated November 9, 1995 submitted to SEBI by HFCL and certified by Canbank, the rights issues of equity shares was stated to be subscribed to the extent of 90.07% and debentures to the extent of 110.23%.
5. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') received a reference from the Income Tax Office, Calcutta in May 1996 as also a number of complaints regarding the said issue, alluding irregular subscription and price manipulation before the rights issue i.e. the possibility of applications being brought in after the closure of issue to

cover up shortfall in collection and rigging of the price just before the rights issue, non disclosure and misstatements in the letter of offer, violations of Debenture Trustee regulations, non listing of shares etc. Price volume data for SPML at various exchanges viz BSE, CSE, DSE, BgSE, GSE and UPSE was called for and analysed. Analysis for the period April 1, 1995 to March 31, 1996 revealed that during the relevant point of time, very thin trading was reported in the scrip of SPML, at all the exchanges except BSE & CSE and out of these two major volumes and trading was noted at CSE.

6. One of the applications made was of SPMLIL, for 1,91,200 debentures (8% of the issue size). However, as per the Letter of Offer for the rights issue of SPML, dated 19th September 1995, under the head "Financial other interest of Group Companies as on 31st March 1995, SPMLIL was shown to be holding only 7500 shares of SPML; and on this holding, they were entitled for only 3000 debentures of SPML. Thus, it appeared that they had applied for debentures in excess of their entitlement.

7. SEBI carried out preliminary investigations and based on the preliminary investigation report; wide its order dated June 8, 1999 ordered the case for formal investigation. Upon the completion of the same, it was revealed that -

- i. The rights issue did not actually receive genuine minimum subscription of 90% of the issue;
- ii. There was an active involvement of SPML and its directors / associates in creating an illusion that the rights issue of SPML had genuinely received mandatory minimum subscription of 90%.
- iii. a major part of the subscription to the rights had been brought in after the closure of the issue by way of applications from the associates of SPML, including SPMLIL, in order to show 90% subscription;
- iv. the issuance of advertisement for giving additional disclosures, as directed by SEBI, had been willfully delayed by SPML.
- v. SPML accepted applications directly and later lodged them with the bankers to the issue;
- vi. SPML accepted applications accompanied by outstation cheques, which was not in accordance with the terms of the letter of offer;

vii. SPML had directly or indirectly funded the subscription to the issue by Sethi family, Zoom Industrial Services Ltd., SPMLIL etc;

viii. SPML had advanced certain sums of monies through various entities to an entity, M/s Raj Investments, for the purpose of creating illusory volumes and trading in the scrip of SPML with a view to ensure successful subscription to the rights issue.

8. In view of these findings of investigation, SEBI issued a notice dated August 30, 2002 to SPMLIL as well as SPML and its directors, asking them to show cause as to why appropriate directions should not be issued against them under section 11B of SEBI Act, 1992 (hereinafter referred to as 'the Act') read with Regulations 11 & 12 of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Markets) Regulations, 1995 (hereinafter referred to as 'FUTP Regulations') and Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines.

9. As against SPMLIL, it was alleged that SPMLIL had applied for the rights issue after being funded for the same by SPML itself, the monies having been routed through Subash Capital City Limited, another associate of SPML.

10. SPMLIL had applied vide composite application Form No. 26 for 1,91,200 debentures, which was found to be in excess of their entitlement. Upon investigation, it was revealed that the concerned bank account did not have funds to support such an application and the cheque no. 093817 deposited along with the application of SPMLIL was dishonoured. The said cheque was subsequently re-presented on 27.11.1995, after necessary funds had been arranged in the concerned account. These funds were found to have been arranged by their associate Subhash Capital City Limited (in turn funded by SPML) and the same was done so to ensure 90% subscription. SPMLIL and the said entities were directed to reply to the said notice within 21 days of the receipt thereof and it was also indicated that if they failed to furnish their reply within the stipulated time, it would be presumed that they had nothing to say in the matter and SEBI would be free to take such action as deemed fit.

11. In reply to the same Shri Subhash Sethi, Vice Chairman & Managing Director, SPML, vide his letter dated January 7, 2003 on behalf of SPMLIL, SPML and its directors, denied all the allegations leveled against them as regards any irregularity in the rights issue subscription, made through various complaints. With reference to the allegations made against SPMLIL, it was submitted that although it had applied for debentures and the cheque presented by it was dishonoured, the same cheque had been

Instead a different cheque was issued by a different party namely, Subash Capital City Limited, in favour of SPML, for allotment of debentures. It was stated that there was no evidence of payment made by Subhash Capital City Limited to SPMLIL for the purpose of acquisition of the said shares and the cheque of Subhash Capital City Limited and their application was before the closure of the issue.

- 12. As regards the allegation that one M/s Raj Investments had dealt heavily in the shares of SPML during the period of the rights issue of SPML, at the behest of Shri Sethi and that the shares so bough by M/s Raj Investments were delivered to associates of SPML, Shri Sethi denied that shares by Raj Investments were ultimately sold to the associates of SPML and added that although SPMLIL, which had purchased 11,600 shares from Raj Investments, was an associate of SPML, the said purchase had been disclosed to SEBI and there was nothing secret about it.
- 13. The allegation to the effect that funds had been routed through associates to camouflage any transaction as also the allegation that SPML had directly or indirectly funded the subscription of their associates, including that of SPMLIL, in their rights issue or that such funding was done out of issue proceeds, was denied. The allegation of active involvement of any of the recipients of the notice to create an alleged illusion

that the rights issue of SPML had genuinely received mandatory minimum subscription of 90% was also denied.

14. It was further denied that pursuant to any agreement, Raj Investments bought and sold shares of SPML out of funds provided by SPML and its associates or that the shares which were purchased by Raj Investments were ultimately sold to associates of SPML. The issue that Raj Investments was taken in as a accomplice by SPML and its associates, including SPMLIL, to artificially create a market in the shares of SPML with a view to increasing the price of the scrip from Rs.125/- to Rs.275/- and maintaining the same till the rights issue was complete in order to induce the investors to subscribe to the rights issue was denied. On the basis of the above, SPMLIL requested that the proceedings against them be dropped and further requested for a personal hearing.

15. In view of the request for a personal hearing, SPML its directors and associates (including SPMLIL) were advised to appear before the Chairman, SEBI for a personal hearing on January 18, 2003. However vide letter dated January 1, 2003 they sought for a postponement of the personal hearing and accordingly the hearing was fixed for February 12, 2003. Finally after several adjournments, which were inter alia sought for the purpose of obtaining certain documents or inspection of documents, the hearing was finally fixed on December 2, 2003.

16. Meanwhile, NSE informed SEBI that during the period April 3, 2002 to June 14, 2002 (Sett. No. 2202064N to 2202114N), SPMLII was found to have entered into transactions which were not genuine, while dealing in the scrip of SPML, through the broker M/s Neon Vinimay P Ltd. an associate. It was stated that the counter party in the said transactions was also its associate, M/s 20th Century Engineering Ltd. in response to the information submitted by NSE, SEBI issued another notice dated August 5, 2003 to SPMLIL, asking it to show cause as to why appropriate directions should not be issued against it under section 11B of the Act read with Regulations 11 & 12 of the Regulations, on the ground of SPMLIL having indulged in acts which were calculated to create a false or misleading appearance of trading on the securities market, which was in violation of Regulation 4(b) of the SEBI FUTP Regulations. SPMLIL was directed to reply to the said notice within 21 days of the receipt thereof and it was also indicated that if they failed to furnish their reply within the stipulated time, it would be presumed that they had nothing to say in the matter and SEBI would be free to take such action as deemed fit.

17. In reply to the said notice, SPMLIL, vide its letter dated October 6, 2003 submitted that their purchase of shares of SPML, against payment, could not amount to creating a false or misleading appearance of trading on the securities market, since the said purchases were genuine purchases and there was no restriction in law on a company like them in purchasing

shares of another company like SPML. It was stated that the expression false and misleading appearance of trading clearly conveyed an idea that there was in fact no actual trading, although in their case, the very allegation in the show cause notice indicated that there was actual trading and it was in fact quantified as being 36.09% of the total gross quantity for the period under scrutiny. SPMLIL stated that no material apart from narrating certain so called suspicious circumstances has been disclosed, so as to establish that there was any false or misleading transaction or that anybody had calculated to create such false or misleading appearance of trading or anybody was actually deceived by such calculation and by such allegedly false and misleading transactions. On the basis of the above, it was stated that there was no violation of Regulation 4(b) of the Regulations, and consequently the provisions of Section 11B of SEBI Act, 1995 or Regulation 11 and 12 of the Regulations, would not apply.

18. SPMLIL challenged the validity of the proceedings and stated that the show cause notice had been issued without any lawful and valid basis and the same was therefore, bad in law. It was further stated that although a show cause notice is required to be issued by the Board, the same had been issued by the investigating Officer which was not permissible in law and that the basis of issuance of the show cause notice was non-existent and the concerned authority who had issued the purported show cause notice had no authority or jurisdiction to

do. On the basis of the above, it was submitted that the present show cause notice had been issued without fulfilling the requisite formalities.

19. As mentioned above, on the basis of their request for a personal hearing, SPML, its directors as well as SPMLIL and other associate companies of SPML appeared before me for a personal hearing on December 2, 2003. They were represented by Shri P.C Sen, Barrister and Senior Counsel, Calcutta High Court, Shri Rajiv Ginodia, Advocate, Calcutta High Court and Shri B.N Choudhary, Company Secretary, SPML who reiterated that SPML, its directors and associates, including SPMLIL, were not guilty of any default and no action should be taken against them as the allegations contained in the show cause notice were incorrect. It was further stated that except on two occasions when the money was brought in late, on all the other occasions, the money came in within the stipulated period and hence the question of jacking up the prices would not arise. It was however submitted that at times inspite of their best efforts, there was always the possibility of some technical discrepancy and / or lack of strict adherence to the rules and regulations, which if any, had been only unintentional and hence any action though to be not in strict compliance of the rules and regulations, may be condoned.

20. I have taken into consideration the facts and circumstances of the case, the material available on record which includes the

facts leading to the investigation, the findings of the investigation, the show cause notices dated August 30, 2002 and August 5, 2003 issued to SPMLIL and their replies to the same.

21. I have noted that SPMLIL had applied for 1,91,200 debentures (8% of the issue size) in the rights issue of SPML. However in terms of their holding in SPML, i.e 7500 shares of SPML, as seen from the Letter of offer for the rights issue of SPML dated 19th September 1995 under the head "Financial / other interest of Group Companies as on 31st March 1995", SPMLIL was entitled for only 3000 debentures of SPML. There is also no indication of any source of funds for the said application. Keeping these facts in mind, it cannot be denied that SPMLIL had applied for debentures in excess of its entitlement without having any funds to support such application, a fact that is clear from the observation that the cheque accompanying the application of SPMLIL i.e. cheque no. 093817 drawn on Canbank Chowringhee Branch, Calcutta was returned unpaid and the application was shifted to cheque return schedule by Vysya Bank, H B Sarani Branch, Calcutta, the collecting bank for the issue.

22. In this regard I have noticed that during the recording of statement of Shri Subash Chand Sethi, VC & MD SPML, it was vehemently denied that no application had been made by SPMLIL vide Application No. 26. However, during the course

of the personal hearing held before me on December 2, 2003, it was admitted that in one case, a cheque amounting to Rs.38.03 lacs was dishonoured and subsequently honoured on representation after the closing date, while the remaining cheques were presented before the closing date. Moreover, I have noted that the bank schedule of the Bank which received the said application had listed this application against BSN 282. Thus there is a clear contradiction in the stand of SPMLIL indicating non transparency as regards their actions in the issue process which is clearly suspect from the facts above stated.

23. It cannot be ruled out that probably at the instance of SPML fits promoters and associate companies, and much against the normal practice of banks the cheque was re-presented after necessary funds were arranged in the account of Subhash Capital City Ltd. (another associate of SPML), which had issued the cheque that had accompanied the application of SPMLIL.
24. I have also noted certain other instances of selective representations of cheques returned in respect of applications by the other associates of SPML. Thus there is a clear indication of the active involvement of SPML / its promoters / associates, including SPMLIL, in causing the bank to selectively re-present returned cheques, after providing for funds in the

25. As regards the contention of SPML and its associates (including SPMLIL) regarding the reliance to be placed upon the collections at the Vysya Bank Ltd., H.B Sarani branch and the role enacted by them in the issue process, I have noted that the Vysya bank had admittedly accepted applications after the closure of the issue, as an individual act of omission and commission of an officer of the bank, who had concealed the information from the corporate office. I have noted that the delinquent official was dismissed from service for his acts of breach of trust, misdemeanor and misconduct and acting illegally and without authority from the management and in violation of the bank's manual of instructions and also RBI Rules. These facts when viewed cumulatively give rise to the conclusion that SPMLIL acted in connivance with SPML and its other associates to create an illusion that the rights issue of SPML had genuinely received the minimum mandatory subscription of 90%.

26. I have further noted from the investigation report that there was active trading in the shares of SPML around the time of its rights issues, mainly by one M/s Raj Investments, at CSE and BSE through various brokers, at the instance of Subhash Sethi and Shri M.P Verma (Verma), Managing Director Zoom, an associate of SPML. The deliveries were effected to various group companies of SPML, as instructed by Shri Sethi and Shri Verma. The data wise Souda ledger of Raj Investments

through more than half a dozen brokers and the gross traded quantity was over 20,00,000 shares of SPML, amounting to Rs.45 crores, during the year 1995-96, the year of the rights issues. The shares so purchased were billed and made over to the associates of SPML. Some of the companies on whom the bills had been raised could be identified as associates of SPML as detailed below:

- SPMLIL (listed as one of the associates of SPML in the rights letter of offer)
- Neon Vinimay (P) Ltd. (an NSE member, having same address of SPML, fully owned by 20th Century Engineering Ltd. and Subhash Capital City Ltd., both associates of SPML. The directors of SPML viz. Shri Anil Sethi and Subhash Sethi are also directors of Neon Vinimay);
- Gladiator Suppliers (P) Ltd. (Later amalgamated with SPML India Ltd.)
- Tohfa Vinimay (P) ltd. and Jeco Commodities (later merged with Astral Traders Ltd., an associate of SPML)

27. Although SPMLIL has denied that Raj Investments was taken in as a accomplice to artificially create a market in the shares of SPML with a view to increasing the price of the scrip from Rs.125/- to Rs.275/- and maintaining the same till the rights issue was complete, in order to induce the investors to

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subscribe to the rights issue, there is clear evidence on record to show that SPMLIL & Gladiator Suppliers (P) Ltd. apparently purchased shares of SPML at Rs.245/- per share during the time of rights issue of SPML. I find that no adequate explanation has been offered by SPMLIL as regards their role in the said matter.

28. In view of the above facts, I hold that SPMLIL is guilty of the charge as brought out in the show cause notice date August 30, 2002, of their having violated the provisions of Regulations 4(a) to (e) of the FUTP Regulations.

29. As regards the observation of NSE regarding involvement of SPMLIL as a client in the trading of the shares of SPML for the period April 3, 2002 to June 14, 2002 (Sett. No. 2202064N to 2202114N), through the trading member Neon Vinimay P. Ltd. (Neon), Member, NSE, I have observed that the counter party to all the trades of SPMLIL, during the said period, was M/s 20th Century Engineering Ltd., an associate of SPMLIL. In addition, Neon the broker for all these trades is also an associate of SPML, SPMLIL and 20th Century Engineering Ltd. The fact that the buyer, seller, broker as also the company whose shares were being traded by these entities were related to each other leads one to conclude that the trades under consideration were non genuine and were meant to serve purposes other than that of ordinary trading in the

restricted to only six days out of a period of two and a half months and the total shares traded did not amount to a significant volume, on an absolute basis. That being the case, it cannot be said that there was a malafide intention on the part of SPMLIL to create a false market or fool any investor or to manipulate the share price. Have also noted that NSE had not imposed any circuit on the shares of SPML, on either the lower or the upper side, which would have been the case, if there was volatility in the shares of SPML during the relevant period. Moreover, no substantial proof has been brought out as regards SPMLIL's involvement during the said period i.e. April 3, 2002 to June 14, 2002 in creating artificial volume and increasing / maintaining the price of the SPML shares in the course of trading in the scrip of SPML.

- 30. In view of the above, although the trades of SPMLIL in the shares of SPML do not seem to have distorted the trading in these shares in any significant manner; the findings regarding pattern of trading, the company whose shares were traded, the broker and the counter party being associates etc. lead to questions for which no adequate explanations have been offered by SPMLIL. Hence I hold SPMLIL guilty of having created artificial volumes in the shares of SPML and thus having violated the provisions of regulation 4 (b) of the FUTP Regulations.

31. As regards the issues raised by SPMLIL on the matter of validity of the investigation proceedings, I have observed that SEBI had analyzed the trading details forwarded by NSE and had observed that a prima facie case had been made out against SPMLIL, as regards its role in indulging in non genuine transactions. Hence, the material provided by NSE was considered sufficient to proceed against SPMLIL. Besides, there was unquestionable inter connection between 20th Century, SPML, SPML India Ltd. and Neon, which remains undisputed till date. In view of these reasons, the question of SEBI initiating a separate investigation against SPMLIL did not arise. Hence the argument put forth by SPMLIL on the issue of legality of the investigation proceedings, is untenable in any case, nothing prevents SEBI from proceeding against an entity on the basis of information provided to another agency, if the information provided is considered sufficient for the purpose of initiating the necessary action.

32. In the above context it is relevant to note the provisions of Regulation 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, which reads as under:

Regulation 4 : No person shall –

- (a) effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities and, thereby inducing the sale or purchase of securities by any person;
- (b) indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities market;
- (c) indulge in any act which results in reflection of prices of securities based on transactions that are not genuine trade transactions;
- (d) enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress, or cause fluctuations in the market price of securities.
- (e) Pay, offer or agree to pay or offer, directly or indirectly to any person any money or money's worth for inducing another person to purchase or sell any security with the sole object of inflating, depressing, or causing fluctuations in the market price of securities.

33. It is to be noted that persons who operate in the market, are required to maintain high standards of integrity, promptitude and fairness in the conduct of the business dealings. People, who indulge in manipulative, fraudulent

(47)

86

and deceptive transactions, or abet the carrying out of such transactions which are fraudulent and deceptive, are not fit or proper persons to operate in the market.

34. Accordingly, in view of the facts and circumstances of the case and the blatant violations by SPMLIL of the provisions formulated by SEBI for the protection of the investors. I find that a direction restraining it from accessing the securities market and dealings in the securities market for an appropriate period would be required. The passing of such an order would be necessary for the regulation of the persons operating in the capital market and the development thereof as well as for the protection of the interest of investors.

35. In view of the above and in exercise of the powers conferred upon me under Sections 19 read with Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 and Regulation 11 of the SBI (Prohibition and fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, I hereby prohibit M/s SPML India Limited from accessing the securities market and dealing in securities for a period of two years.

36. This order shall come into force with immediate effect.

PLACE : MUMBAI
DATE: AUGUST 18, 2004

A.K. BATRA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE

Financials Overview

Dear Stakeholders,

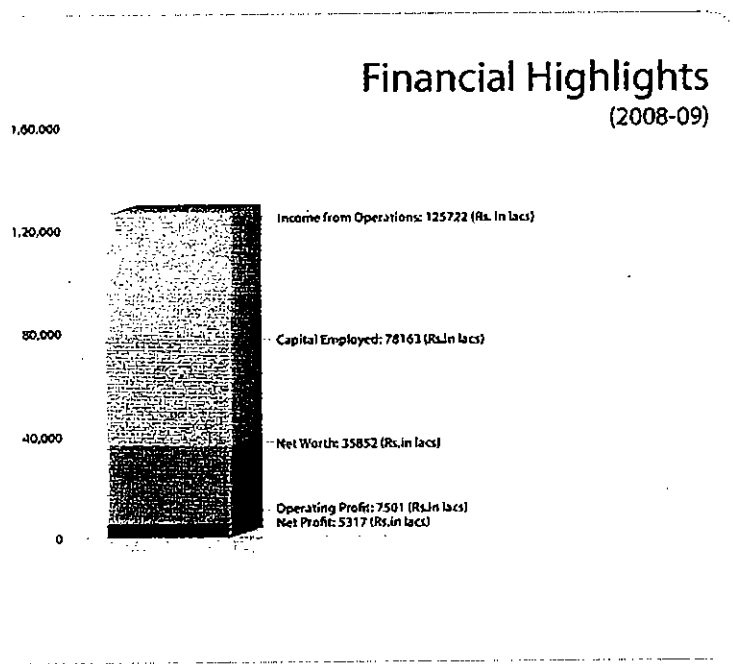
Last year had been a testing time for the industry and SPML; but we as a team have taken this period as a time to retrospect and evolve long term strategies for the organization.

The financial year gone-by can be branded as the year of positive transformation for us at SPML; resource, effort and considerable time has been spent to restructure the various functions of the organization to align with the growth of the company - the sole objective of the initiative was to stay ahead of the curve.

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Financial Highlights



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[BACK TO THE TOP](#)

122

ANNEXURE P - 17

NO. K. 11011/7/2005-PORT
DEPARTMENT OF INDUSTRIAL DEVELOPMENT (PORT)
GOVERNMENT OF PONDICHERRY

Pondicherry: the 13.6.2005

To

The Director
National Institute of Port Management
East Coast Road
Uthandi
Chennai - 600 119

Sir,

Sub: DID (Port) - Development of Pondicherry Port through private investment on BOT basis - Appointment of NIPM as consultant - Reg.

I am directed to inform that the Government of Pondicherry (GOP) has decided to appoint your institution (NIPM) as consultant for the entire process of the Development of Pondicherry Port through Private Investment on BOT basis, on usual terms and conditions on mutually agreeable basis.

2. As a first step, the GOP has shortlisted few private developers and one of the short listed firms has been issued with Letter of Intent (LOI) as a developer and asked to submit a Detailed Project Report (DPR) for the Development of Pondicherry Port. The DPR is expected to be ready by the end of July 2005.

3. As such, the scope of the consultancy services would involve the following works-like:

- a. A detailed analysis and evaluation of the DPR from all angles (technical, financial environmental legal etc) and submission of a Comprehensive Report with views / comments and recommendations to the GOP.
- b. Finalisation of DPR, which would form the basic document for the port developmental activities.
- c. Advice and assist in obtaining all the statutory clearances in connection with the Port Development Project.
- d. Preparation of a Draft Concession Agreement for the Port Development Project on BOT basis to be entered between the GOP and the successful Private entrepreneur
- e. Assist the Government in negotiation and finalization of Final Agreement.
- f. To monitor, supervise and advise the GOP on all matters during execution and completion of the Port Development Project.
- g. Any other related works that may be sought by the GOP.

Therefore, I request that your terms and conditions for taking up the consultancy assignment (MOU), money fee charges payable, PERT/CPM or Bar Chart for this assignment and the various stages

(51)

124

in which payment is to be released to your end and any other relevant information pertaining to this subject may kindly be awarded so as to approach the Government for necessary approval and sanction.

An early reply will be highly solicited.

Yours faithfully,

Sd/-

(V. KANNABIRAN)

UNDER SECRETARY TO GOVT. (PORT)

cc to:

The director
Port Department
Pondicherry

TRUE COPY

130
ANNEXURE P-20 Colly(i)

NATIONAL INSTITUTE OF PORT MANAGEMENT

East Coast Road, Uthandi, Chennai – 600 119

Phone: 24491635, 24491189 Fax: 044-24490477

C. VENKATACHALAM

ADVISOR

Ref: NIPM/TRG/103/DGP/001/2005-06 13 September 2005

Shri Ram Kumar
Director of Ports
Government of Pondicherry
PONDICHERRY

Sir,

Sub: Development of Pondicherry Port – Comments of NIPM on the
DPR for the development of a Deep Water Port at
Pondicherry.

Please find enclosed a Draft Report containing the views and
comments of NIPM on the DPR for the Development of a Deep
Water Port at Pondicherry submitted by M/s Subhash Projects &
Marketing Ltd., New Delhi which was enclosed with the order dated
4.8.2005.

With regards,

Yours sincerely,

(C. VENKATACHALAM)

TRUE COPY

131

ANNEXURE P-20 COLLY(ii)
COMMENTS OF NIPM
ON THE DPR FOR DEVELOPMENT OF
DEEP WATER PORT AT PONDICHERRY
(PREPARED BY HALCROW CONSULTING INDIA LTD.
FOR
SUBHASH PROJECTS AND MARKETING LTD.)

DRAFT REPORT

CHAPTER I
EXECUTIVE SUMMARY

GENERAL

The Report prepared by the Consultants have been mostly on the basis of existing data available on site condition and earlier studies done by others. The report is to be considered as preliminary report as detailed design based on detailed study has not been done as spelt out by the Consultants. This is to be considered as a feasibility study for the development of the Port. However all the aspects of the report given by the consultants have been studied and comments are given.

A. SALIENT FEATURES OF THE DPR

1. The DPR Prepared by the Consultant for development of Deep Water Port at Pondicherry spell out the development plan in Four stages. With the commencement of the Preliminary work in 2005, the first stage of the Project is to be commissioned by the year 2009. The first stage comprise of construction of one General Cargo Berth and two Container Berths. The second, third and fourth stages are to be commissioned in the year 2010, 2011 and 2012 respectively. The development plan during the last three stages are development of Bulk Terminal, POL Terminal and third Container berth respectively. The total cost of the Project has been estimated by the Consultant as Rs.2043.24 crores.

2. In the report the consultant also spelt out the work to be carried out and other obligations to be done by Government of Pondicherry in order to make this project viable. The details are given below:

Land : Providing the existing land of 153 acres free of cost and providing additional land of 105 acres after acquisition. The land which is meant for development of the Port and its facilities to be leased out for 50 years and the land which will be utilized for development of tourism to be leased out for 99 years.

Road : To be constructed by Government of Pondicherry

- The proposed dual carriageway around the town ending upto 2 km south of the Port should be completed by January 2009 when the port is scheduled to commence operations.
- The Govt. shall build a four lane link road from the above road with a bridge over Ariyamkuppam river.
- Alternative access road to the fishing harbour shall be constructed as it will cut the existing access to the fishing harbour after the development of the port.

Rail: The Government will arrange for the rail line from Pondicherry station yard to the proposed port area along with the necessary sidings.

134

Beach nourishment : The government should take responsibility for beach nourishment by maintaining dredging of the sand trap and the dredger.

Upper Drain : The existing drain highly, polluted, should be cleaned and diverted through a pipeline for discharge into the sea after proper treatment.

Dredging : The capital dredging of 8.9 million cu.m (3 million in the channel and 5.9 million in other areas) of sand is to be undertaken.

Electricity : The required electric supply of 40 MVA should be made available.

Water : 3 lakhs liters per day is to be provided.

Sub-contract : the Port should permit a number of sub concessionaries to operate some or all the terminals.

Fiscal incentive – it is assumed that the Government would provide the following fiscal incentives:

- Transport Incentive : Developers of Ports and other establishments within Ports should be granted transport subsidy on the inland freight inward and outward for the

goods transported in the form of reimbursement of full fares.

- > Sales Tax, duties, local taxes and levies.
 - Developers of Port and other establishments including Contractors within the Project Area should be exempted from all taxes, including Sales Tax, WCT, Turnover Tax, VAT, Purchase Tax or any other levy of the Government of Pondicherry in respect of all transactions.
 - Port developer and units in Port should be exempted from taxes levied by the local bodies, as they would be self contained units and would be responsible for the maintenance of services within Project Area.
 - All establishments to be located in the Project Area should be exempted from payment of Stamp Duty and Registration Charges towards land transactions.

Labour Regulations : Labour Laws / Rules should be examined and steps taken to simplify the same.

Grant of Equity for the Project : Appropriate grant, Equity etc., will be provided for the Port Project out the Central Government funds provided under ASIDE Scheme as per guidelines. In addition, the State Government shall provide equity to the tune of Rs.50 crores in cash for the project.

No State Taxes of any type, such as, Luxury Tax, Entertainment Tax etc. shall be levied on various Units in leisure development area, such as, Hotels, Fun Parks etc. In addition, a 10 years Tax Holiday to these Units should be provided.

No escalation of rates should be allowed for water and electricity charges to be supplied to the Project.

Government of Pondicherry shall promote Pondicherry as a Tourist Destination at its own cost.

No Licence Fee / Property Tax or any Fee for sanction of land use change should be levied within Project area.

- (3) The consultants have estimated container traffic of 3.422 Million TEUs for the Port of Pondicherry for the year 2015. For this estimated traffic the consultants have planned three container berths with a capacity of 0.9 Million TEUs.

The Projected Traffic for Iron ore and Coal for the Pondicherry Port is 27.096 million tones for the year 2015, for which the plan is to develop one Bulk Terminal with a capacity of 8.55 million tons.

The Projected traffic for POL cargo for Southern Indian Ports

estimated that 5 to 10% i.e. 405 million tons may be attracted by the Pondicherry Port. Accordingly, a POL Terminal with a capacity of 2 million tons has been planned.

For handling of other cargo such as Granite, Limestone, cement etc., a Multi Purpose cargo with a capacity of 0.6 million tons has been planned.

- (4) The entire funding of Rs.2043.24 crores is to be made through equity and loan in the ratio of 30 : 70.
- (5) The Consultants have carried out a financial analysis for the Project and have calculated the IRR, Minimum DSCR and Average DSCR for the Project and have arrived at a figure of 12.5%, 0.06 and 7.25 respectively. The consultants have also carried out sensitive analysis for the project under three different scenario as given below:
 - a. Capital cost during construction phase : Increase by 10%
 - b. Tariff decrease by 10%
 - c. The number of ships decrease by 10%

The financial indicators for this three different scenarios are also given in the report.

- (6) The Consultants have also enumerated the risk factors associated with the Project and have given the same under Chapter 12 of the main report Vol. I.

B. COMMENTS ON THE DPR

The Report has been prepared with the preliminary data available on the ground conditions (viz.) geotechnical, meteorological, oceanography etc.

- (1) The Consultants themselves have indicated in number of places that a detailed study as well as analysis have to be carried out for e.g the ship simulation modeling is to be carried out for detailed design of the break water entrance and the channel, and additional numerical modeling for estimation of quantity of littoral drifts needs to be carried out. No investigation has been carried out as on date regarding geotechnical conditions within the port basin and along the line of dredged channel and proposed to carry out before finalization of the design of the plan for the Port.
- (2) The traffic forecast has been worked out purely on the basis of past trend of the traffic of the major ports of the Southern Indian ports. It has been estimated by the Consultant that the cargo traffic for the Pondicherry port will be the cargo which will not be possible to be

handled by the major ports in the Southern region due to inadequate capacity. No other type of studies such as Origination and Destination, discussion with the probable exporters or importers, major industrial houses in the region or a detailed market survey have been carried out. As the entire development hinges on the forecast of traffic, it is essential that this is carried out and the traffic is firmed up to a reasonable extent before undertaking developmental work. This has also been reflected as risk factor by the Consultants in the report under the Chapter 12.

- (3) The lay out planned by the Consultant provides for development of 3 container Berths, one Multipurpose cargo berth of length 850 metres and 200 metres length running south to north facing the sea within the dock basin. The POL and Bulk Terminal are planned on the northern side of the eastern break water. The coal and POL berths have been planned adjacent to each other without provision of required distance of separation between the two berths. Hence this requires realignment. Container and Multi purpose cargo berth lay out is in order. However, the coal and POL storage facilities are also planned adjacent to each other which has high risk potential due to the possibility of fire emanating from the coal stack. Re-location of preferably POL Storage tanks may be examined.

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140

- (4) The Consultants have proposed Rail connectivity as well as road connectivity for movement of cargo from and to the port. Approximately 25% of the container cargo and 40% of the bulk and POL is expected to move by rail and the balance by road. For this purpose consultants have proposed additional sidings at the existing Port of Pondicherry and branch out separate connection to the Port from Pondicherry station yard, providing links to the container terminal yard, bulk terminal yard and POL terminal yard. The Road connectivity has been planned from the Southern side through a four lane link road joining the ring road to be developed by the Government of Pondicherry. The entire work of the rail, road and all associated work such as acquisition of land etc. are to be carried out by Government of Pondicherry at their cost. Since this is a policy issued to be decided by Government of Pondicherry there is no comments to offer. However, the connectivity proposed by Consultants are very essential for the successful implementation of the Project.

- (5) The type of break water, approach channel, quay structures proposed are acceptable. However detailed designs are to be made using ship simulation model to arrive at the appropriate length and width of the channel based on the current, wind etc. and also crust level of

break water to avoid over topping and to optimize the design and to maintain the tranquility inside the basin. As far as quay structures are concerned the pile supporting the deck is in order under the given situation. Wherever harbour mobile cranes are to be deployed, the design has to be suitably modified.

- (6) The proposed container terminal within the yard design and the equipment planned are quite adequate for the estimated traffic 0.9 million tones. The bulk terminal has been planned to carry out dual function of handling imported coal and to handle iron ore export. Separate set of equipments for handling coal with the associated equipment for loading iron ore has been planned. In the details furnished for the system for the bulk terminal, it is found that there are serious limitation both on the capacity as well as on the operation system. Only a limited information is made available on the conveyor handling system provided for both the cargo. In the absence of the such details more detailed analysis could not be carried out. If the terminal is developed as spelt out in the report, the terminal is likely to face serious congestion which will make the terminal uneconomical for the shipping line as well as for the exporters and importers. The POL terminal planned should have adequate distance from the Bulk Terminal. Similarly the POL Storage tank farms also need re-

location. Moreover such tank farms are constructed and provided by the exporter or the importer and not provided by the terminal operators. The multi purpose cargo berth has been planned to handle cargoes like granite, limestone, cement etc. Instead of planning a separate multi purpose berth and two container berth in the first stage, one of the two container berth can be initially used as Multi purpose berth and can be converted later on to handle container if adequate container cargo flows into the Pondicherry port.

22

(7) The other supporting equipments for operation of the Port such as tugs, survey boat, barges, navigational system are found to be in order. However, there is no details on fire fighting system provided within the port is made available.

(8) Regarding environmental aspects the Consultants have identified the clearance required and the various Acts and Regulations which are applicable to the proposed Port Project for the type of cargoes to be handled. Environment clearances are required from the Ministry of Environment and other State Committees and Pollution Control Boards at various stages. The total capital dredging will be 8.9 million cubit metre of which a port will be used for reclamation. However, the balance quantity may have to be disposed off in the offshore

which the disposal location is to be identified by conducting necessary studies and get the clearance of MOEF. This aspect may have to be included in the environmental study.

- (9) For implementing this project consultants have indicated various works to be undertaken by the Government of Pondicherry and other obligations to be carried out by them. The details of which have already been enumerated under Point No.2, Section A of this chapter. Regarding these issues the Government of Pondicherry may take a policy decision in respect of all the points enumerated.

- (10) The cost estimate of the Project is stated to be Rs.2043.24 crores by the Consultants. However, it is found that the estimates are on a higher side in certain items. The detailed comments on individual items and its estimates is given in the respective chapter on Cost Estimate.

- (11) The revenue forecast for the entire project is expected to accrue from the following:
 - Vessel related charges in terms of Port dues, Pilotage dues and berth hire charges.

144

- Cargo related charges in terms of cargo handling charges and storage charges.

The cargo handling charges for the Bulk and General Cargo assumed for revenue calculations is on the higher side compared to the tariff charged by the Ports in the southern region. Hence the revenue has to be re-worked out taking into account the realistic charges.

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(12) The financial analysis carried out on the basis of 30% : 70% equity, debt ratio has given an IRR of 12.5% Minimum DSCR of 0.6 and DSCR of 7.25. The consultants have themselves commented that IRR on the project is very low and hence carries significant risk to the developer. With any changes leading to cost escalation, low tariff, low traffic volume will still more enhance the risk of the project. The risk factors associated with the project has been brought out by the consultants themselves separately.

(13) The other important issued which required to be examined are given below:

- Whether the port developer will be allowed to sub contract any of the operation of the terminal. If so, the extent of stake that the port developer will be

shall be taken by Government of Pondicherry who is the land lord for the entire Port Project.

- Whether the equity to debt ratio of 30:70 is agreeable to the Government of Pondicherry and how the equity base of 30% is to be made for the present as well as in the future.
- Whether the land is to be leased to the Port developer for 50 years for operational purpose and 99 years for tourism purpose is agreeable to the Government of Pondicherry. The Central Government guidelines lay down 30 years lease to any BOT operator.
- The detail on the terms and conditions under which the BOT operator is to develop the port is not known. Hence no comment is offered.
- In the conclusions and recommendations the consultants have brought out that the development of Karaikal Port should be delayed by a few years until the proposed capacity of the Pondicherry Port is realized. More over they have also indicated that as these two ports are so close, the development should be integrated by a single Port operator. In

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146

independent of Pondicherry Port, this will bring greater risk to the investors for both the Ports. This is an issue to be addressed by the Government.

- The proposed construction will have impact on the sediment transport leading to erosion on the northern side of the Port. Already, erosion has taken place adjacent to the Port. So far, the Port department was removing the deposited sand from the sand trap and pumping them in the port land for reclamation. In the present proposal the entire port land will be reclaimed and developed as stack yards and terminals, using the materials from capital dredging. In that case, there may not be any place for disposal of the sand during maintenance. This quantity will be in the order of 0.7-1.3 million cu.m per annum as per the report of Halcrow. Hence an alternative solution which is environmentally acceptable and socially adoptable should be found out. Perhaps, a scheme could be evolved to pump the materials by pipelines through the proposed Port area to the existing beach opposite to the Chief Secretariat.
- Though the DPR proposes that the capital dredging is to be carried out by the Government. It is suggested that it shall be carried out by the developer, since this work need to be executed

simultaneously along with the construction of the Port and also require close coordination during the construction period.

- In Chapter 5 of the Report while discussing rail connectivity consultant has mentioned that if the infrastructure in the old port is removed it can be usefully developed commercially as a tourist spot.

No other details were provided in this regard.

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CHAPTER 7

PRELIMINARY ENVIRONMENTAL ASSESSMENT

Since a new port is suggested along the coast to handle 20 million tons of cargo with breakwaters and other berthing structures particularly in CRZ, the applicability of existing environmental Act and CRZ notification has been examined. The applicability of other Acts during construction and operation has also been examined by the consultants and a detailed note has been provided in the report.

Clearances are required in respect of the following issues:

- Impact on air quality
- Impact on sensitive receptors
- Impact on noise environment
- Impact on water resources

148

70

- e. Impact on marine ecology
- f. Impact on land environment
- g. Impact on terrestrial environment (Forests, Vegetation, Wild life & habitat)
- h. Impact on. Socio-economic profile and human use values
- i. Risk analysis (POL storage area)

The various environmental / CRZ Acts / regulations in prevalence in the country and the applicability of the same for this project are given below:

- Environmental Protection Act of 1986 & Environmental Impact assessment Notification of 1994. (Requires clearance of State Pollution Control Board and MoEF)

As per the above Schedule 1, clearance is required for Ports & Harbours development projects

- Coastal Regulation Zone Notification (CRZ) – 1991

This project needs MoEF clearance under Section 3(2) (ii) (Permissible activities), as the project falls within 500 m of the coast line

- Water & Air (Prevention & Control of Pollution) Acts – 1974 and Air (Prevention & Control of pollution) Act – 1981

Requires the clearance of PCCB under these acts

- Forest (Conservation) Act – 1980

Project does not have any forest

149 (71)

- **Wildlife (Protection) Act – 1972**

Project area is not located close to any national park / sanctuary hence, no clearance is required

- **Motor Vehicles Act – 1988**

This act is applicable during the constructional stage and operational stage as there will be vehicular movement

- **Ancient Monument & Archaeological Sites & Remains Act – 1958**

Project area is not located close to ancient monument / archaeological remains hence, no clearance is required

- **Hazardous wastes (Management & Handling) Rules – 1989**

Under Section 3(14)(a) of this Act, a no objection certificate from State Pollution Control Committee is required.

- **Merchant Shipping Act – 1958**

Marine pollution from shipping operation will be regulated by this Act. Hence, applicable to this project.

- **Pondicherry Groundwater (control and regulation) Act – 2002**

Under this Act, permission is required from PGW Authority for any digging or extraction of water within 6 km of coast.

- **Marpol Convention – 1973-1978**

This convention is responsible for preventing pollution by operational or accidental discharge from ships. This convention includes six technical regulations for preventing pollution by oil, sewage from ships etc. All this are applicable to this project.

- **Ballast Water Management – 2004**

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150

Under this Act Port authority is responsible for regulating and discharging of ballast water into the sea

- State level legislation and other Acts are summarized below:

In view of the above, this project would require clearance from Government of India and Government of Pondicherry for the following:

1. Environmental Clearance from the MoEF.
2. Environmental Clearance from the MoEF under CRZ regulation
3. No objection certificate (NOC) from the Pondicherry Pollution Control Committee (PPCC)
4. Clearance from the State Forest Department for cutting of trees for site clearance
5. Clearance from the Pondicherry Pollution Control Committee under the Air Act, the Water Act and Cess Act, if stipulated by the State Pollution Control Board while giving the NOC.
6. Clearance of Pondicherry Ground Water Authority for withdrawal of ground water of construction and operation of the project.
7. No objection Certificate from PPCC for public hearing
8. No objection Certificate from the PPCC for handling, recycling and disposal of hazardous waste produce from

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151

The report also deals with existing environmental situation and the mitigation / avoidance procedures. It is proposed to have proper studies to assess the endangered species of plants / mangrove and the fauna.

The most important environmental issue i.e. dredging has to be taken care of while operating the dredgers and disposing the spoil.

It is proposed to develop a dredging program according to the guidelines prescribed for Ports & Harbour facilities to minimize adverse effects. Nearly 8.9 million cu.m of sand is to be dredged during capital dredging. While a portion of it will be used for reclamation of the back up areas to develop the stack yards, the balance quantity may have to be disposed offshore. If so, the location for the disposal is to be studied in the mathematical model for environmental impact assessment and clearance obtained from MoEF.

In the bulk terminal coal & iron ore are proposed to be handled. This is adjacent to the POL terminal. Therefore, in addition to the environmental clearance, the no objection of the Chief Controller of Explosives, Nagpur is also to be obtained.

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CHAPTER 11

FINANCIAL ANALYSIS

The Consultants have worked out the Project cost taking into account 30 years like for the assets and have arrived at Rs. 204.00

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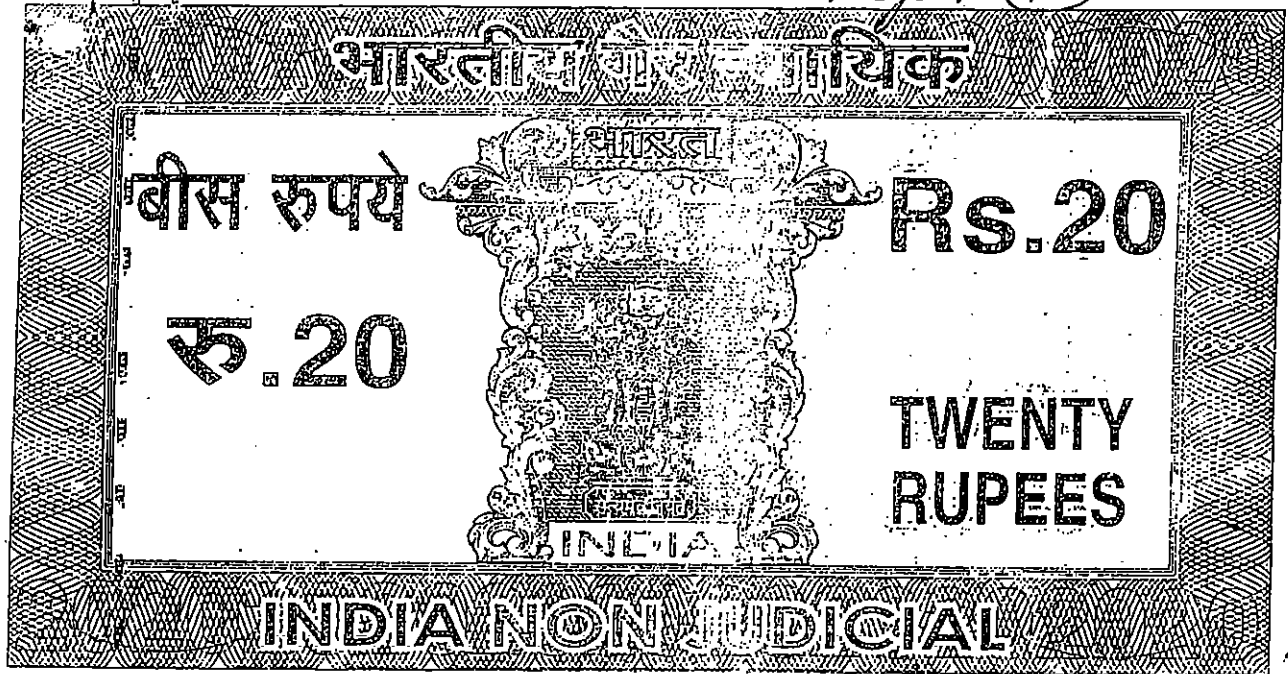
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crores as against the initial investment cost of Rs.2043.24 crores. Financial Modeling has been done to arrive at IRR, Minimum DSCR and Average DSCR values for the total project cost. The Consultants have proposed equity to debt ratio of 30:70. The interest rate has been assumed as 8.5% and the tax has been arrived at assuming a base rate of 30% which works out to an effective rate of 33.66%. Depreciation has been assumed as 15% for all the assets.

The revenue forecast also includes the lease for the Plots to be leased for 99 years. The consultants also expect Rs.50 crores to be provided by the Government of Pondicherry as a equity and other tax benefits as enumerated in earlier chapters. The IRR with the above assumptions works out to 12.5%. The Minimum DSCR and Average DSCR comes 0.06 and 7.25 respectively. The consultants have observed that the IRR of the project is very low even after Government providing the share of the project as described above. The project therefore carries a significant risk to the developer. The sensitive analysis for the project has been carried out for the following scenario :

- Capital cost during the construction phase increased by 10%
- The tariffs decrease by 10%
- The number of ships decrease by 10%

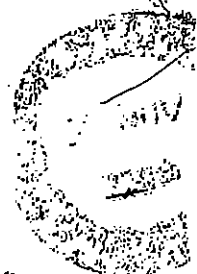
The IRR, Minimum DSCR and Average DSCR values for the above scenario gets worsened indicating that any of the changes in the



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20/11/2006

CONCESSION AGREEMENT

This Concession Agreement ("Agreement") is made on this twenty first day of January, 2006 by and between:

The Lt. Governor of Union Territory of Pondicherry, represented by the Under Secretary to the Department of Port Pondicherry, (hereinafter referred to as the "GOP" which expression shall, unless be repugnant to the context or meaning hereof, include its successors and permitted assigns) as party of the First Part

And

M/s Subhash Projects and Marketing Ltd and M/s Om Metals Ltd having office at F 27/2, Okhla Industrial Area Phase II New Delhi (hereinafter referred to as the "PPL", which expression shall, unless repugnant to the context or meaning hereof, include its successors and permitted assigns) as party of the Second Part.

OM METALS LTD
Authorized Signatory

Subhash Projects & Marketing Ltd
Authorized Signatory
[Signature]

[Signature]
V. Kamran
UNDER SECRETARY TO GOVT.
CHIEF SECRETARIAT (PORT)
PONDICHERRY

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WHEREAS:

- A. The GOP recognizing, that owing to the liberalized Indian economy which is poised for a very rapid growth, Ports will play a pivotal role in the emerging buoyancy in international trade and in the U T of Pondicherry and nearby areas of Tamilnadu, shall have large requirement of port facilities due to major developments in power sector, industrial development, etc., had invited Expressions of Interest for Development of Port vide News paper advertisement, dated 18-10-2004.
- B. GOP has been making efforts for a few years to seek development of Pondicherry Port on BOOT / BOT basis. However, due to various economic reasons and other administrative inadequacies it has not been possible to finalise a party so far.
- C. Upon the evaluation of the proposals & presentation so received in response to the above invitation of Expression of Interest M/s Subhash Projects and Marketing Ltd hereafter referred to SPML was awarded a letter of Intent (hereinafter referred to as "LOI") dated [June 3, 2005] for the development, of the Project on a Build Operate Transfer basis.
- D. On 18th June 2005, SPML provided an initial Development Guarantee, to be revalidated from time to time, vide Bank Guarantee No. 2083305BG0000051 dated 18.06.2005 from State Bank of Hyderabad, Park Street Branch, 113 Park Street, Kolkatta," in favor of the GOP for Rs. 50,00,000 (Rupees Fifty Lakh only) in terms of LOI.
- E. The Detailed Project Report (hereinafter referred to as "DPR") detailing the various Phases of the Project was prepared and submitted by SPML, in accordance with the terms of the LOI, to the GOP on [July 18, 2005]. Following meetings with Pondicherry Government and their Consultants, a revised DPR incorporating modifications as required by GOP was submitted on 23rd September, 2005. The revised DPR was further reconsidered and discussed in a meeting held on 12th November, 2005 with the Port officials and their Consultants. Accordingly the second revised DPR was submitted on 18th November, 2005 and the same is approved by the GOP subject to the condition that the provisions in the DPR and the Provisions in this agreement shall be in tune. However in case where the provisions of the DPR are in variance with any provisions of this agreement than the provision of this agreement alone will prevail. The second revised DPR shall be referred to as the DPR.
- F. Pursuant to the approval of the DPR, SPML with their Consortium Partner M/s. Om Metals Ltd (hereinafter to referred to as OML) along with their Affiliates, has incorporated the PPL as a special purpose vehicle for the development of the Project and all related and ancillary activities.
- G. SPML with their Consortium Partner M/s. Om Metal Limited along with their affiliates agreed to hold a minimum of 26% of shareholding in PPL for a period of ten years from the date of commercial operation and thereafter 11% till the fulfillment of Financial obligations;
- H. The GOP has agreed to grant to the PPL, rights under this Agreement to implement the Project in accordance with the terms and on the conditions provided herein.
- I. The GOP has issued Order No.1 dated 21-01-2006 approving this Agreement to be entered between the GOP and the PPL.
- J. The GOP has represented that it is authorized under the Statute to enter into this Agreement, and undertake to obtain all requisite approvals to the PPI. from all

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Om Metals Ltd
Partners

OM METALS LTD

Subhash Projects & Marketing Ltd

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NOW, THEREFORE, in view of the foregoing provisions and in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, GOP and PPL (each together with their respective successors and assigns, are referred to as a Party and collectively "Parties") intending to be legally bound, hereby agree as follows:

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Agreement, unless the context otherwise requires:

1. "Affiliate" shall mean and include any entity, which directly or indirectly is controlled by SPML, OML and / or their associates or nominees.
2. "Applicable Law" means any statute, law, regulation, ordinance, rule, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration having the force of law of any of the foregoing, by any government authority having jurisdiction over the matter in question.
3. "Appointed Date" means the date of execution of this Agreement.
4. "Detailed Project Report", hereinafter referred to as DPR, means the Detailed Project Report approved by the GOP for the development and construction of the various phases of the Port, the approved form of which has been signed for identification by the GOP and the PPL and attached hereto as Annexure 1.
5. "Certificate of Partial Completion" shall have the meaning specified in Clause 10.7(a).
6. "Certificate of Completion of Project" shall have the meaning specified in Clause 10.7(b).
7. "Change in Law" shall have meaning specified in Clause 14.
8. "Concession" means the rights granted by the GOP to the PPL in accordance with Clause 3.1.
9. "Concession Agreement" / "Agreement" means this Concession Agreement, together with the Annexures comprised herein or forming part hereof.
10. "Conditions Precedent" shall collectively mean the GOP's Conditions Precedent and the PPL's Conditions Precedent.
11. "Confidential Information" means all information, data records, know how and other information which, whether in written, electronic or oral form is disclosed by a Disclosing Party, its Affiliates or Representatives to the Recipient Party, its Affiliates or Representatives and is in its nature or otherwise marked or designated as being confidential and relates to: (a) this Agreement; (b) other Project Agreements; and (c) the past, present or future business activities, policies or plans of any party to this Agreement or its Affiliates; and (d) the past, present or future business activities, policies or plans of any third party which the Disclosing Party confirms has been provided to it under an obligation of confidence.
12. "Conservator" means the conservator appointed in respect of the Port from time to time under the Indian Ports Act 1908.
13. "Date of Commencement of Operations" shall have the meaning specified in Clause 10.6.
14. "Development Guarantee" shall have the meaning specified in Recital (D).

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SUBHASH PROJECTS & MARKETING LTD

Authorized Signatory

V. Kannan
UNDER SECRETARY TO GOVT.

- 15. "Direct Agreement" means any agreement between the GOP and the Lenders setting out (inter alia) the detailed provisions and procedures relating to the exercise by the Lenders of their rights of step-in and substitution in connection with this Agreement, the Lease and Possession Agreement (s) (based on the terms of Clause 16.3.7), and any other agreement related to the Project.
- 16. "Disclosing Party" means the party disclosing Confidential Information.
- 17. "Effective Date" means the date on which Lease and Possession Agreement is signed.
- 18. "Financial Closing" means the execution of the Financing Documents by the PPL for the development of the Project.
- 19. "Financial Obligations" means the sum of (i) the amount required to repay the principal amount of all loans and other obligations committed to the PPL under the Financing Documents to finance the development, design, completion, ownership, operation and maintenance of the Project Facilities (or the relevant part thereof) outstanding on the date of termination, plus (ii) interest, fees, costs, expenses and other amounts due and payable without any breach of terms of the Financing Documents at such time pursuant to the Financing Documents.
- 20. "Financing Documents" means all the loan agreements, notes, indentures, security agreements and documents, letters of credit, share subscription agreements, subordinated debt agreements and other documents relating to the financing of the development, design, completion, ownership, operation and maintenance of the project facilities (including any Direct Agreement) as the same may be amended, supplemented or modified from time to time.
- 21. "Force Majeure" shall have the meaning specified in Clause 15.
- 22. "Good Industry Practice" means that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be exercised by a skilled and experienced developer and/or operator in relation to its practices, methods, techniques and standards (as modified or adapted from time to time), complying with Applicable Law and engaged in the same type of undertaking under the same or similar circumstances and conditions, acting in good faith with the intention of performing its contractual obligations.
- 23. "GOP" shall mean the Government of Pondicherry having its office at Secretariat, Pondicherry and represented by the Secretary, Ports Department, which shall include his administrators, successors and assignees.
- 24. "Government of India" means the Union Government of India.
- 25. "Gross Income" means and includes, gross income generated by the PPL from the operation of the Port or any other service in respect of vessels and cargo as audited by the Auditor including but not limited to berth hire, Pilotage, tug assistance fee, hire charges for flotilla, towage, stevedoring, wharfage, transshipment, lighterage, intra-port transportation, demurrage, storage, cargo handling, including stuffing and stripping of containers, hire of floating craft, railway services, and all other revenues from Services within the Port, except Port Dues, and interest income, whether collected or not by the PPL and its assignees or sub-contractors and sub-licencees.
- 26. "Expert" shall mean a qualified person appointed in accordance with Clause 5.1 to undertake, perform, carry out the duties, responsibilities, services and activities set forth in Clause 5.2 for supervision, monitoring and certifying of activities undertaken by the PPL in relation to the Project in accordance with the terms and conditions set out in this Agreement.

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- 27. "Indian Ports Act" means the Indian Ports Act, 1908 as amended or re-enacted from time to time.
- 28. "Indian Prime Lending Rate" (or "IPLR") means the rate of interest per annum displayed as the "State Bank of India" prime lending rate on the appropriate page of the Reuters information service screen, or (if such display on such service ceases to be available) as displayed on the appropriate page by another display-based market information vendor reasonably selected by the PPL for the purpose and notified to the GOP and displaying the State Bank of India "Prime Lending Rate", or (if no such service is available) as quoted by the State Bank of India, in each case as determined as above or at or about 12.00 noon on the relevant day (or, if not then available, at such later time of day as it first becomes so available) on the first business day of the period for which interest is to accrue, and in each case rounded to two decimal places;].
- 29. "IWPI" means the Indian Wholesale Price Index (all Commodities), as published from time to time by the officer of the Economic Adviser, Ministry of Commerce and Industry in India (or any successor Relevant Authority officially authorized to publish such index
- 30. "Lease and Possession Agreement-" means the agreement between the GOP, and the PPL entered into on the Appointed Date, with respect to Land and Assets thereon, already in possession of GOP and attached hereto as Annexure II.
- 31. "Lenders" means any Indian/Foreign finance institution/s, corporations, company/ies, banks, agencies or other persons providing senior secured and/or unsecured credit facilities or finance to PPL, (including lease and hire-purchase facilities) pursuant to the Financing Documents.
- 32. "Letter of Intent (LOI)" means the letter of intent dated June 3, 2005 awarded to the Promoters by the GOP to develop, operate and maintain the Project on a BOT basis.
- 33. "Loss of Permit" means any illegal cancellation, revocation, withdrawal or suspension of, or failure or refusal to issue or renew, any clearance, license, and permit or consent needed for the PPL's performance of its obligations and exercise of its rights under this Agreement.
- 34. "Major Port" means a major port as defined in the Indian Ports Act, 1908.
- 36. "Normal Transfer" shall have the meaning specified in Clause 17.
- 37. "Notified Tariff" shall have the meaning specified in Clause 13.1.2 (b).
- 38. "Operating Procedures" shall have the meaning specified in Clause 12.3(a).
- 39. "Performance Guarantee" means the guarantee executed by the PPL in favor of the GOP in terms of clause 3.4.2(ii) or 3.6.2(c) of this Agreement.
- 40. "Permitted Activity" means all activities that is permissible within the Site and shall include development of land for commercial, recreation, tourism purposes and any allied or incidental facilities including residential for the Project viability.

41. "Phase(s)" shall mean phases in which the project construction may proceed as outlined in the DPR

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- 42. "Port" means the existing port at Pondicherry proposed to be developed in accordance with the terms of this Concession Agreement by the PPL, as per the DPR
- 43. "Port Limits" means the limits of the Port as defined under Section 5 of the Indian Ports Act. "Port Land" means land delineated for the development of the Port and leased to the PPL for providing the Services.
- 44. "Priority Services" means any Port-related Services and facilities which the PPL (and any other port operators) may be required to provide by a Relevant Authority in connection with any emergency, natural disaster, environmental catastrophe, maintenance of essential supplies, matter of national importance or similar circumstances.
- 45. "Project" means and includes the development, financing, design, construction, operation and maintenance of the Project Facilities at the Port in accordance with the provisions of this Concession Agreement, including inter alia, Permitted Activities, Ship Building and provision of Services to the users.
- 46. "Project Facilities" means the assets (whether existing, constructed, purchased, leased or hired by the PPL) listed or otherwise identified in the Approved DPR, as have been agreed upon by the GOP and the PPL for the operation of the Port together with such other assets as may be subsequently acquired by the PPL and included as a part of the Project in accordance with this Agreement.
- 47. "Recipient Party" means a party receiving Confidential Information from the Disclosing Party.
- 48. "Reclaimed Land" means reclaimed land and/or any land to be used for the purposes of reclamation or proposed to be reclaimed either by the GOP or the PPL, as may be delineated in plans set out in the DPR.
- 49. "Regulatory Authority" means any authority constituted by law in the Pondicherry for the port sector.
- 50. "Relevant Authority" means (a) any court with the relevant jurisdiction or, (b) any local, national or supra-national agency, authority, council, department, inspectorate, ministry, municipality, official or public or statutory person or any other executive, legislative or administrative entity of, or under the control of, the GOP or the Government of India.
- 51. "Representatives" means the officers, directors, employees, or agents of a party.
- 52. "Rupees" or "Rs" means the lawful currency of the Republic of India.
- 53. "Scheduled Date of Normal Transfer" shall mean date on which License period described in clause 3.2 expires.
- 54. "Services" shall mean the following services provided by the PPL to port users, all in accordance with the approved DPR:
 - (a) Services to facilitate the approach and departure of ships, including the dredged channel, pilotage, navigation marking, tugs and port VTS system.
 - (b) Services to facilitate berthing of ships as provided by the port staff and the breakwaters and quays.

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- (c) Services for loading and unloading of ships and for stacking and storing of cargo.
- (d) Services for the receipt and dispatch of cargo by road and rail.
- (e) Bunkering and other such services for ships in port.
- (f) Ship repairs including dry-docking facilities.

- 55. "Site" means the total land area required to develop the Project and to make the development of the Project viable including the Port Land, Reclaimed Land and land which has not been acquired on the date hereof but to be acquired in future.
- 56. "Term" shall mean License period as specified in Clause 3.2.
- 57. "Termination Notice" shall have the meaning specified in Clause 16.3.5(a).
- 58. "Transport Infrastructure Linkages" means the road, rail linkages mentioned in the DPR, identified as material transport infrastructure required for the development and/or operations of the Port.
- 59. "Zero Date" means the date on which all the conditions precedent are satisfied or waived in accordance with the terms hereof.

2. Interpretation

In this Agreement, unless the context otherwise requires:

- i) words denoting the singular shall include the plural and vice-versa;
- ii) words denoting a person shall include an individual, corporation, company, partnership, trust or other entity;
- iii) heading and bold type face are only for convenience and shall be ignored for the purpose of interpretation;
- iv) references to all agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, novated or assigned from time to time;
- v) reference to any legislation or law or to any provision thereof shall include references to such law as it may after the date of this Agreement from time to time be amended, supplemented or reenacted;
- vi) references to the word "include" or including" shall be construed without limitation;
- vii) the Annexures to this Agreement form a part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement; and
- viii) a reference to "party" is to a party to this Agreement and a reference to "parties" is, unless otherwise stated to the contrary, a reference to the parties to this Agreement.
- ix) a reference in this Agreement to a Clause, Sub-Clause, Annexure, Schedule or paragraph is (unless otherwise stated to the contrary) a reference to a Clause, sub-Clause, Annexure, Schedule or Paragraph of this Agreement; and
- x) a reference to a "clearance" includes any permit, consent, license, exemption, approval, registration, filing or recommending to competent authority.
- xi) all capitalized terms used herein and not defined shall have the meaning ascribed to them in the DPR.

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- xii) The documents forming this Agreement are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence: a) Approved DPR; b) Terms of this Agreement (excluding all Annexures to this Agreement); and c) Annexures forming part of this Agreement.
- xiii) Where in this agreement amounts are refer to as being subject to an "IWPI" adjustment or as "Inflation Adjusted" or "Indexed", the relevant amount shall be multiplied by $IWPI_A / IWPI_B$ where: a) $IWPI_A$ is the value of IWPI most recently published prior to the relevant calculation date; and b) $IWPI_B$ is the value of IWPI on Appointed date.

3 Scope

3.1 Grant of Concession

- 3.1.1 The GOP hereby irrevocably grants to the PPL full and exclusive right and authority during the Term of this Agreement to develop, finance, design, construct, sub-lease, operate and maintain the Site and Project and to do or procure all things necessarily incidental thereto to have full use of the Site and to provide necessary Services to the users of the Port, levy & collect user charges, Rentals, Sale proceeds or any other revenue and to exercise and / or enjoy the rights, powers, benefits, privileges, authorizations and entitlements, in accordance with the provisions of this Concessions Agreement. Sub
- 3.1.2 The PPL accepts the Concession granted to it by the GOP and agrees to develop, finance, design, construct, own, operate and maintain the Project Facilities and Site and provide Services to the users of the Port, in accordance with DPR.
- 3.1.3 For the financing or refinancing of the Project, the GOP hereby recognizes and grant the right to the PPL to mortgage, assign, transfer, charge or otherwise encumber the Project Facilities and the Site and to assign its right under this Agreement in favor of the Lenders in accordance with the terms of the Financing Documents. Sub
- 3.1.4 On the date hereof, the GOP shall execute the Lease and Possession Agreement and hand over the vacant unencumbered possession of the land scheduled therein within 180 days to the PPL for immediately commencing Port and Permitted Activities and the PPL accepts to commence implementation of the same immediately. Sub
- 3.1.5 The PPL shall be sole and exclusive person entitled to undertake the Project and GOP agrees that no agreement or arrangement permitting Port activity by any other party shall be entered into during License Period in Pondicherry.
- 3.1.6 The GOP hereby grants the PPL the Right to modify, alter, demolish and dispose off the salvage i.e., the existing plant and machinery, equipments, structures, scrap, materials at the Site. Cost/benefit if any shall be to PPL's account.

3.2 Licence Period:

- (a) The Licence Period is hereby granted for an initial period of 30 years and a further period of 20 years (two-ten years period) for Port development and 50 years for tourism related activities from the date of certificate of completion of Port. 7

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3.4.1
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(b) The Licence period under this Concession Agreement shall be renewed on expiry, on the terms & conditions to the extent applicable. For renewal of the Licence, the PPL will send a request for renewal to the GOP 90 days before expiry of the present Licence period, and on receipt of such request the GOP shall communicate the acceptance, of such request of renewal within 60 days of receipt of such request. On such renewal PPL shall share its profit with GOP, in addition to sharing of Gross income as per clause 13.2. GOP's share of Profit shall be 10% for first 10 years of extended period and thereafter 1% increases every year subject to maximum of 20%.

3.2.3 Deleted

3.2.5 However, it is understood by the parties that if the License is not deemed to have been renewed as aforesaid, then, till the time the License is either renewed in favor of the PPL or is awarded to the third party by following the procedure set out above, the PPL shall continue to operate the Project on the existing terms & conditions.

3.3 Effective Date:

Effective Date shall mean the date on which Lease and Possession Agreement has been executed.

3.4 Conditions Precedent

(a) Except for the provisions of Clause 3.1, this Agreement shall come into full force and effect upon satisfaction (or waiver by the PPL of the GOP's Conditions Precedent or by the GOP of the PPL's Conditions Precedent, at their respective discretion) of the following conditions (such conditions, together with the conditions to the Date of Commencement of Operations set out in Clause 10.6(a) hereinafter referred to as "Conditions Precedents"):

3.4.1 GOP's Conditions Precedent:

- (i) Declaration by the GOP appointing the PPL as the Conservator for the port under the Indian Port Act.
- (ii) Notices shall have been issued by the GOP pursuant to Section 33 of the Indian Ports Act confirming the right of the PPL to set its tariffs and Commercial Charges at the levels and in the manner permitted by this Agreement.
- (iii) PPL shall have been granted all Port related Government clearances and permits under the Applicable Laws, including those relating to environmental protection and conservation from the GOP. Provided however that the grant of such clearances and permits shall be at the sole cost of the PPL and subject to the PPL having submitted the due applications, requests and requisitions as required by the Government Authority. The Central Government clearances shall be facilitated by GOP on a "best efforts" basis
- iv) The execution of the counterparts of the Direct Agreement and all such other agreements as are required by the Lenders for Financial Closing;
- v) GOP shall have been granted the lease with respect to existing Port land including submerged area and shall execute in favour of PPL a valid and binding Lease and Possession Agreement and handover possession of Port land free from all encumbrances to

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- vi) Deleted.
- vii) GOP shall have issued notifications under Applicable Law, specifying PPL as the entity with the rights to implement the Project in accordance with BOT principles.
- viii) GOP shall have issued necessary notification/Government Order exempting the PPL from the applicability of the relevant Land Reforms Act or any other ceiling related Applicable Law in relation to the Project Site, which shall be handed over to the PPL.

3.4.2 PPL's Conditions Precedent:

- (i) Written confirmation has been given by the PPL that Financial Closing has been achieved.
 - (ii) The PPL shall submit the Performance Guarantee from a Scheduled Bank on or before the Effective Date in favor of the GOP for Rs. 50,00,000 (Rupees Fifty Lakh only), which shall be valid till the date of financial closure and GOP shall return Development Bank Guarantee submitted by PPL vide Recital D
 - (iii) PPL shall submit all applications for Port related Government clearances and permits under the Applicable Laws, including those relating to environmental protection and conservation to the GOP/GOI as the case may be so as to enable GOP/GOI to grant the permission at the earliest for the project. The grant of such clearances and permits shall be at the sole cost of the PPL.
- (b) The GOP and the PPL shall (within the scope of their respective responsibilities, power and capacity) satisfy the Conditions Precedent set out in Clause 3.4 as soon as practicable after the Appointed Date and in any event by no later than 15 months from Appointed Date.
 - (c) In the event that any of the Conditions Precedent referred to above are waived by the PPL or the GOP (as the case may be) for the purposes of Clause 3.4(a) they shall (subject to any contrary agreement of the parties) be deemed to be Conditions Precedent to the Date of Commencement of Operations under Clause 10.6.

3.5 Zero Date

- (a) The "Zero Date" shall mean the date on which all the Conditions Precedent set out in Clause 3.4 have been satisfied or waived by the PPL of the GOP's Conditions Precedent or by the GOP of the PPL's Conditions Precedent, at their respective discretion.
- (b) It is the intention of the parties that Zero Date shall be achieved no later than 15 months from the Appointed Date or as mutually extended by the parties hereto, but subject to and without prejudice to the proviso set out in Clause 3.4 (b).
- (c) Upon failure to achieve the Zero Date by the date referred to in Clause 3.5(b) above for reasons attributable to GOP, the Development Guarantee or the Performance Guarantee, as the case may be, shall stand discharged and shall be returned to the PPL.

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3.6 Covenants

3.6.1 Covenants of the GOP

- (a) In case required for new Port development, GOP shall apply to the Customs Department for approval of the Port as a Port and as a Landing and Shipping Place, and obtain such approval from the Customs Department and promptly upon obtaining such approval declare the Port a Landing and Shipping Place and publish the required notifications in the Official Gazette.
- (b) GOP shall acquire all areas within or outside the Port Limits which are needed for the Project and required to make the Project viable as indicated in the DPR by the PPL as early as possible, and transfer the leasehold interest and vacant possession of the above to the PPL and to obtain and/or issue any clearances and execute Lease and Possession Agreement
- (c) The GOP shall recommend and make best efforts with the Government of India to solicit financial assistance to PPL for capital dredging
- (d) Providing requisite quantum of power at the incoming terminal of sub-station at the boundary of the Port area as per DPR on usual cost.
- (e) Providing requisite quantity of Water at one point near the boundary of the Port area as per DPR on usual cost.
- (g) The GOP shall not charge, pledge, mortgage, assign, encumber or otherwise create or agree to any security interest of any kind whatsoever in favor of any person other than the PPL, in or over any of the assets, property or land comprised in the Port site.
- (h) The GOP shall ensure and arrange to extend the rail linkages to the Port limits.
- (i) The GOP shall ensure and arrange to connect the Port with major highways that emanate from Pondicherry as well as with proposed Pondicherry Special Economic Zone and will carry out all the road transport linkages.
- (j) The GOP will ensure and provide all relevant Utilities at users' cost.
- (k) The GOP shall provide the following fiscal and financial incentives:
 - (a) Deleted.
 - (b) In cases found appropriate, GOP may, at the request of the PPL, issue recommendatory or supporting letters to any Government Authority recommending any permissible tax or duty Concessions or benefits to the PPL and/or the Port Project.
- (l) PPL shall maintain dredging of the sand trap adjacent to the southern groyne to the extent required for running and operation of the Port.
- (m) The GOP shall suitably realign the Uppar drain so that it shall not pass through the Port Limits if technically feasible and recommended by the consultants at PPL's cost.

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- (n) The GOP shall assist in all grants/subsidies/concessions/benefits to the PPL for the Project as may be applicable under any present or future scheme/Act/Policy of the GOP or Central Govt.
- (o) Endeavor to Secure a grant /subsidy of adequate amount from the Central Government for the Project to make it Financially viable.

3.6.2 Covenants of the PPL

- (a) The PPL shall conduct the design and detailed engineering studies as per the DPR.
- (b) On and from the Zero Date, the PPL shall develop the Phase I of the Project as per DPR and subsequent Phases shall be developed depending on traffic projections and financial viability.
- (c) The PPL shall submit a Performance Guarantee from a Scheduled Bank within 15 days of financial closure, in favour of GOP for Rs.1,00,00,000/- (Rupees ten nullions only), with validity upto completion of Phase-I construction

4. Statutory Obligations of the Parties

The GOP and the PPL shall perform their respective obligations under this Agreement (including in respect of the Conservator) in compliance with all applicable laws and (in case of the PPL) Good Industry Practice.

5. Expert

5.1 Appointment of Expert

- i. For selection of an Expert, the PPL shall, within a period of 30 days from the Effective Date, propose a list of three firms.
- ii. The GOP shall, within a period of 7 (seven) days communicate to the GOP if it desires any of the firms suggested to be excluded from the list.
- iii. The PPL may appoint one of the firms not excluded by the GOP or within a period of 7 days propose replacement for such firms, which were excluded by the GOP. The GOP may communicate his exclusion of any of such replaced firms in which case the process set forth in this section shall be repeated.
- iv. The PPL may also appoint other firms as supporting Experts for specific project components, if felt necessary, on mutual agreement with the GOP
- v. If the above process does not result in the appointment of Expert within 60 (sixty) days from the Effective Date, the PPL shall at its discretion appoint a firm to act as Expert, provided that the Expert shall not be one of the firms excluded by the GOP in the above process.
- vi. The approved firm shall act as Expert for the purposes of determining and ensuring compliance with the terms of this Agreement and the terms of reference for such Expert shall be substantially those as set out in herein.
- vii. The PPL upon 30 days notice to the GOP may remove Expert. In such event, the PPL may appoint another entity as Expert following the process set forth herein.

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5.2 Duties of Expert

The Expert shall monitor in the design and construction, operation and maintenance of the Project in accordance with DPR Except as expressly stated in this Agreement, the Expert shall have no authority to relieve the Parties of any of their obligations under this Agreement.

5.3 Payments to Expert

- (i) The fees payable to the Expert shall be agreed from time to time between the PPL and the Expert (but following prior consultation with the GOP and giving due consideration to any reasonable comments of the GOP on the level of fees). The level of fees shall be reasonable and appropriate for the services provided and consistent with any market rate of fees, which would reasonably be expected to be charged for such services. Disbursements and out-of-pocket expenses reasonably incurred by the Expert will be reimbursed at cost subject to the presentation of supporting invoices or other appropriate documentation.
- (ii) The GOP and PPL shall bear the fees, costs and expenses of the Expert on a 50: 50 % basis.

5.4 Termination of the Expert

- (i) If the GOP/PPL has reason to believe that the Expert is not discharging its duties in a fair, efficient and diligent manner, it may make a written representation to the other Party stating its reasons in detail and seeking termination of the appointment. Upon receipt of such representation, a meeting shall be held between the PPL, the GOP and the Expert with a view to reaching an amicable resolution of the dispute.
- (ii) The Expert may be removed by the GOP/PPL upon 30 days' written notice and may be replaced by an appropriately qualified substitute in accordance with the provisions of clause 5.1.

6 Clearances

- (a) The GOP shall make best efforts and assist the PPL in obtaining clearances from the Government of India at all levels as may be required for the performance of its rights and obligations under this Agreement, including any easementary rights and any applications for income tax concessions under Sections 10(23G) and 80-IA of the Income Tax Act 1961.
- (b) The GOP will recommend for grant from Central Government or any other Concessions/ relief / subsidies if available to the Project so as to make the Project sustainable.

7 Land

7.1 Leased Land

- (a) Ownership of the Site shall vest in the GOP.
- (b) Land occupied by the PPL under the terms of the Lease and Possession Agreements shall revert to the GOP on termination of this Agreement unless otherwise mutually agreed between the Parties.
- (c) The PPL hereby agrees, undertakes and covenants with the GOP that the PPL shall either use and/or shall permit or cause any other person to use minimum 80% of the total Land for the purposes of establishing, operating and maintaining the Port and for allied and incidental activities and balance of the total land i.e. 20% in aggregate for Permitted Activity to make the Project financially viable.

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) It is agreed by the PPL that in order to boost tourism, commercial, and recreation facilities in Rondicherry, PPL will start the activity for development of Port and Permitted Activity within 90 days from the Appointed Date in the land delivered under Lease and Possession Agreements.

(e) As a special case, PPL shall be entitled to consume a maximum FSI of 300 and under no circumstances the PPL will exceed the FSI limit of 300 for Permitted Activity. Further, the maximum height of the structure will be 50 meters

7.2 Easementary Rights

The GOP wherever required, shall acquire / provide easementary rights for the Project.

7.3 Period of Lease

The term of the lease granted in the Lease and Possession Agreements shall run concurrently with this Agreement and shall terminate on the expiry of the Term of this Agreement, unless otherwise agreed to between the parties herein.

7.4 Reclaimed land

(a) With GOP approval, the title to all Reclaimed Land within the Port Limits, including those which are proposed to be brought within the Port Limits in terms of the DPR, shall vest with the GOP, as provided in/and subject to the terms of the Lease and Possession Agreements. The GOP shall take all such steps as may be necessary to confirm the PPL's leasehold interest thereto, including the specific steps identified in the Lease and Possession Agreements in relation thereto. On Reclamation of Land in the course of execution of obligations under this Agreement, the PPL shall notify the GOP and GOP shall forthwith make arrangements for survey of the Reclaimed Land and its incorporation in the concerned Revenue Records.

7.5 Acquired Land

The GOP acknowledges that to make Project viable it needs to acquire additional land as identified by PPL and is in the process of acquisition of land and the same shall be leased to the PPL under a separate Lease and Possession Agreement. The GOP shall take all steps necessary to ensure to lease such land to be acquired as early as possible.

7.6 Sub-leasing

PPL may sub-lease any portion of the leased land with prior approval of GOP for effectively implementing objects of this agreement provided the period of such sub-letting is co-terminus with the term of this agreement.

7.7 Deleted.

7.8 Land Lease Rentals

(a) In consideration of the Lease of the land required for the Project (excluding submerged land) described in Lease & Possession Agreements, PPL shall pay to GOP the Lease Charge amounting to Rs. 2000 (Rs. Two thousand) Per acre for every year. With respect to the reclaimed land (reclaimed by PPL at its own cost), submerged land, reclaimed Land and the water area, PPL shall pay total Lease Charges Rs. 1000/- (Rupees One thousand only) per year.L.S.

(b) In case any additional land is given on Lease by GOP to PPL in future, then the Lease Charge for such additional land or reclaimed land shall be determined then by GOP.

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(c) The Lease charges shall be payable 15 days before beginning of each financial year.

8 Progress Monitoring and Status Reports

The GOP & PPL shall furnish to Expert, monthly status reports relating to the performance of their obligations, with copy to each other.

9 Infrastructure

(a) Transport

GOP shall provide Transport Infrastructure Linkages as early as possible. In the event that the Transport Infrastructure Linkages as identified and agreed upon in the DPR have not been provided by the GOP, by Date of Commencement of Operation, then without prejudice to any other provisions hereof, the PPL shall be entitled to an extension of the Term of this Agreement by such time till the Transport Infrastructure Linkages have been provided. Provided however that if the Transport Infrastructure Linkages are not ready within 180 days from the Date of Commencement of Operation, the GOP will recommend and assist in re-scheduling debt service payments with the Lenders.

(b) Utilities

(i) In the event that the Utilities for which due application has been submitted by PPL to concerned authorities, particularly Water & Power, as identified and agreed upon in the DPR /as mentioned in Clause 3.6.1 have not been provided by the GOP, 180 days prior to Date of Commencement of Operation, then without prejudice to any other provisions hereof, the PPL shall be entitled to an extension of the Term of this Agreement by such time till the Utilities have been provided. Provided however that if the Utilities are not ready 30 days prior to Date of Commencement of Operation the GOP will recommend and assist in re-scheduling debt service payments with the Lenders.

(ii) PPL shall maintain dredging of the sand trap adjacent to the southern groyne to the extent required for running and operation of the Port.

(iii) The GOP shall suitably realign the Uppar drain so as it shall not pass thru the Port Limits if technically feasible at PPL's cost.

10. Construction Phase

10.1 Construction Period

(a) The Construction Period shall be the period from the Zero Date till the Date of Commencement of Operations of Phase I as mentioned in DPR by 2009.

10.2 Construction Monitoring and Inspection

(a) From the Effective Date, Expert shall be entitled to monitor and inspect any construction activities on the Port Land to ensure conformity with the requirement of the DPR and to ensure compliance with the terms and conditions of this Agreement

(b) The Parties shall furnish periodic status reports to Expert, relating to the obligations in accordance with this Agreement.

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- (c) Subject to the sub clause (d) below, the PPL shall ensure un-hindered access and offer necessary co-operation to the GOP or its representatives for monitoring and inspection of construction activities at the Port.
- (d) The GOP shall provide the PPL with reasonable notice of any such inspection and ensure that any such inspection shall in no way interfere with the construction activities of the PPL and is carried out at reasonable times.
- (e) The aforesaid provisions shall not, however, relieve the PPL from performing any of its obligations under this Agreement.

10.3 Deleted.

10.4 Sub-concession for the construction of asset

- (a) The PPL may fulfill its obligation to construct and operate the Project by granting sub-concessions and/or sub lease with prior approval of GOP. PPL shall be entirely and absolutely responsible for any acts or commissions, negligence or defaults, breaches by any of its agents as if such breach, act, omission, negligence or default has been caused by PPL or its agents or workmen, and PPL shall be solely responsible for the same. Sub Concession
- (b) Unless otherwise agreed to by the GOP, all sub-concessions granted by the PPL to third parties and long term commercial agreements entered into by the PPL with third parties shall be in accordance with the terms and conditions of this Agreement, and shall terminate on expiry of this Agreement.
- (c) The PPL shall:
 - (i) ensure that any assets created and/or constructed pursuant to the sub-concession, which constitute the Project Facilities vest in the GOP at the expiry of this Agreement (but subject always to the provisions of Clause 17);
 - (ii) be liable for payment of Concession Fees for any cargo handled by the sub-concessionaire during the Term;
 - (iii) ensure that the sub-concessionaire performs its obligations in the same manner that the PPL is required to perform its obligations under this Agreement; and

The GOP shall not be liable for any costs whatsoever in relation to such sub-concessions and long term commercial agreements entered into by the PPL with third parties as a result of the expiry or termination of this Agreement unless such termination is due to the GOP or on account of Force Majeure or Change in Law.

- (d) The PPL shall construct and operate or cause to be constructed and operated assets in accordance with Good Industry Practice and as per the provisions of DPR.

10.5 Deleted.

10.6 Date of Commencement of Operations

- (a) The Pondicherry Port is already operational. However if due to change of operator a fresh / endorsed Landing and Shipping Declaration is required the same will be notified by GOP. On such an event, the date of issue / endorsement of such notification shall be treated as date of commencement of operation.

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10.7 Completion of Construction

- (a) The Expert shall cause the Port Land to be inspected promptly (and in any event within 7 days) on intimation by the PPL that the construction of any one terminal which can be used and operated independently, is substantially complete and shall, upon satisfying itself on the inspection, thereupon issue a "Certificate of Partial Completion" in relation thereto.
- (b) The Expert shall cause the Port Land to be inspected promptly (and in any event within 7 days) on intimation by the PPL that the construction of the Project is substantially complete and shall, upon satisfying itself of the inspection, thereupon issue a "Certificate of Completion of Project" in relation thereto
- (c) The Expert shall not delay issue of the Certificate of Partial Completion or a "Certificate of Completion of Project, on account of any minor deficiencies or defects in the Project Facilities which do not detract from the substantially completed nature thereof or otherwise impede the use or operation of the Project facilities, including Safety and security of Port operations (provided always that the PPL shall complete or rectify any such minor deficiencies or defects within a reasonable period of time thereafter). The PPL shall be entitled (subject to Applicable Law) to start using and operating the Port facilities forthwith upon issue of such certificate.

11. Rights Over Assets

11.1 Site

The PPL shall be entitled to mortgage (or otherwise charge or create security interests in or over) the leasehold interest in the Site or part thereof in accordance with the provisions of this Agreement in favour of Lenders.

11.2 Mortgage rights of sub-lessees

The PPL agrees that sub-lessees of the PPL shall not mortgage and/or create any charge on the sub-leased title to the land and the waterfront on which the relevant assets are situated without the approval of the PPL and GOP.

11.3 Ownership of Project Facilities

The GOP acknowledge that the legal title, right and interest in and to, the Project Facilities rests with the PPL, until such time as they are transferred to the GOP in accordance with Clause 17.

12. Operations Phase

From the Date of Commencement of Operations, the following provisions of this Clause shall be applicable.

12.1 Pilotage

- (a) The PPL shall engage and deploy pilots licensed by the Appropriate Relevant Authority for pilotage operations in the port.
- (b) The PPL shall take all measures as may be necessary to familiarise such pilots with the local waters of the Port and in accordance with the prevalent practices in the ports of Pondicherry and guidelines, if any, issued by such Relevant Authority.

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12.2 Operations & Services

- (a) The PPL shall in accordance with the principles of Good Industry Practice and the terms hereof:
 - i) efficiently manage, make available and maintain the Project Facilities consistent with prudent standards of safety and technical sufficiency; and
 - ii) provide the necessary resources for the operations and maintenance of the Project Facilities.
- (b) Subject to and without prejudice to Clauses 12.3(d) and the DPR, it is the intention of the PPL to provide and to encourage the provision of non-discriminatory access to the Project Facilities to users of the Port in accordance with the Operating Procedure. Provided however, that this shall not prevent the PPL or the sub-lessees from undertaking priority berthing as per applicable Laws.
- (c) The PPL shall be entitled throughout the term of this Agreement to:
 - i) exclusive rights for the construction and operation of Project facilities, developed at or for the Port, the Project and Permitted Activities and provision of Services to all users of the Port within the Port Limits;
 - ii) provide value added and any other port related services within the Port Limits; and
 - iii) operate the Port (and the Project Facilities comprised therein) subject to applicable law and the terms of this Agreement.

12.3 Operating Procedure

- (a) The PPL shall be responsible for preparing and notifying the written statement of procedure for operation and provision of services at the Port (the "Operating Procedure") in accordance with Applicable Law, incorporating any necessary rules made pursuant to Section 6 of the Indian Ports Act. The GOP shall provide the PPL with all necessary assistance in this connection.
- (b) Any material revision in the Operating Procedure shall be made after reasonable advance notice to the port users.
- (c) In the event the PPL fails to comply with the provisions of Clause 12.3(a) & (b) above, the GOP may require the PPL to comply with the operating procedure applicable to the minor port(s) of Pondicherry;
- (d) Nothing in Clauses 12.2 and 12.3 shall prevent the PPL or its subcontractors from entering into separate, specific-user contracts on mutually agreed terms and conditions. Unless otherwise agreed to by the GOP (or as otherwise provided herein), below:
 - (i) all such commercial contracts entered into by the PPL with third parties shall not be inconsistent with the terms and conditions of this Agreement and shall, is so otherwise provided, terminate on the expiry or termination of this Agreement; and
 - (ii) the GOP shall not be liable for any costs or liabilities whatsoever that may arise on the expiry or termination of such commercial contracts unless the termination is on account of Force Majuere or a condition of default by the GOP.

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12.4 Priority services

- (a) In emergency situations like war, famine, natural calamities, shortage of some essential commodities etc., GOP or Union Government of India may direct PPL to grant priority to handling of ships of specified types. PPL shall abide by such orders issued by the Union Government of India or by GOP.
- (b) For the duration of any such period in which Priority Services are provided, the PPL shall not be liable to the GOP for any Lease Rental payments.
- (c) For the avoidance of doubt, any obligation under this Agreement which the PPL is unable to perform or discharge (in whole or part) as a result of any direction or requirement to provide Priority Services shall be deemed to have been affected by a Force Majeure Event (pursuant to the provisions of Clause 15).
- (d) The PPL shall permit the Indian Navy / Coast Guard the exclusive right to make use of the Port and the facilities in any situation including emergency situations like an act of war (whether declared or undeclared), hostilities, invasion, armed conflict or act of foreign enemy, blockade, embargo, prolonged riot, insurrection, terrorist or military action. In such an event, the Navy shall take over the entire area of the Port and the facilities for its exclusive use. Once the operations are over, the Navy will hand over the Port and other facilities occupied by the Navy back to the PPL. PPL shall be entitled for compensation as per applicable law.

12.5 Sub-Contracting of services

- (a) The PPL may engage sub-contractors for the provision of services. The PPL shall make all of his best efforts that the all sub-contractors, agents, Sub-lessees and/or employees comply with all the relevant provisions of this Agreement.
- (b) Save as otherwise provided herein, the GOP shall not be liable for any costs or liabilities whatsoever that may arise in relation to such contracts as a result of the expiry of this Agreement unless the termination is on account of Force Majeure or a condition of default by the GOP.

12.6 Leasing of facilities

- (a) The PPL may lease or license the use of the assets constructed by it on the Site to third parties to be operated and / or used by such third parties/ lessees with approval of the GOP. The ownership of such assets shall remain vested in the PPL in accordance with the terms of this Agreement and the Lease and Possession Agreements.
- (b) The PPL shall ensure use all reasonable endeavors to procure that such third parties the lessees comply with applicable law, regulatory directives and the terms of this Agreement.
- (c) All contracts and documents pertaining to leasing or licensing the use of any part of the Site or of such assets shall be governed by the terms of this Agreement and the rights of any person there under shall not (save as otherwise provided herein or by the terms of such lease, sub- lease or contract) extend beyond the date of the expiry of this Agreement for any reason unless the GOP has given its written consent to the term of the relevant contract.

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12.7 Security

The PPL shall provide normal security at the Port Land provided that security personnel (excluding personnel of the Central Industrial Security Force who are required to carry firearms by Applicable Law) shall not carry, use or have access to firearms or similar weapons. In addition, if in accordance with Applicable Law the GOP reasonably requests, the PPL shall endeavor to engage such number of Security Force as may be consider appropriate in the circumstances, at the PPL's sole costs, in certain locations at the Port Land, to protect public interests.

12.8 Maintenance Standards

The PPL shall maintain the Project facilities in accordance with Good Industry Practice.

12.9 Performance Standards

The GOP may appoint a committee of its representative and/or independent experts to assess the performance of the Port, at its own cost, and publish a periodic report for the information of users of the port.

12.10 Interaction of the PPL with GOP

- (a) The PPL shall provide any additional information as the GOP may reasonably require to ensure that the PPL is in compliance with the terms of this Agreement, provided that the PPL shall be provided reasonable notice having due regard to the information sought to be obtained.
- (b) Subject to sub-clause (d) below, the PPL shall ensure un-hindered access and offer necessary co-operation to the GOP and/or representatives for monitoring and inspection of operations of the Port at all reasonable times.
- (c) The GOP shall provide the PPL with reasonable notice of any such inspection and ensure that any such inspection shall not interfere with the commercial operations of the Port and is carried out at reasonable times
- (d) The GOP may station his representative in the Port Land for providing data and reporting information to the GOP. The PPL shall provide appropriate office space and tele-communication facilities for such representative at the GOP's cost.
- (e) In the event that on-line vessel traffic management systems are installed at the Port, the GOP may require (subject to the PPL's rights to protect its commercially confidential information and provided it is reasonably practicable in the circumstances to do so) that such systems be linked to the central and/or regional monitoring systems installed by the GOP and/or navigational authorities and/or any other similar ports and any additional costs borne in this regard shall be to the account of the GOP.

13. Commercial issues.

13.1 Tariff

13.1.1 Tariff Fixation

- (a) The PPL shall be entitled to fix and collect fees and charges for all services rendered or performed in relation to the Project and authorized under this Agreement in accordance with applicable law. Such fees may include both charges, rentals, rates and royalties which it is specifically authorized (or obliged) to charge or levy pursuant to Applicable Law ("tariffs") and

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other commercial charges (including charges for value-added services under long-term commercial agreements) which it is otherwise entitled or free to make and collect for its Services ("Commercial Charges").

- (b) The PPL shall comply with the provisions of the Indian Ports Act, 1908 and other Applicable Laws relating to tariff.
- (c) The PPL shall be entitled, to the extent permitted by Applicable Law, to structure the tariffs and the currency of denomination of the tariffs at its discretion. It is acknowledged, however, that the tariffs may be subject (in whole or in part) to certain regulations under Applicable Law. It is the intention of the parties, however, that the PPL shall have the maximum freedom and discretion permissible under Applicable Law to structure and determine all elements of its Commercial Charges at its discretion

13.1.2 Public Notification

- (a) The PPL agrees and acknowledges that the tariff shall, to the extent required by Applicable Law and subject to the provisions of this Clause, be non-discriminatory.
- (b) Subject to Clause 13.1.3, a comprehensive tariff schedule ("Notified Tariff"), setting out the levels (any relevant terms and conditions) of the tariffs and the time period from which such tariff shall be in effect, shall as and to the extent required by Applicable Law, be notified to the public and to users of the Port by the PPL. Subject and without prejudice to sub clause (c) below, any user of the Port shall be entitled to avail itself of the port's services at the Notified Tariffs. Any revisions to the Notified Tariff shall also, as and to the extent required by Applicable Law be intimated to the GOP and notified to the Public and to the users of the Port by the PPL at least a month before the revisions come into effect.
- (c) The PPL may customize service and tariff packages and commercial charges for specific users of the Port from time to time. Such customization may include long-term contracts with large and/or dedicated users or to attract new users.

13.1.3 Statutory Tariff Schedules

In the event that any tariff is required by Applicable Law to be formally notified by the GOP or any other relevant authority, rather than by the PPL, the GOP shall take all steps within their power to notify or procure the Notification of the same as required by the Applicable Law, and the PPL shall provide it or them with the relevant information and any other assistance reasonable required for this purpose.

13.1.4 Collection Agency

- (a) Subject to Applicable Law, all tariffs and Commercial Charges from users of the Port and the Services shall be collected by the PPL or by an agency appointed by the PPL. The GOP undertakes to obtain and/or grant (as the case may be) any necessary authorizations and consents necessary for this purpose under the Indian Ports Act, 1908.

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(b) The GOP shall, promptly following receipt of a request in writing from the PPL to do so, on or before the Date of Commencement of Operations, appoint a body of persons designated by the PPL or (provided it accords with Applicable Law), the PPL itself, to collect tariffs, port dues, fees and other charges at the Port on its own behalf in accordance with Section 36 of the Indian Ports Act. The PPL shall inform the GOP as soon as reasonably practicable where any change takes place or is required in the identity of any such body of persons, and the GOP shall promptly effect any further formal appointment necessary as a result.

13.2.1 Sharing of Gross Income

The Concession Fee shall be payable, as a percentage of Gross Income of the PPL, each year for the duration of the Concession Period, as per the table below:

Years of Operation	Rate of Concession Fee
1-30	2.6%

9

13.2.2 The Concession fee shall be paid to GOP in the form of four equal installments based on annual revenue projections. Any surplus or shortage shall be adjusted with the installments for the subsequent year and for the last year of the Concession Period within 3 months of the End Date.

13.2.3 However, the PPL shall not pay Concession Fee to GOP in respect of any year where the PPL does not have Profit.

13.2.4 Interest

The payment of Concession Fee as indicated in Clause 6.1 shall be made to GOP within first fifteen (15) banking days of the succeeding quarter. Failure to remit these payments on due date shall render the PPL liable to pay interest on the due amounts at the prevailing rate of SBI PLR plus 2% p.a. for every month or part thereof of delay, the liability of which shall commence from the first day of the next month. Interest payments by the PPL shall be without prejudice to other remedies available to GOP under this Agreement.

13.2.5 Guarantees for Payment of Concession Fee to GOP

(a) The PPL shall furnish to the GOP within thirty days from the Commercial Operation Date, guarantee for payment of Concession Fee, in the form of a bank guarantee from a Scheduled Bank operating in India, one and quarter times the estimated Concession fee payable to GOP for the first year of operation.

(b) Upon completion of the first year of operation, the Concession Fee payable to GOP shall be assessed to fix the amount for guarantee amount for the subsequent years of the Concession Period on a half-yearly basis. The basis of assessment shall be one and quarter time the Concession Fee paid during the previous half-year period or one and quarter time of the estimated Concession Fee payable to GOP for that six-month period, whichever is higher.

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(c) On assessment as per item (b) above, PPL shall furnish a new Bank Guarantee in place of (a) above from a Scheduled Bank operating in India.

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- (d) In the event of non-payment of dues to GOP within two months of its due date, these payments along with interest thereon as specified at Clause 13.2.4 shall be recovered from above Bank Guarantee.
- (e) All penalties as specified in this Agreement shall have to be paid by the PPL within one month of date of its communication by GOP failing which these shall be recovered from the above Bank Guarantee.
- (f) In the event of the encashment of the above Bank Guarantee by GOP, the PPL shall be required to make good the amount so encashed from Bank Guarantee by giving another Bank Guarantee of same amount within 10 days of communication in this regard by GOP to PPL.

13.3 Development of New Facilities

- (a) The GOP shall not develop or permit the development of any new common user port sites other than at the sites (if any) identified by GOP on or before the Effective Date till the year falling the 10 years after the Effective Date, in Pondicherry region. In the event that the sites identified by GOP on or before the Effective Date are found to be unviable, the GOP shall be within its rights to develop other sites which are located not less than 25 kms along the coast line the either direction from the Port, subject however to the maximum number of sites identified by GOP on or before the Effective Date.
- (b) If the Port does not at any time contain any specialized cargo handling facilities required for a particular type of cargo, the establishment of a new port for the handling of commercial cargo by or the expansion of an existing port, as the case may be, may be permitted by the GOP for that particular type of cargo. Provided always that the GOP shall promptly notify the PPL of any intention or decision on its part to permit any such port or the handling of such commercial cargo, as the case may be, before granting any such permit, and the PPL in these circumstances shall be entitled within 6 months of such notification to decide whether to establish and develop such specialized cargo handling facilities at the Port itself. In the event that the PPL decides to establish and develop such specialized cargo handling facilities, the GOP shall permit the PPL to establish and develop the same on an exclusive basis, within a reasonable period of time. If it will not be possible or feasible in the circumstances for the PPL to create such specialized cargo handling facilities at the Port, the establishment of a new port for this purpose may be permitted by the GOP.

14. Change in Law

14.1 Definition

- (a) "Change in Law" shall mean the occurrence of any of the following events after the Effective Date of this Agreement:
 - i) the enactment of any new Applicable Law;
 - ii) the modification, repeal or re-enactment of any existing Applicable Law;
 - iii) the commencement of any Applicable Law which had not at the Effective Date yet entered into effect except to the extent such Applicable Law was enacted prior to the Effective Date with a commencement after the Effective Date and such Applicable Law takes effect on that commencement date without material

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- iv) a change in the interpretation or application of any Applicable Law by judicial or other authority (including a court, tribunal or any other Relevant Authority) having the authority to interpret or apply that Applicable Law or any interpretation of any applicable law by such authority which is contrary to the existing generally accepted interpretation thereof;
- v) a loss of permit;
- vi) designation or re-designation of the Port as a Major Port by the Government of India or the occurrence of any other such events insofar as they do not give rise to an immediate exercise of the PPL's right to terminate the Agreement under Clause 16 ("Re-Classification"); or;
- vii) directive, order or notification by any Governmental agency which has a force of Law or statutory effect.

to the extent that such Change in Law has a material adverse effect on the rights and obligations of the PPL under this Agreement and that such event has not been caused due to the fault or negligence of the PPL.

Provided that Change in Law shall not include:

- (a) coming into effect, after the submission of the Detailed Proposal, of any provision of a statute which is already in place as of the Proposal Due Date or
- (b) any new Law or any change in the existing Law under the active consideration of or in the contemplation of any government as of the Detailed Proposal, which is a matter of public knowledge.

14.2 Deleted

14.3 Consequences of Change in Law

If, after the date of this Agreement, there is a change in the Law, which substantially and adversely affects the rights of PPL under this Agreement, the PPL may, by written notice, request amendments to the terms of this Agreement. The PPL shall not be entitled to any compensation whatsoever from GOP as a result of Change in Law. However, GOP may decide after mutual discussion with the PPL to amend the terms of this Agreement including extension of Concession Period.

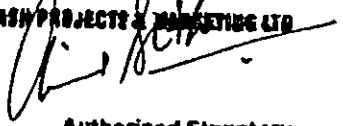
However, the PPL is not entitled to any compensation for any increase in indirect and/or direct tax, which the PPL is liable to pay in respect of the Port Project.

15. Force Majeure

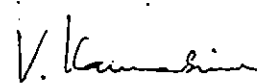
15.1 Definition

- (a) "Force Majeure" ("FM") shall mean any event or circumstance or combination of events or circumstances (and their consequences) occurring on or after the Effective Date (a Force Majeure Event) that materially prevents or impedes the performance of the GOP's and/or (as the case may be) the PPL's (Affected Party) rights or obligations under this Agreement provided that such events and/or circumstances

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- i) are beyond the reasonable control, directly or indirectly, of the Affected Party (it being understood that if a causing event is within reasonable control of an Affected Party, the direct consequences shall also be deemed to be within such Party's reasonable control); and
- ii) could not have been avoided, overcome or remedied if the Affected Party had taken reasonable care or had acted in accordance with Good Industry Practices.

including, without limitation, the specific events set forth in Clauses 16.1 & 16.2. Provided further, however, that a Political Force Majeure Event shall only be deemed to constitute Force Majeure to the extent that it affects the performance of the PPL's (and not the GOP's) rights or obligations under this Agreement.

- (b) "Reasonable care" includes any acts or activities that, in accordance with Good Industry Practice, protect the Port or the Project Facilities comprised in the Project from a casualty event which are reasonable in the light of the likelihood of such event, the probable effect of such event should it occur, and the likely efficacy of the protection measures.
- (c) Any event or circumstance meeting the definition of Force Majeure and which adversely affects the performance of the PPL's turnkey or any other third party contractors of the PPL constructing significant assets for the Project or otherwise performing a significant role in relation to the Project shall constitute a Force Majeure Event for the PPL.
- (d) The following conditions shall not, however, constitute a Force Majeure Event unless they are caused due to a Force Majeure Event affecting the PPL's turnkey contractors or any such contractors constructing significant assets for the Project:
 - i) late delivery of plant, machinery, equipment, materials, spare parts, fuel, water or consumables for the Project; or
 - ii) a delay in the performance of any of the PPL's turnkey contractors or any other contractors constructing significant assets for the project.
- (e) Notwithstanding anything contained in this Clause, insufficiency of funds shall not in itself constitute a Force Majeure Event.

15.1.1 Political Force Majeure

- (a) "Political Force Majeure Event" shall mean any Force Majeure Event of the kind referred to below occurring in or affecting India or any part of India provided that such events and/or circumstances are not a lawful and/or reasonable response to the default, neglect or other wrongful act of the Affected Party:
 - i) blockade, revolution, riot, bombs, religious strife or civil commotion;
 - ii) political strikes, lock-outs or other industrial action (other than those involving primarily the PPL's own employees or those of any of the PPL's contractors, sub-contractors, sub lessees, any other agents of the PPL or any act of the PPL himself) or labour disputes affecting the port sector in Pondicherry which are not primarily motivated by the desire to influence the action of an enterprise so as to preserve or improve conditions of employment;

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- iii) act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, insurrection, terrorist or military action, coup d'etat or politically motivated sabotage;
- iv) a decision, act or the order of a court or tribunal or tribunal or other Relevant Authority which has effect of restraining, preventing, disrupting or delaying the construction of the whole or a substantial part of the Project (except to the extent that it constitutes a remedy or sanction lawfully exercised as result of breach by the PPL of any applicable law then in effect by the PPL).
- v) unlawful or unauthorized revocation of, or refusal to renew or material delay in granting by GOP without valid cause any consent or approval required by PPL to perform its obligations under the Project agreements (other than a consent the obtaining of which is Condition Precedent), provided that such delay, modification, denial, refusal or revocation did not result from PPL's inability or failure to comply with any condition relating to grant, maintenance or renewal of such consents or permits;
- vi) Change in Law, other than any Tax Laws and Regulations, for which no relief is provided under this Agreement;
- viii) Expropriation or compulsory acquisition by any Indian Governmental Agency of any material Port Assets or rights of PPL, for no fault of PPL; or
- ix) the exercise of any rights to provide Priority Services pursuant to Clause 12.4 or any Step-In Rights pursuant to Clause 16.4.

15.1.2 Natural/ Other Force Majeure

- (a) Natural/Other Force Majeure (OFM) means any Force Majeure Events except to the extent they constitute or are caused by the events or circumstances of Political Force Majeure including the following:
 - i) explosions, accident, breakage of facilities, navigational or maritime perils, malfunction inoperability or breakage of facilities (including computer hardware or software), plant or equipment, structural collapse, fire chemical or radio active contamination or ionizing radiation (other than resulting from an act of war, terrorism or sabotage), or atmospheric disturbance or pressure waves caused by aircraft or objects falling from aerial devices or meteorites;
 - ii) tidal variations, storm including monsoon conditions to the extent that such condition could not reasonably have been expected to occur at the place and at the time of the year in question;
 - iii) Lightening, earthquake, tempest, cyclone, hurricane, whirlwind, flood, landslide or any similar acts of God;
 - iv) Epidemic or plague;
 - v) the discovery on site of adverse sub-surface or sub-aqueous conditions, any archaeological finds, articles of historic interest or hazardous materials;
 - (vi) third-party claims relating to the acquisition, clearance, occupation or use of the Site;

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(vii) any Change in Law which is not a Qualifying Change in Law.

15.2 Procedure for calling FM

15.2.1 Notice and particulars thereof

- (a) The Affected Party shall give notice to the other party of the Force Majeure Event as soon as is reasonably practicable, but not later than fifteen (15) Days after the date on which the Affected Party knew or should reasonably have known of the commencement of the Force Majeure Event giving brief details of the event, its effect and an indicative estimate of its likely duration. Notwithstanding the above, if the Force Majeure Event results in a breakdown of communications rendering it not reasonably practicable to give notice within the applicable time limit specified herein, the Affected Party shall give such notice as soon as is reasonably practicable after the reinstatement of communications, but not later than five (5) business days after such reinstatement.
- (b) As soon as practicable and in any event within fifteen (15) days after the notice referred to in Sub-Clause (a), a further notice shall be given which shall, inter-alia, specify:
 - i) the nature of such Force Majeure Event;
 - ii) the date and time when the Affected Party was materially and adversely affected by the Force Majeure Event;
 - iii) the material adverse effect of such Force Majeure Event on the Affected Party;
 - iv) the measures which the Affected Party has taken, or proposes to take, to alleviate the impact of those Force Majeure Events and/or mitigate the damage;
 - v) an indicative estimate of the period of time that the Affected Party shall be unable to perform its obligations and/or continue to be materially adversely affected by the Force Majeure Event; and
 - vi) any other relevant information as may be appropriate in the circumstances.
- (c) Failure by the Affected Party to give notice to the other party within the time period specified above shall not prevent the Affected Party from giving such notices at a later time, provided however that in such case the Affected Party shall not be eligible for the remedies as envisaged in Clause 15.6 for any failure or delay in complying with its obligations under or pursuant to this Agreement until notice has been given in accordance with this Clause 15.2.1.

15.2.2 Reporting requirements

- (a) For so long as the Affected Party continues to claim to be affected by the Force Majeure Event, it shall provide the other party with regular (and not less than monthly) written reports containing:
 - i) the information called for by Clause 15.2.1 (b); and
 - ii) such other information as the other party may reasonably request.

(b) The Affected Party shall also provide to the other party (and/or, if relevant, to the Expert Committee) reasonable facilities including site

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inspection for obtaining further information about the Force Majeure Event or circumstance alleged to constitute a Force Majeure Event.

15.3 Force Majeure period

- (a) In this Clause 15, reference to Force Majeure period shall mean the period from the date and time specified in the notice given by the Affected Party in respect of a Force Majeure Event, until such time as the impact of the Force Majeure on the Affected Party is no longer, or would no longer have been materially adverse, if the affected Party had complied with its obligations under this Clause,
- (b) On expiry of the Force Majeure period, the Affected Party shall forthwith give notice to that effect to the other party.
- (c) In the event that such notice is not tendered by the Affected Party to the other party within a week from the expiry of the Force Majeure period, the other party may serve such notice to the Affected Party.

15.4 Obligation to Perform

- (a) From the date of expiry of the Force Majeure period, the obligations of the Affected Party under this Agreement shall no longer be suspended pursuant to Clause 15.6.
- (b) Nothing in this Clause 15 shall affect the Affected Party's obligation to make any payments in respect of liabilities incurred prior to the occurrence of any Force Majeure Event.

15.5 Mitigation Responsibility

- (a) Upon the occurrence of the Force Majeure Event and during the subsistence of the Force Majeure period, the GOP and the PPL shall engage in good faith consultations. The Affected Party shall use all reasonable endeavors acting in accordance with Good Industry Practice to alleviate the material adverse effect of such Force Majeure.
- (b) Subject to the terms of the Financing Documents and any contrary provisions in this Agreement, the Affected Party shall use the insurance proceeds paid in respect of the Force Majeure Event to mitigate its impact.

15.6 Consequences

15.6.1 Consequences of Political Force Majeure; Natural/Other Force Majeure

Provided that the Affected Party has at all times since the occurrence of the Force Majeure Event complied with the obligations of Clause 15.5, and, during the Force Majeure period continues to comply with the same, the Affected Party shall be entitled to following relief:

- i) the obligations of the Affected Party to the extent performance thereof is prevented or impeded, by the Force Majeure Event shall be suspended for the duration of the relevant Force Majeure period;
- ii) the time period(s) for the performance of obligations of the Affected Party (including the Term of the License) to the extent they are affected by the Force Majeure Event shall be extended on a day for day basis for the duration of the relevant Force Majeure Event.

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15.6.2. Adjustments following Qualifying Change in Law or other Political Force Majeure Event

(a) In the event of the occurrence of a Qualifying Change in Law or other Political Force Majeure Event which causes (or is likely to cause) the PPL to incur any material costs, losses or expenses (including loss of revenue) in excess of the amounts ("Threshold Amounts") referred to in Sub-Clause (b) below, or otherwise has (or is likely to have) a material adverse effect on the PPL, in circumstances where the PPL could not reasonably be expected to recover or overcome the same within a reasonable period of time (in accordance with Good Industry Practice) from revenues accruing to it from the operation of the Port, the PPL shall be entitled (but without prejudice to any other right or remedy which the PPL may have under this Agreement or otherwise) to give notice to the GOP requiring that such modifications or adjustments (satisfactory to the PPL) are made to the provisions of this Agreement and/or to any charges or tariffs which the PPL is entitled to levy under this Agreement:-

(i) as may be necessary to enable the PPL to continue to perform its obligations and exercise its rights under this Agreement, the other Project Agreements and the Financing Documents, taking into account (as appropriate) the impact of the relevant Force Majeure Event; and

(ii) to compensate the PPL / GOP for the amount of any such costs, expenses or losses suffered or incurred (or likely to be suffered or incurred) as a result of such Force Majeure Event such that (in each case) the PPL is left in the same net financial position it would have been in, and accordingly enjoys the same net, after-tax, economic return, had no such Qualifying Change in Law or other Political Force Majeure Event occurred. Provided, however, that no account shall be taken of any cost increase, expense or loss of revenue suffered or incurred (or likely to be suffered or incurred) by the PPL which is compensated from the proceeds of any insurance in relation to the Qualifying Change in Law or other Political Force Majeure Event.

(b) The Threshold Amounts referred to in Sub-Clause (a) above as being applicable before the PPL can require that any modifications or adjustments are made of the kind referred to in Sub-Clause (a) above in relation to any costs, losses or expenses incurred by the PPL are (i) an amount of Rs. one Crore in relation to any one occurrence of Qualifying Change in Law or other Political Force Majeure Event; or (ii) an amount of Rs. Five Crore in relation to all such occurrences in the course of a period of one calendar year.

(c) The modifications or adjustments to which the PPL shall be entitled pursuant to this Clause 15.6.2. shall include any one or more of the following:

(i) an extension of any time period specified herein for performance of the PPL's obligations;

(ii) an extension of the Term of this Agreement (subject to Applicable Law);

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- (iv) a change to the scope or nature of the Services to be provided by the PPL hereunder;
 - (v) a change to the Approved or the design of the same or of the Project facilities
 - (vi) a change in Land use pattern.
- (d) Promptly following the provision of any notice from the PPL pursuant to this Clause 15.6.2, the duly authorized representatives of the PPL and GOP shall convene and consult in good faith in relation to the relevant circumstances and impact of the Qualifying Change in Law or other Political Force Majeure Event in question and the proposed modifications or adjustments to be made.
- (e) In the event that the PPL and GOP are unable to agree to their mutual satisfaction within sixty (60) days of the date of the PPL's notice under Clause 15.6.2(a) above, upon any such necessary modifications or adjustments, or the GOP disagrees that the PPL is entitled to invoke the provisions of this Clause 15.6.2(a) in the circumstances, then either the PPL or the GOP shall be entitled, within a further period of thirty (30) days from the expiry of such sixty (60) day period, to refer the matter for determination to the dispute resolution procedure pursuant to Clause 20. In the event that it is determined pursuant to the dispute resolution procedure that the aforesaid modifications or adjustments cannot be made in the circumstances, and the PPL has consequently sustained or can reasonably be expected to sustain a loss of at least Rs. 25 Crore over a period of 5 years from the date of the relevant occurrence, the PPL shall be entitled to terminate this Agreement pursuant to Clause 16.
- (f) The parties agree and undertake promptly to implement and give effect to all modifications or adjustments to the provisions of this Agreement or the PPL's charges and tariffs as may be agreed or determined pursuant to this Clause 15.6.2.

15.6.3 Termination for Prolonged Event of Force Majeure

In the event that any Force Majeure Event or its consequences continue(s) such that the Affected Party is unable to comply with its material obligations or exercise its material rights hereunder for a continuous period of at least 365 days ("Prolonged Force Majeure") the PPL shall be entitled to terminate the Agreement by giving 30 days written notice to the other, unless the PPL has during such period taken steps satisfactory to the GOP to overcome the relevant Force Majeure Event or its Consequences and is continuing to implement the same at the end of such period. In the event of such termination, the relevant provisions of Clauses 16, 17 and 18 shall apply.

16. Default & Termination

16.1 PPL Event of Default - Right of GOP to Terminate

The following (unless arising as a result of a Force Majeure Event or Change in Law or a GOP Default) shall constitute PPL Events of Default entitling the GOP to terminate this agreement in accordance with (and subject to) the provisions of this clause 16.

- i. Failure to achieve financial closure as mentioned in clause 3.4.2(i).
- ii. Failure to complete the construction of Phase I of the project within the time limits set forth in DPR, i.e., by 2009.

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A material breach of any provision of this Agreement by the PPL, which remains unheeded for a continuous period 180 days after notification of such breach by the GOP.

- i) Repudiation of this Agreement by the PPL or the evidencing of an intention by the PPL not to be bound by the terms of this Agreement.
- ii) Appointment of a provisional liquidator by a court of competent jurisdiction providing for winding up of the PPL, after notice to the License and due hearing, unless such appointment has been set-aside within 180 days.
- iii. The PPL is ordered to be wound up by a court or files a petition for voluntary winding up except for the purpose of amalgamation, reorganisation, merger, consolidation or reconstruction provided that the property, assets and undertaking of the PPL are transferred to its successor; and provided that such amalgamation, reorganisation, merger, consolidation or reconstruction does not adversely affect the ability of the amalgamated or reconstructed entity to perform its obligations under this Agreement, the successor has assumed in writing unconditional responsibility for the performance of the PPL's obligations in accordance with the terms hereof and the technical, financial and operating capability of the successor should be satisfactory to the GOP and can not be reasonably considered to be prejudicial to national interest in India (as determined by the GOP, acting reasonably and in accordance with Applicable Law).
- iv. The PPL in breach of contracts abandons the construction or operation of the whole or a substantial part of the Port and the facilities comprise therein for a continuous period of 180 days.
- v. Failure to pay Lease Rentals in accordance with the terms hereof for a consecutive period of 8 quarters.

16.2 GOP Events of Default - Right of PPL to Terminate

The following (unless arising as a result of a Force Majeure Event or PPL Events of Default) shall constitute GOP Events of Default, entitling the PPL to terminate this agreement in accordance with (subject to) the provisions of this Clause 16:

- i) Performance of any acts or occurrence of any of the following events as per Indian Port Act, 1908. which are within the powers and jurisdictions of GOP
 - a. Redefining the Port Limits.
 - b. Appointment of a Conservator (other than the body of persons designated by PPL) for the Port.
 - c. Adverse alteration of Schedule 1 of The Indian Ports Act by Gazette notification, including by re-grouping the Port with other ports.
 - d. Appointment of a person to collect any dues, fees or other charges under the applicable Laws other than the PPL.
 - e. Any grouping of the Port with other ports by GOP.
 - f. Authorization of a person other than the PPL to carry out works or perform services at the Port.
 - g. Exercise by GOP any of its powers...

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- h. Creation or grant of security in favour of third party over any assets included in Concession Agreement.
- ii) Repudiation of this Agreement by the GOP.
- iii) Commission of a material breach of a material provision of this Agreement by the GOP, which remains unremedied for a continuous period of 180 days after notification of such breach by the PPL;
- iv) The GOP fails to obtain approval from the Customs Department and issue the declaration referred to in Clause 10.6 within a period of 90 days, from the date of completion of inspection referred to therein in accordance with the provision of Clause 10.6;
- v) Failure to provide Infrastructure as per the provisions of Clauses 9 & 10 of this Agreement;
- vi) Failure to recommend to Central Govt./Concerned Central Govt. Agency for undertaking of capital dredging, to the required depth or necessary funds for the same, as per Government norms.
- vii) Termination of the Lease and Possession Agreement by the GOP in breach of the terms of Clause 3.4.1(v).
- viii) Failure to recommend for Central Govt. Subsidy / Grant of amount available for the Project.
- ix) Failure to Procure and hand over possession of the Land as required.

16.3 Consequences of Default

In the event of a GOP Event of Default or PPL Event of Default ("Event of Default") the termination procedure as set out in this Clause shall apply.

16.3.1 Notice of Intent to Terminate

- (a) On the happening of any Event of Default as set out above, the party entitled to terminate this agreement (non defaulting party) may initiate termination of this Agreement by delivering a notice to the GOP or the PPL (as the case may be) (the defaulting party) of intention to terminate this Agreement (Notice of Intent to Terminate). The non-defaulting party shall also send copy of the Notice of Intent to Terminate to the Lenders and the GOP.
- (b) The Notice of Intent to Terminate shall specify with reasonable detail, the grounds of termination and any relevant defaults committed by the defaulting party.

16.3.2 Lenders rights to rectify

- (a) If Notice of Intent to Terminate is issued by the GOP for non payment of any amount due and payable by the PPL or for any other PPL Event of Default, the Lenders shall, within a period of 180 days from the date of issue of the Notice of Intent to Terminate (and without prejudice to any right of the PPL to rectify the same pursuant to Clause 16.3.3), have the right to rectify the PPL event of default or ground of termination and to take or procure all such acts as may be necessary for such purpose.
- (b) In the event Lenders exercise the right to cure the PPL event of default or the ground of termination, the Lenders shall pay or procure the payment of all sums then due and payable to the GOP along with interest at prevailing bank rate, or in any other manner assist the PPL in rectifying the Event of Default. If the PPL Event of Default is cured within such period of 180 days:

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- i) The Notice of Intent to Terminate shall stand revoked without prejudice to the rights of GOP to issue similar notice for any subsequent breach or any other breaches by the PPL; and
- ii) The PPL shall continue to perform its obligations under this Agreement as if Notice of Intent to Terminate has not been issued.
- (c) The Lenders rights under this Clause 16.3.2 shall continue to remain in force during the termination procedure and till the issue of the Termination Notice under Clause 16.3.5.

16.3.3 Remedy Period

- (a) Following the service of the Notice of Intent to Terminate, the defaulting party shall have a period of 180 days ("Remedy Period") to cure the Event of Default pursuant to which the Notice of Intent to Terminate was issued.
- (b) During the Remedy Period, the defaulting party may continue to undertake efforts to cure the event of default, and the non-defaulting party shall not, by any act or omission, impede or otherwise interfere with the defaulting party's endeavors to remedy the Event of Default.
- (c) During the Remedy Period, both the parties shall, save as otherwise provided herein, continue to perform their respective obligations under this Agreement.

16.3.4 Withdrawal of Notice of Intent to Terminate

If, during the Remedy period, the defaulting party rectifies or remedies the default to the satisfaction of the non defaulting party or the non defaulting party is satisfied with steps taken or proposed to be taken by the defaulting party or the Event of Default giving rise to the Notice of Intent to Terminate has ceased to exist, the non defaulting party shall withdraw the Notice of Intent to Terminate in writing with a copy to the Lenders.

16.3.5 Termination Notice

- (a) Upon the expiry of the Remedy Period, unless the parties have otherwise agreed to, or the Event of Default giving rise to the Notice of Intent to Terminate has ceased to exist or the default has been rectified or remedied by the defaulting party or a Lender, the non defaulting party may terminate this Agreement by giving a further 180 days written notice ("Termination Notice") to the defaulting party, with a copy to the Lenders (but subject always to the terms of any Direct Agreement).
- (b) Upon the expiry of the notice period referred to in Sub-Clause (a) above following service of Termination Notice, unless the Lenders have successfully exercised the right of substitution in accordance with the provisions of this Agreement (and any Direct Agreement), this Agreement shall stand terminated (save for any provisions hereof which need to remain in force following and in order to give effect to such termination (but not further or otherwise) including Clauses 1, 2, 13, 15, 16.3.8, 17, 18, 19, 20, 21, 23 and 24) and the provisions of Clause 18 shall be applicable

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16.3.6 Transfer Information Notice

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- (a) Upon service of the Termination Notice in accordance with the provisions of this Clause 16 on the defaulting party, or the service of a Termination Notice for Change in Law (pursuant to Clause 14) or Political Force Majeure (pursuant to Clause 15.6.2(e)) or Prolonged Force Majeure

(pursuant to clause 15.6.3), the GOP shall be entitled to serve upon the PPL a Notice (Transfer Information Notice) calling upon the PPL to provide the following to the expert appointed under clause 16.3.6(b):

- i) Any relevant data or records regarding the operation or maintenance of the Port;
- ii) Any other relevant information or records regarding the PPL, its business, assets and liabilities, and
- iii) Statement of Project Facilities,

as may (in each case and subject to any confidentiality restrictions or obligations binding on the PPL) be reasonably required to enable an estimation of the likely compensation, if any, payable by the GOP to the PPL.

(b) On receipt of the Transfer Information Notice, the PPL shall cause to be conducted, by independent third party experts of international repute and appropriate qualifications and experience (expert), appointed by the PPL with approval of the GOP, a condition survey of the entire Project facilities to ascertain the condition and quality of the various facilities comprised therein provided by the PPL and whether or not the PPL has complied with the provisions of this Agreement in relation thereto. A report by such expert including an inventory and description of the condition of the Project facilities shall be submitted to the GOP as part of the requirements of the Transfer Information Notice within three months of receipt of such notice.

16.3.7 Lenders' Rights of Substitution

(a) If the Termination Notice is issued by the GOP for a PPL Event of Default and subject to the terms of any Direct Agreement:

- i) within 60 days (or such other period as may be permitted by any Direct Agreement) from the date of service of the Termination Notice, the Lenders may issue a Notice (Replacement Notice) to the GOP with a request to replace the PPL by another operator to exercise the rights and perform the obligations of the PPL under this Agreement. The Replacement Notice shall indicate the name(s) of the person (Nominated Licensee(s) (NL)) proposed to substitute the PPL for the purpose of this Agreement. The GOP and the Lenders will then consult for a further period of 60 days as to the suitability of the NL. The Lenders shall be entitled to replace the PPL as aforesaid with the NL at any time before the expiry of the period referred to in Clause 16.3.7(b) below, provided the NL has the necessary technical, commercial and managerial expertise, competent and resources to continue to perform the obligations of the PPL under this Agreement. In the event the GOP does not approve the proposed NL on the grounds that such criteria have not been satisfied, it shall be entitled to reject the proposed NL and shall promptly give notice to the Lenders and the PPL accordingly. The GOP shall also be entitled to reject such NL if its replacement of the PPL could reasonably be considered to be against the national interest (as determined by the GOP, acting reasonably and in accordance with Applicable Law).

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ii) On appointment of a new NL in accordance with the provision (a) (i) above, this Agreement and the Lease and Possession Agreement shall be novated by the GOP and the PPL to the new NL hereunder

and the PPL shall transfer all its rights, title to, interests and obligations hereunder and under the Lease and Possession Agreement in the Leased Premises, the Port and the Project facilities to the NL. Following such novation and transfer, this Agreement shall come to an end. The Port User Agreement, and any other agreements with the PPL of the kind which are expressed to survive termination of this Agreement shall also be transferred and/or novated to the NL in accordance with their terms, and shall (together with this Agreement) remain in full force and effect on the same terms as before (save for the substitution of the NL for the PPL and any other modifications that may be agreed at the time). The GOP shall take all such steps and provide the PPL, the NL, and the Lenders with all such assistance as may be reasonable in the circumstances in connection with such novation and transfer.

- (b) If within 180 days from the date of Termination Notice (or such longer periods as may be allowed in any Direct agreement), the NL acceptable to the GOP as aforesaid does not execute a novation of this Agreement, the GOP may terminate this Agreement on the expiry of the 180 days Termination Notice period as if no Replacement Notice had been served.

16.3.8 Procedure for appointing an Appraising Team

- (a) Within 21 days after the expiry of the Termination Notice pursuant to Clause 16.3.5(b) or on the issue of the Termination Notice due to Change in Law (pursuant to clause 14.3) or due to Political Force Majeure Event or Prolonged Force Majeure (pursuant to Clause 15.6.2(e) or 15.6.3, (respectively)), the PPL shall provide the other party with a list of proposed persons meeting the criteria specified below to constitute the Appraising Team, to carry out a determination of the Final Compensation Payable under Clause 17. The Appraising Team shall consist of individuals or firms, or consortia of individuals or firms (or a combination thereof), of international repute and appropriate qualifications and experience, to carry out the valuation prescribed in Clause 17, including:

- i) A port and harbor engineering expert;
- ii) A transport economist; and
- iii) A financial expert.

- (b) In the event the party receiving the list of proposed members does not agree to the appointment of an Appraising Team selected from the list within 15 days after it receives such list, either the GOP or PPL (as the case may be) may ask the Expert Committee to nominate an independent firm of chartered accountants of repute and appropriate qualification as aforesaid, and that person shall be designated as the financial expert in the team undertaking the Appraisal. This financial expert shall then form an Appraising Team selecting such experts for the roles referred to in (a) (i) and (a) (ii) above or (whether from the original proposed list or from other qualified and experienced experts in the relevant field) with the aforesaid qualifications as he deems appropriate for the task.

- (c) From the date of such appointment, the procedure set out in Clause 18 for Normal Transfer and Termination would apply mutatis mutandis to the termination under this Clause 16.

- (d) However, until such time as the, Project Facilities and the Port Land (or any parts thereof), are handed over by the PPL to the GOP in accordance

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with the Clauses 17 & 18 (equivalent to the Date of Actual Transfer in the course of Normal Transfer), both the GOP and PPL shall use all reasonable efforts to operate and maintain the Project Facilities in accordance with the provisions of this Agreement.

- (e) If this Agreement has been terminated in accordance with the provisions hereof, the PPL shall, until Actual Date of Transfer, be entitled to continue to earn and receive all revenues (if any). Available from the operation of the Port and to benefit from all other rights to which it is entitled under this Agreement.

16.4 GOP Step-in rights

- (a) The PPL agrees that the GOP (on its own or acting on behalf of the Government of India) and/or the Government of India (as the case may be) (each a step in entity) shall be entitled to take over the operations of the Port (in whole or part) and control of the relevant facilities comprised therein, in accordance with and subject to the ensuing provisions of this Clause 16.4, on the occurrence of the following events:
 - i) Where it is necessary for it to do so in order to prevent, mitigate or eliminate an emergency (being a condition or situation which in the reasonable opinion of the GOP, poses a significant threat to the safe operation of the Port or which seriously endangers the security of persons, plant or equipment) in circumstances where the PPL, in breach of the terms hereof, is unable to prevent, mitigate or eliminate such emergency; or
 - ii) Where it is necessary for it to do so for national security reasons (as determined by the GOP, acting reasonably and in accordance with Applicable Law).
- (b) Exercise by the relevant Step-In Entity of the rights referred to in Sub-Clause (a) above ("Step-In Rights") shall be effected by service on the PPL by the Step-In Entity of written notice ("Step-In Notice"), giving the PPL as much notice as is practicable in the circumstances of the proposed exercise or such Step-In Rights, referring to the relevant provisions of this Clause 16.4 relied upon and specifying the grounds and reasons for the same. Upon receipt of a Step-In Notice, the PPL shall, if reasonably satisfied that the Step-In Notice is in accordance with this Agreement, permit the Step-In Entity to enter upon the Port Land (or the relevant part thereof) and take over the operation of the Port (in whole or part) and the facilities comprised therein, and shall provide the Step-In Entity with such assistance as it may reasonably require the connection with any such take-over.
- (c) For the duration of any period during which any Step-In Rights are exercised:

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(i) The GOP (on its own behalf or on behalf of the relevant Step-In Entity) shall be responsible for collecting in and receiving all revenues and liable to the PPL for the amount of all standing and operating liabilities, costs and expenses of the PPL during such period (including debt service and any other amounts payable under the Financing Documents) relating to the facilities taken over pursuant to the exercise of any Step-In Rights (but excluding any liabilities, costs and expenses of the PPL incurred as a result of any breach of this Agreement on the PPL's part). Without prejudice to the generality of the foregoing, the GOP shall hold all such revenues net-off meeting aforesaid obligations, on trust for the PPL, which may remain beneficially entitled thereto, and shall account to the PPL for all such amounts; and

111

- (ii) The GOP shall (except where the PPL is in breach of the terms hereof) take all reasonable steps within its power to assist the PPL to obtain any compensation available to it under Applicable Law in relation to the exercise of any Step-In Rights and will pay over to the PPL any such compensation received by the GOP in respect thereof. In the event that any such Step-In Rights are exercised for a continuous period in excess of 9 months, the PPL shall be entitled to such compensation as may be reasonable in all the circumstances from the GOP in respect of any loss of profit it has suffered or incurred during such period.
- (d) As soon as possible after the relevant emergency or reasons of national security has or have ceased or ceased to apply (as the case may be), and in any event after a maximum period of one year, the GOP shall return or procure the return of the operation of the Port and control of the relevant facilities comprised therein to the PPL in the same condition they were in immediately prior to such take-over, save for normal wear or tear. In the event of any dispute regarding the condition of Port and/or the facilities reverting to the PPL, the same may be referred to the Expert Committee.
- (e) The PPL shall, except where the exercise of Step-In Rights has been necessitated by a breach of this Agreement by the PPL, and subject always to Applicable Law, be entitled to an extension of the Term equivalent to the duration of the exercise of any such Step-In Rights, which (for the avoidance of doubt) shall be deemed to constitute a Political Force Majeure Event.
- (f) In the event that the Step-In Rights are exercised by the GOP, GOP and/or the Government of India for a period in excess of 1 year, the PPL shall, except where the exercise of Step-In Rights has been necessitated by a breach of this Agreement by the PPL, be entitled to terminate this Agreement under Clause 15.6.3 as if the same had been caused by a Prolonged Political Force Majeure Event.

17. Compensation payable on early termination / normal transfer - Scope of transfer and Principles of Valuation:

17.1 Transfer of Port Assets

- (a) On the expiry of the Concession Period, including any extension granted therefor, land, and all other immovable assets like improvements, structures, buildings, at the Port whether permanent or semi-permanent, constructed by or belonging to Concessionaire or their sub-contractors, sub-lessees and assignees free from all encumbrances and liabilities shall be transferred to GOP by the Concessionaries on terms and conditions (including price) determined 2 years prior to End Date, free from all encumbrances and liabilities.
- (b) All the moveable Port Assets shall be transferred to GOP by the Concessionaire on terms and conditions (including price) determined 2 years prior to End Date, free from all encumbrances and liabilities.
- (c) The Concessionaries has the option to take away assets, which are not Port Assets. In the event of the Concessionaire not exercising its option, the same would as well become the property of GOP, free from all encumbrances and liabilities.
- (d) The Concessionaire shall transfer all the rights, titles, and interest over the Port Assets to GOP and execute such deeds and documents as may be necessary for this purpose and complete all legal or other formalities required in this regard, so as to give clear and marketable title over the Port Assets to the GOP.

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- (e) On the date of transfer, GOP shall, subject to the provision of this Agreement, pay to the Concessionaire, Compensation in accordance with the provisions of Clause 18.4
- (f) Lease of equipment required for port operations entered into by Concessionaire, or their sub-contractors, sub-lessees and assignees, on expiry of the term of this Agreement, shall continue for the un-expired period of lease. The terms of lease for the un-expired period shall not be less favourable than the expired portion of the lease period. Where GOP takes over these equipments with an unexpired period of lease, the corresponding lease charges from the date of transfer shall be paid by GOP on the due dates.

17.2 Joint condition survey

- (a) A joint condition survey shall be carried out by mutually agreed and appointed surveyors in order to assess the conditions of Port Assets being transferred by Concessionaire to GOP. In addition, the said surveyors shall prepare an inventory of the Port Assets and identify any breaches or defects in the same. The cost would be borne equally by Concessionaire and GOP
- (b) If the condition survey assesses that the Port or any part thereof have or has not been operated and maintained in accordance with the requirements therefor under this Agreement, the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in good working conditions well before the date of transfer or else make good for it.
- (c) Concessionaire shall be given one month's time or as extended by GOP in writing to rectify defects or breaches if any, found by the joint surveyors. Any breaches on the part of Concessionaire under this Clause shall be deemed to be a breach subjected to penalty to cover all the costs incurred by GOP and to the satisfaction of GOP, as may be decided finally by the GOP.
- (d) The concessionaire shall as security for performance of its obligation as per Clause 17.2, submit to GOP, a guarantee issued by a Scheduled Bank for a sum equal to 2% of the cumulative investments made in the Port Assets, atleast 2 years prior to the expiry of the Concession Period. In the event of concessionaire's failure to provide such guarantee, the same shall be deemed to be a Concessionaire Event of Default and GOP shall accordingly be entitled to terminate the Agreement in accordance with Clause 16.1.

17.3 Project Agreements

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The Concessionaire shall at the cost of GOP, transfer or assign such of the Project Agreements, which GOP may require, to be transferred in its favour subject to counter parties to such contracts consenting to such transfer or assignment. The Concessionaire shall entirely at its cost, terminate all such Project Agreements which are not transferred or assigned to GOP provided, the termination is not on account of the GOP Event of Default. If the Termination is on account of GOP Event of Default, all costs of termination of Project Agreements will be borne by GOP.

17.4 Transfer of Liabilities

PPL shall not transfer any of the liabilities of the Concessionaire including liabilities towards manpower arising on account of building, owning, operation and maintenance of the Port beyond the Concessions Period.

17.5 Transition Period

The concessionaire and GOP shall at least one year prior to the expiry of the Concession Period, agree upon the modalities and take all necessary steps to complete the aforesaid process of transfer of Port Assets and Payments of compensation on the date of transfer.

17.6 Procedure for Transfer

- (a) PPL shall hand over quiet vacant and peaceful possession of the Port Assets to GOP together with all designs, plans, engineering drawings, operation and maintenance manuals and all records pertaining to the Port.
- (b) The Parties shall execute a deed of transfer/assignment and such other documents as are required to effect the transfer of the Port Assets to GOP.
- (c) The transfer of the Port Assets to GOP shall be made on a going concern basis with continuity of employment benefits to the workmen and employees.
- (d) As incidental to the transfer, all ongoing agreements entered into by PPL including leases of equipment, sub-contracts, Construction Contracts, operation and maintenance agreement shall continue and if required by GOP be assigned to GOP.
- (e) Upon repayment of the entire dues, due and payable, to the Lenders under the Financing Documents, the Port Assets shall be transferred to and vest in GOP free from all charges, mortgages and encumbrances and GOP shall not accept transfer of any of PPL's liabilities towards manpower.
- (f) All costs, charges, expenses including stamp duty, registration charges and other Taxes and Duties in relation to or incidental to the transfer of the Port Assets to GOP shall be borne and paid by GOP.

18. Payment of Compensation

18.1 Compensation on Transfer upon expiry of concession

In the event of expiry of Concession by efflux of time, the concession having run its full course, the Port Assets shall be transferred to and stand vested in GOP as on the end Date and GOP shall pay to PPL, the fair market value of the Port Assets to be transferred to GOP as determined by an Expert appointment by mutual agreement or the total Debt Outstanding on the End Date, whichever is higher. The amounts to be paid by GOP shall be paid to the Lenders towards the Debt Outstanding and the balance, if any, shall be paid to PPL. Any debt taken during the last 10 years of the concession period with the knowledge of Government only shall be considered.

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18.2 Compensation on Transfer upon termination by PPL

In the event of termination of this Agreement on account of a GOP Event of Default, GOP shall pay to PPL, an amount equal to the aggregate of (a) fair market value of the Port Assets to be transferred to GOP as determined by an Expert appointed by mutual agreement or the total Debt Outstanding on the End Date, whichever is higher, (b) all costs and expenses incurred by PPL towards development of the Port (and which are not included in the fair market value of the Port Assets); and (c) all loss, damage costs, charges and expenses incurred or suffered by PPL directly on account of, or as a direct result of the GOP Event of Default. The amount to be paid by GOP shall be paid to the Lenders towards the Debt Outstanding and the balance, if any, shall be paid to PPL.

18.3 Compensation on Transfer upon termination by GOP

In the event of termination of this Agreement on account of a PPL Event of Default, no compensation shall be payable by GOP to PPL, provided that GOP shall pay to the Lenders the total Debt Outstanding on the End Date.

18.4 Compensation on Transfer upon termination on account of Force Majeure

Upon Termination of this Agreement due to Force Majeure Event, the compensation payable by GOP to PPL shall be in accordance with the following:

(i) if the termination is due to a Force Majeure Event, which is a Non-Political Event, no compensation shall be payable by GOP to PPL, provided that GOP shall pay to the Lenders the total Debt Outstanding on the End Date.

(ii) if Termination is due to a Force Majeure Event, which is a Political Event, GOP shall pay Compensation equal to higher of the following:

(A) Aggregate of:

i) Value of Land, which has been acquired by the Government for the Project at PPL's cost, escalated at the rate of 6.5% p.a compounded from the Commencement Date and up to the time the land is adjusted by the Government.

ii) Fair Market Value as determined by Experts of Port Assets (except land) as on the date of Termination Notice.

OR

(B) Complete Proposal Value received by GOP from the Replacement Developer for the Port Assets.

In any event, the Debt Outstanding shall be covered.

if the Termination is due to a Force Majeure Event, which is covered under Other Events (as in C1.15.1.2), then GOP shall pay only 75% of the value as determined under clause 18.4.ii above. In any extent, the Debt Outsourcing shall be covered.

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V. K. Chandra

18.5 Amounts to be deducted from Compensation

- (a) GOP shall be entitled to deduct from the compensation payable any amount due and recoverable by GOP from the Concessionaire as on the Termination Date.
- (b) If the Agreement is terminated on account of Force Majeure, the insurance proceeds received or to which PPL is entitled shall, if not used to effect restoration of or repairs to the Project, be distributed in following order (i) to the Lenders, towards repayment of the Debt Outstanding under the Financing Documents; (b) to GOP to the extent of compensation payments made by GOP to PPL; and lastly, (c) the residual amount shall be paid to PPL.

19. Insurance

19.1 Covers to be taken

The PPL shall on and from commencement of construction, maintain or cause to be maintained at its own expense, insurance policies that are required under the terms of the Financing Documents.

19.2 Additional Insurances and Interests

- (a) Nothing in this Clause 19 shall prejudice the PPL's right to place any additional insurances in relation to the Project and/or the PPL's obligations under any contract relating to the Project on such terms, as it shall, in its sole discretion, consider appropriate.
- (b) The PPL shall be entitled (for the avoidance of doubt) to include the Lenders as named insured and/or additional loss payee in any of the insurances referred to in this Clause 19 and/or grant security over the proceeds of such insurance.
- (c) For the avoidance of doubt, the GOP shall not have or incur any liabilities to the PPL under this Agreement in taking out or maintaining any insurance required hereunder

19.3 Market Availability

The PPL shall not be in breach of its obligations under Clause 19 to the extent that, and for so long as, the insurances are not available to the PPL on reasonable commercial terms in the Indian insurance market (or, where applicable, in the international insurance market). In circumstances where this Clause 19.3 applies, the PPL shall approach the insurance market at reasonable intervals, but not less frequently than every 3 months, to determine whether insurances, which it has not obtained, have become available.

19.4 Proof of Insurance

- (a) The PPL shall furnish to the GOP copies of certificates and policies of insurance referred to in Clause 19.1 as soon as reasonably possible after they have been received by the PPL. The PPL shall notify GOP in writing as soon as reasonably practicable, and in any event no later than 30 days after any cancellation or non-renewal of any cover provided under the insurances. The PPL shall, each year during the term of this Agreement, provide the GOP with a summary report on the insurances then being maintained by it pursuant to the terms of this Clause 19, and the respective status thereof.

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(b) Failure by the PPL to obtain the insurance coverage or certificates of insurance required pursuant to this Clause 19 shall not relieve the PPL of all or any of its obligations herein or in any way relieve or limit the PPL's obligations or liabilities under any other provisions of this Agreement.

19.5 Application of the Insurance Proceeds

Subject to any contrary or other agreement with the Lenders, all and all insurance proceeds paid to the PPL shall be applied for reconstruction of the Port and Project facilities except for insurance proceeds unrelated to physical damage caused to the Port assets.

20. Dispute Resolution

20.1 Any dispute or difference of whatsoever nature howsoever arising under, out of, or in connection with this Agreement between the parties shall be resolved through the dispute resolution procedures as set out hereafter.

20.2 Each party to a dispute shall select and appoint one senior representative within a period of 30 days from the day on which one party has sent the notice of dispute to the other party to the dispute. The representatives shall meet in Pondicherry as and when necessary from time to time and attempt in good faith and use their best endeavors at all times to resolve the dispute and produce written terms of settlement. The meetings of the representatives shall be conducted in English

20.3 If the dispute has not been resolved as evidenced by the signing of the written terms of settlement within 90 business days after the receipt of the notice as provided in clause 20.2 above, (the "Relevant Period"), such dispute shall be submitted to arbitration and shall (but subject always to Sub Clause 20.4 below) be finally determined in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 or any modification or amendment thereof (the "Indian Arbitration Act").

20.4 The venue of arbitration shall be Pondicherry region and the language of the arbitration shall be English and the award shall be made in the English language. The number of arbitrators shall be three. The PPL shall nominate one arbitrator, the GOP shall nominate another, and the presiding arbitrator shall be jointly appointed by the two arbitrators so appointed by the Parties

20.5 If the other Party fails to appoint an arbitrator within thirty (30) days from the receipt of the request to do so from the aggrieved Party or if the two (2) appointed arbitrators fail to agree on the presiding arbitrator within thirty (30) days from the date of their appointment, the Parties shall be free to approach the Secretary, Indian Council of Arbitration, Tansen Marg, New Delhi (without application of the ICA Rules) for appointment of an arbitrator or the presiding arbitrator and his decision shall be final and binding on the parties

20.6 Each of the Parties expressly understands and agrees that the arbitral award shall be the sole, exclusive, final and binding remedy between them regarding the Dispute(s) presented to the arbitral tribunal. The Parties hereto agree that the arbitral award may be enforced against the Parties or their assets wherever they may be found and that a judgment upon the arbitral award may be entered in any court having jurisdiction.

20.7 The existence of any dispute(s) or difference(s) or initiation or continuance of the arbitration proceedings shall not permit the Parties to postpone or delay the performance by the parties to the arbitration of their respective obligations pursuant to this Agreement. If court proceedings to stay litigation or compel arbitration are necessary, the Party who unsuccessfully opposes such proceedings shall pay all associate costs, expenses and attorney's fees, which are reasonably incurred by the other Party to the arbitration.

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20.8 Each Party shall bear its respective costs in relation to any arbitration proceedings.

20.9 The provision with respect to arbitration in this Clause 20 shall survive termination of this Agreement or any takeover of the Project by GOP.

21. Indemnities

21.1 Indemnities

(a) The PPL shall during the term of this Agreement hold harmless and indemnify the GOP and its officers, employees and agents, from and against any and all claims, demands, proceedings or judgments brought by any third party ("Claims") or losses, expenses, damages, costs, charges or liabilities arising from such Claims instituted, made or alleged against, suffered or incurred by the GOP, its officers, employees or agents as a result of any breach of contract, negligence or other breach of duty of the PPL or its sub-licensees, contractor(s), sub-contractor(s), sub-lessee(s), sub-PPL(s), invitees, or of the officers, employees, agents of PPL and such sub-licensee(s), contractor(s), sub contractor(s) and/or sub-lessees, sub PPLs and/or invitees as the case may be in connection with or arising out of this Agreement and/or arising out of or in connection with the PPL's use and occupation of Port Land except to the extent that such Claims or losses arose out of the negligence, fraud, willful default of, or any breach of contract or breach of duty by the GOP, its officers, employees or agents or on account of any event that is not within the reasonable control of the PPL.

(b) The GOP shall during the term of this Agreement hold harmless and indemnify the PPL, its officers, employees and agents against any and all actions, claims, demands, proceedings or judgments brought by any third party ("Claims") or losses, expenses, damages, costs, charges or liabilities arising from such Claims instituted, made or alleged against, suffered or incurred by the PPL, its officers, employees and agents as a result of any breach of contract, negligence or other breach of duty of the GOP, its officers, employees or agents in connection with or arising out of this Agreement, except to the extent that such Claims or losses arose out of the negligence, fraud, willful default of, or breach of contract or breach of duty by, the PPL, its officers, employees and agents.

21.2 Benefit of Indemnity

(a) The obligations and undertakings of the PPL under the indemnity in Clause 21.1(a) are given to the GOP for its own benefit and for the benefit of (and on trust for) its officers, employees and agents.

(b) The obligations and undertakings of the GOP under the indemnity in Clause 21.1(b) are given to the PPL for its own benefit and for the benefit of (and on trust for) its officers, employees, agents and Affiliates.

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21.3 Conduct of Proceedings

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(a) A party seeking indemnification under Clause 21.1(a), 21.1(b) or 21.2 above (the "Indemnified Party") agrees to give the GOP or PPL (as the case may be) (the "Indemnifying Party") notice ("Notice") of any and all claims asserted against the Indemnified Party for which indemnification is or may be sought hereunder, together with reasonable details of the nature of such claim. Such Notice shall be given as soon as the Indemnified Party becomes aware that it has or may have a claim against

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the Indemnifying Party. Provided that failure to give such Notice shall not abrogate or diminish the Indemnifying Party's obligation under this Clause if the Indemnifying Party has or receives knowledge of the existence of any such claim by any other means.

- (b) If the Indemnified Party admits liability in relation to or settles any claim in respect of which it is entitled to an indemnity hereunder, or consents to entry of any judgment or otherwise seeks to terminate any proceedings in respect of which such indemnification is sought, without the prior written consent of the Indemnifying Party (other than in circumstances where it is taking all reasonable steps to mitigate its losses and liabilities, or where such settlement, consent or termination includes a release of the Indemnified Party from any and all liabilities arising out of each such claim), it shall not be entitled to any indemnity hereunder in respect of any liability, damages, costs or expense payable in connection with such claim. [The Indemnified Party shall keep the Indemnifying Party properly informed at all times in relation to the conduct of any such proceedings, and shall consult with and take account of all reasonable suggestions of the Indemnifying Party in relation thereto.]

22. Assignment

- (a) Subject to paragraphs (b) and (c) below, the PPL may assign or transfer its leasehold interest in the Site or any part thereof to third party sub-lessees during the development phase of the Project. The PPL shall, at all times, be entitled without restriction to grant any sub-licenses to any of its contractors or sub-contractors to enter thereon in connection with the development and construction of the Project facilities.
- (b) Subject to paragraphs (c) below, the PPL may assign or transfer all or any of its obligations or liabilities under this Agreement, or its interest in the Project Facilities provided that in all such cases the GOP shall be intimated of such assignment or transfer as soon as reasonably practicable.
- (c) The PPL shall be freely entitled to assign the benefit of this Agreement (in whole or part) to the Lenders by way of security or to any of the PPL's Affiliates.
- (d) The right of the Lenders, upon assignment of the rights and obligations under this Agreement or its interest in the Project Facilities and Site to substitute the PPL shall be subject to provisions of Clause 16.3.7
- (e) In the event of a take over of the Project facilities by the GOP at the time of Normal Transfer or earlier termination of this Agreement, the PPL shall endeavor to ensure that all existing charges and encumbrances, in respect of such assets, are extinguished upon the payment of Final Compensation Payable.
- (f) Save as otherwise expressly provided herein, the GOP shall not assign or transfer all or any of its obligations or liabilities under this Agreement or the Lease and Possession Agreement without the prior written consent of the PPL.

23. Representations and Warranties

23.1 The GOP represents and warrants that:

- (a) It has all requisite power and authority (whether statutory, governmental, legal or otherwise) to execute and deliver this Agreement, to perform its obligations hereunder and to carry out the transactions contemplated thereby and all actions required to authorize its execution and delivery of this Agreement have been duly taken.

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 [Signature]
 Authorized Signatory

OM METALS LTD
 [Signature]
 Authorized Signatory

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- (b) The obligations expressed to be assumed by it in this Agreement are legal and valid obligations binding on it and enforceable in accordance with the terms thereof (except as such enforceability may be limited by the laws relating to bankruptcy, insolvency, reorganisation, moratorium, fraudulent transfer and similar laws affecting the enforcement of creditors rights generally and general equitable principles).
- (c) The officer(s)/person(s) executing this Agreement for or on behalf of the GOP has or have all the requisite power and authority to execute and deliver this Agreement on its behalf, and has or have complied with all relevant procedural requirements relating to such execution.
- (d) It shall not have the benefit of any sovereign immunity or similar immunity from suit, execution, attachment or other legal process in relation to itself or any of its assets in any jurisdiction in regard to the matters set forth in this Agreement.
- (e) The execution, delivery and performance of this Agreement and the transactions contemplated hereby do not and will not conflict with or contravene or result in a material breach of the provisions of any of its constitutive documents or any other agreement or instrument by which it or its property may be bound or give rise to a GOP Event of Default.
- (f) Save as specifically disclosed to the PPL in writing prior to the date hereof, to its knowledge there are no actions, suits or proceedings pending or threatened against or affecting it before any Court or administrative body or arbitral tribunal which are likely to have a material adverse affect on its ability or the liability of the PPL to meet and carry out its obligations under this Agreement and which are likely to result in an adverse determination for the GOP.
- (g) It has not at the date hereof charged, pledged, mortgaged, assigned, encumbered or otherwise created or agreed to any security interest of any kind whatsoever, in favor of any person other than the PPL, in or over any of the assets, property or land comprised in the Port, or the Project, or any interest, right or benefit of the parties therein or taken any steps which may lead to the creation of any such security interest.
- (h) The present Draft at existing Port channel including proposed approach channel is 4 meters at all locations.

23.2 The PPL represents and warrants that:

- (a) It is a company duly incorporated and validly existing under the laws of the Republic of India and, save as otherwise expressly provided herein, it has all requisite power and authority to execute and deliver this Agreement, to exercise its rights and perform its obligations and to carry out the transactions contemplated under this Agreement.
- (b) All actions required to authorise its execution and delivery of this Agreement have been duly taken, including obtaining all necessary corporate approvals.
- (c) The obligations expressed to be assumed by it in this Agreement are legal and valid obligations binding on it and enforceable in accordance with the terms thereof (but except as such enforceability may be limited by the laws relating to bankruptcy, insolvency, reorganisation, moratorium, fraudulent transfer and similar laws affecting the enforcement of creditors rights generally and general equitable principles).

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- (d) The company officer(s) executing this Agreement has or have all the requisite capacity and authority to execute and deliver this Agreement on its behalf, and has or have complied with all relevant procedural requirements relating to such execution.
- (e) The execution, delivery and performance of this Agreement and the transactions contemplated hereby do not and will not conflict with or contravene or result in a material breach of the provisions of its Memorandum or Articles of Association or any other agreement or instrument by which it or its property may be bound or give rise to a PPL Event of Default.
- (f) To its knowledge there are no actions, suits or proceedings pending or threatened against or affecting it before any Court or administrative body or arbitral tribunal which might materially adversely affect its ability to meet and carry out its obligations under this Agreement and which are likely to result in an adverse determination for the PPL.

24. Miscellaneous Provisions

24.1 Amendments etc.

- a. Except as otherwise specifically provided, any amendment to this Agreement shall be effective if the same is in writing and signed by the GOP, the PPL and GOP;
- b. Except as provided in Sub-Clauses (a) and (b) above, any amendment of any provision of this Agreement shall be effective if the same is in writing and signed by the GOP and the PPL; and
- c. Any waiver of any provision of this Agreement must be in writing and signed by the party waiving the relevant right hereunder.

24.2 Agreement to Override Other Agreements; Conflicts

This Agreement supersedes all previous agreements or arrangements between parties, including the Letter of Intent and any memoranda of understanding entered into in respect of the contents hereof and (together with the Lease and Possession Agreement, and (where relevant) the other Project Agreements) represents the entire understanding between the parties in relation thereto.

24.3 No Waiver; Remedies

No failure on the part of any party to exercise, and no delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof or a consent thereto; nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Save as otherwise expressly provided herein, the remedies herein provided are the cumulative and not exclusive of any remedies provided by applicable law.

24.4 Severance of terms

If any provision of this Agreement is found or declared to be invalid, unenforceable or illegal by any competent arbitral tribunal or court, such invalidity, un-enforceability or illegality shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect. In that event, the parties shall use all reasonable endeavors and enter into negotiations in good faith to agree on an alternative provision to replace the relevant invalid, unenforceable or illegal provision on terms, which are as close as practicable to the provision so replaced.

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24.5 Language

All notices, certificates, correspondence or other communications between the parties under or in connection with this Agreement, any other Project Agreements or the Project shall be in English.

24.6 Confidentiality

(a) No Recipient Party shall, without the prior written consent of the Disclosing Party, at any time divulge or disclose or suffer or permit its Representatives to divulge or disclose to any person or use for any purpose unconnected with the Project any Confidential Information during the terms of this Agreement and for a period of five years after the expiry or termination of this Agreement, except to its Representatives and (in relation to the PPL only) Affiliates who have a legitimate need to know the Confidential Information in order to perform their duties relating to the Agreement.

(b) This Clause shall not apply to Confidential information:

- i) at the time of disclosure or thereafter has become part of public knowledge or literature without a breach of this Agreement;
- ii) is already in the possession of the Party receiving such Confidential Information before it was received from any other Party and which was not obtained under any obligation of confidentiality from the party which disclosed such information; or
- iii) was obtained from a third party (other than one disclosing it on behalf of a party) who was free to divulge the same and who was not under any obligation of confidentiality in relation to such Confidential Information to party, which disclosed the information.
- vi) is disclosed by the PPL to the lenders, any actual or bona fide potential shareholders, investors or bankers (and their professional advisers) of the PPL;
- (v) subject to subparagraph (e), is required to be disclosed pursuant to any legal and mandatory requirement of any court, legislative or administrative body or the Relevant Authority, or the rules of any applicable stock exchange;
- (vi) is disclosed by the PPL to any sub-licensee, contractor, sub-contractor or supplier of goods and services of or to the PPL;
- (vii) is disclosed to actual prospective insurers, re-insurers and insurance brokers;
- (viii) is disclosed to any professional advisors or consultants of any persons to whom a party is entitled to disclose Confidential Information under this Clause;
- (ix) is disclosed to any person in connection with the dispute resolution provisions hereunder; and
- (x) is independently developed by a party receiving such Confidential Information without reliance on the Confidential Information disclosed by the other party; or
- (xi) is disclosed to any Relevant Authority or any other body in any relevant jurisdiction in connection with the obtaining of renewal of any approval, licence, permit or consent required hereunder or for the Project;

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provided that the party making a disclosure of Confidential Information pursuant to (iv) and (vi) to (ix) (inclusive) above shall insure that any person to which it makes such disclosure undertakes to hold such Confidential Information subject to obligations of confidence equivalent to those set out in this Clause 24.6.

- (c) A party making a disclosure of Confidential Information pursuant to Sub-Clause (a) of this Clause shall (i) at the time of making such disclosure inform its Representatives and Affiliates of their obligation of confidentiality pursuant to this Agreement and ensure their compliance and (ii) be liable for any breach of such obligations by such Representatives and Affiliates.
- (d) In the event that a party is required or requested to make a disclosure of Confidential Information referred to in subparagraph (b) (v) above, such party shall prior to such disclosure (to the extent permissible by Applicable Law) use its best efforts to promptly notify the Disclosing Party or its Affiliate so that appropriate protection order and/or other action can be taken if possible. In the absence of such a protection order restricting disclosure, the party required to make such disclosure may disclose only that portion of the Confidential Information which it is legally required to disclose and shall use reasonable efforts to obtain assurances that confidential treatment will be accorded to the Confidential Information;
- (e) The Recipient Party agrees that it, its Affiliates and Representatives shall, upon request by the Disclosing Party promptly:
 - (i) return, and use all reasonable endeavours to procure that any third party to whom the Recipient Party has disclosed the Confidential Information pursuant to this Agreement shall return, all the Confidential Information that is in tangible form (including, without limitation, Confidential Information contained on computer disks or other electronic storage media or devices) furnished, together with any copies or extracts thereof; and
 - (ii) destroy, and use all reasonable endeavours to procure that any third party to whom the Recipient Party has disclosed the Confidential Information pursuant to this Agreement shall destroy, all analyses, compilations, studies or other documents which have been prepared and which reflect or refer to any Confidential Information,

provided that the Recipient Party shall be entitled to retain such Confidential Information which forms part of the permanent records of the Recipient Party or its Affiliates and which was prepared for the purposes of the review or decision-making process of the Recipient Party or such Affiliate and/or which the Recipient Party or its Affiliates is required to retain by law or the rules of any regulatory body or recognised stock exchange if it continues keep such Confidential Information confidential in accordance with this Agreement.

24.7 Notices

Any notice to be given hereunder shall be in writing and shall either be delivered personally, by courier or by hand or facsimile transmission. The notice shall be given to the parties at their respective addresses set forth below:

24.7 SUBJECT & MARKETING LTD
[Signature]
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OH METALS LTD
[Signature]
Authorized Signatory

The Secretary (Port)
Government of Pondicherry
Chief Secretariat,
Goubert Avenue
Pondicherry-605001

Tel.No. (0091) (413) 333271-75
Fax No. (0091) (413) 337575

PPL

M/s Subhash Projects and Marketing Ltd and Om Metals Ltd Joint Venture
F 27/2 Okhla Industrial Area Phase II, New Delhi
ATTENTION: [Mr. Mr Anil Sethi / Mr. C.P. Kothari]

Tel No. +911151435004 // +911141545590

or such other address, or facsimile number as may be notified by that party to the other parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, or by courier at that address and (ii) in the case of any communication made by facsimile upon receipt by the sender of confirmation that the transmission was successful. In case any party changes its address, communication numbers, or directed attention as set forth above, it shall notify the other parties in writing to the adoption thereof.

24.8 Further Assurance

- (a) Each of the parties shall promptly take such actions and execute such documents as are necessary to give full effect to the rights and benefits contained in this Concession Agreement and/or contemplated herein.
- (b) The rights and benefits conferred hereby on the PPL are conferred for the benefit of the PPL itself and for the benefit of (and on trust for) the PPL's officers, employees, successors, permitted assigns and Affiliates.

24.9 Original Document

This Agreement is made in three original copies, each having the same contents and the parties have read and thoroughly understand the contents hereof and have hereby affixed their respective signatures and seals before witnesses.

24.10 Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the Republic of India. The Parties unequivocally agree that any legal action, suit or proceeding arising out of or in any way relating to this Agreement shall be subject to the exclusive jurisdiction of the courts at Pondicherry.

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SUBHASH PROJECTS & MARKETING LTD

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IN WITNESS HEREOF this Agreement has been executed by the duly authorized representatives of the parties hereto on the day and year first above written.

Under Secretary to the Government(Port)

For and on behalf of the GOP

By Mr V.Kannabiran
UNDER SECRETARY TO GOVT.
CHIEF SECRETARIAT (PORT)
For and on behalf of the GOP.

Date 21/01/2006 Pondicherry.

M/s Subhash Projects and Marketing Ltd and M/s Om Metals Ltd.

By Mr (Anil Sethi)
(Chairman)

(C.P.Kothari)
(Chairman-cum-Managing Director)

Date Pondicherry 21-1-2006

- Witness;
1. (B-RAMKUMAR)
Director of Ports
11/C-24, Subbiah Sulozi
Pondicherry-605001
 2. SHARAD SOSANI
2/2 PARSI MOHALLA
CHHAVANI
INDORE 452001

Enclosures

1. Annexure -I - Detailed Project Report
2. Annexure -II- Lease and Possession Agreement (Model).
(along with Schedule I and II)

(103)

ANNEXURE - VIII

Pondicherry's Sandy Beaches Imperiled by New Port Development

Published 8 February 2007 Environment , India 4 Comments

Tags: Ariyankuppam River, beach, coastal management, Coromandel Coast, corruption, development, Environment, environmental disaster, erosion, Government of Pondicherry, groyn, longshore drift, New Jersey shore, Ohm Metals, Pondicherry, port, Puducherry, Quiet Beach, rip-rap, sand, sand migration, satellite image, seawall, Subhash Projects Marketing Limited, Tamil Nadu, Union Territory of Pondicherry



Study the photos above. In less than two decades — and it may have been much more rapid than that — Pondicherry's beautiful sandy beach along the the main promenade of the town has completely disappeared, leaving a rough coastline of riprap boulders, brought in with heavy equipment to staunch further erosion.

What happened to the gorgeous beach front? It eroded away, largely as a function of breakwaters (stone jetties that protrude into the sea to arrest wave action), which were built between 1986 and 1989 at the harbour entrance where the Ariyankuppam River joins the sea.

And now the Government of Pondicherry is planning to compound the damage.

Fighting Nature, Stupidly

The breakwaters essentially act like a dam, blocking the waves as well as the sand that flows from South to North along seashore.

Thus, on the southern side of the harbour, near Veerampattinam, a lot of sand has accumulated and a huge artificial beach has been involuntarily created. But to the North of the harbour, sand is being washed away by the waves and the currents, and as the sand from the South cannot flow anymore to the North, the beaches to the North have completely eroded away.

Before building the new harbor at the Ariyankuppam River mouth, the Pondicherry Government knew that the breakwaters would cause erosion to the North. This is a well studied, fundamental geological principal, perhaps best illustrated by the accelerated depletion of sand from the once-famous vacation destination of the New Jersey shore in the United States, caused by the building of simmilar breakwaters.

To prevent erosion of the beaches to the North of the harbor, a complex system was designed and put in place to artificially dredge the sand and pump over the breakwater to the North. What was once done by nature, must now be done — inefficiently and ineffectively — by machine.

20 years after the harbor was built, millions of cubic meters of sand have been washed away and lost as a result of this man-made erosion. More than 7 kilometers of the coastline has suffered

(126)

extensive damage due to erosion. That erosion that has been advancing to the north at a pace of 350 meters per year, and is accelerating with time.

Repeating Past Errors, Threatening Environmental Tragedy

The Pondicherry Government has now embarked on a project to enlarge the Pondicherry Port in a ten-fold expansion. This project will not only denude Pondicherry's remaining beach sands through erosion after construction, *during construction* approximately 10 million cubic meters of sea sand will be physically moved to within the new port area.

This project, like so many in India, is in the hands of a private contractor, Pondicherry Port Limited (jointly owned by Subhash Projects and Marketing Ltd and Om Metals) and is receiving quiet rubber-stamping by the government. PPL's project proposal evinces neither future accountability for the impending ecological disaster, nor much concern about it. The Environmental Impact Report describes the patterns wave action and sand migration in the section entitled "Baseline Environmental Conditions" (section 1.4) but makes no mention of the certain sand erosion or even fanciful mitigation strategies in the subsequent sections entitled "Screening of Potential Impacts" (section 1.5) and "Environmental Management Plan" (section 1.6).

If one needed any evidence that this is a sweetheart deal between the Pondicherry Government and the developer, consider the speed with which the government is hustling the superficial Environmental Impact Report through the approval process. Opponents of the project were given less than a week to prepare objections, and the hearing is scheduled for 14 February.

Citizen Action

Notwithstanding the government's efforts to push this project through without notice, a group of concerned citizens have challenged the project and provided thoughtful comment, on the Environmental Impact Report even within the unreasonable time strictures. They have crafted a thoughtful objection to the report and the project.

If the government of Pondicherry is successful in closing this deal for its developer-friends, the devastation to Pondicherry's remaining beaches is assured. Please lend your voice in opposition to this project. An action plan will be posted on the Save Our Beach blog shortly.

4 Responses to "Pondicherry's Sandy Beaches Imperiled by New Port Development"



tina 24 March 2007 at 4:02 pm

i am very upset afer hearing abt this project
infact it will eradicate the peace thatz prevalent in our town.i am so worried abt it. pls do something to stop it.we are not supposed to fight against our nature we wont have the power tio withstand its attack
i dont know wht to do
i am a pondicherrian and is there anything that i can do to save my place pls suggest.
tina

Reply



Alex 25 April 2007 at 7:06 pm

Thank You

Reply



Elisa 16 June 2007 at 12:57 pm

Thanks bro! Real good work! Visit my sites, please:

Reply



niranjan 16 June 2007 at 1:03 pm

the government do not know about the impacts of the new harbour port construction. Already we had lost our beach, nw we will lose our pondicherry city also if this government will construct that port. Thengathitu, is a wet land, which paly an important role for our city. this place act as a buffer zone, which absorbs the high nutrient effluents from the sewage, filtered it and mixed in the sea, and also sand dunes, mangroves etc., which marine fauna hatching the egg and larvae., play an important role in the ecosystem. If they built the port here, we should have lost. So, we should vulnerably against for this port construction, and also the government should try to stop this project development.

Reply



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Sea Port Pondicherry

Case Studies

- [Chappi Irrigation Project](#)
- [Koldam Hydro Electric Project](#)
- [Kurichu Hydro Electric Project](#)
- [Upper Krishna Project](#)
- [Om Enclave Kota](#)
- [Sea Port Pondicherry](#)
- [SEZ Pondicherry](#)



Ports are integral to facilitating international trade and act as fulcrum of economic activity and overall growth.

Opportunity.

India's coastline of 7,517 kms, spread over 13 States/Union territories, is studded with 12 major ports and 200 (as per latest information from Maritime States) non-major ports. This would not suffice the anticipated growth, considering the emergence of India, in the region and the world over, as a hub of business, trade and commerce.

Further, the Government of India has developed a National Maritime Development programme with a vision to make India a leading player by the year 2025.

Puducherry, (formerly known as Pondicherry), ranked as India's best small state, fast emerging as an industrial and technology destination, is an ideal location for developing a Deep water Port.

Puducherry currently has a small shallow water port used for the import & export of general cargo. Ships anchor offshore and cargo is transferred to a small shallow draft quay by means of barges.

Deep water Port at Puducherry

Pondicherry Port Limited has envisaged a world class Deep water port to augment the economic demand and meet the opportunities available for such an initiative.

The Government of Puducherry has signed a 30 year Concession Agreement (extendable for a further 20 years) with Pondicherry Port Limited to develop the existing port into a deep water port. Upon completion of the development, the port will handle containers, cars, general cargo, edible oil and passengers

Salient Features

Environment

The Environmental Impact Assessment Report and Environmental Management Plan for the Port is being prepared by IIT Madras. Clearances are expected shortly. No significant environmental issues have been found that would restrict the development & operation of the port.

Beach Nourishment

Sand bypassing system will be established and the beaches of Puducherry shall be nourished.

Design ship size

Container vessels (7000 TEU) with a draft of 14.2 mts and length of 300 mts

Container terminal equipment

10 quay side post panamax ship to shore container cranes.

3 quay side feeder ship to shore container cranes.

52 rubber tyred gantries 1 over 5.

78 tractor trailer units.

11 empty container handlers.

2 rail mounted gantries

Quay Level

+4.5 m CD

Depth at Quay

Dredge channel

Length - 2.5 Kms | Depth - 16.4 mts | Width - 210 mts
Volume of capital dredging - 16.3 million cubic meters
Dredged material will be used for land reclamation and beach formation.

-15.5 m CD

Land reclamation

Raising and filling of sea 1200m long and 200m to sea from present shoreline and area on south and north in the basin & treatment of soft marine clays.

Breakwaters

Northern & southern breakwaters totaling 3 Kms in length, oriented to avoid wave penetration and sediment intake & designed for 100 year return period storm.

Modal split of traffic

Trans-shipment 20%, Rail 10%, Road 70% for containers. General cargo terminal equipment Ships' gear will be utilized.

Liquid cargo terminal

Ships pumps will be used for unloading.

Quay structure

Open piled or gravity structures.

Port infrastructure equipment

2 Tugs, pilot and survey boats, navigation buoys and lights, port VTS system.

Utilities

Government is committed to provide adequate power and water. State-of-the-art waste water and solid waste disposal facilities will be provided.

Buildings

Port administration building, accommodation block & gate house plus individual administration blocks and offices in each terminal.

Connectivity

Government is committed to provide rail connectivity & dedicated road connectivity from port to national highway and port to the proposed SEZ.

Port Development

The Port facilities will be commissioned by 2012. The following will be the port facilities upon completion of development by 2017.

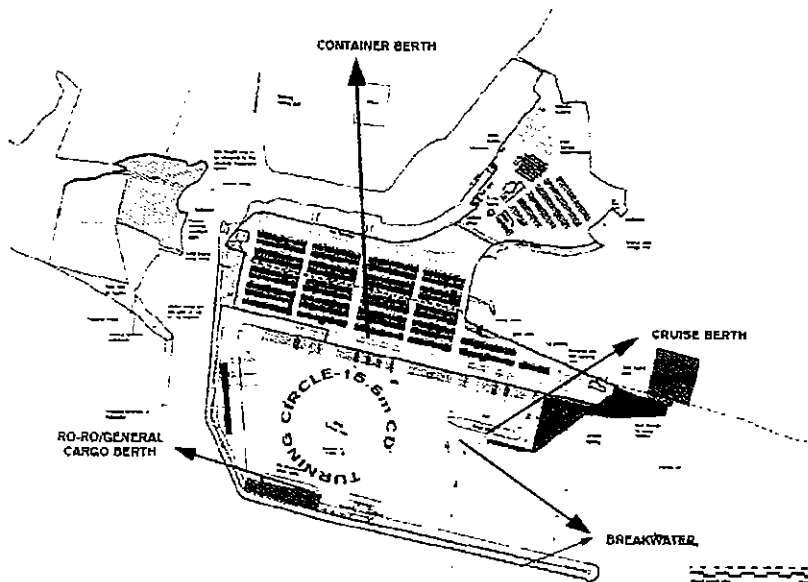
Container terminal - 1670 m long with annual throughput capacity of 2.25 million TEU

General cargo / ro-ro berth - 300 m long with annual throughput capacity of 180000 cars

Edible oil berth - One liquid cargo terminal handling 200,000 tonnes per annum

Cruise terminal - 300 m long with annual throughput capacity of 23350 passengers

Sand bypassing and beach nourishment - Bypass the sand from south of the port to the beach of Puducherry



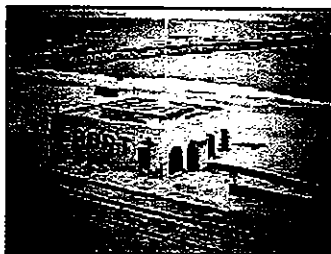


PORT OF PONDICHERRY

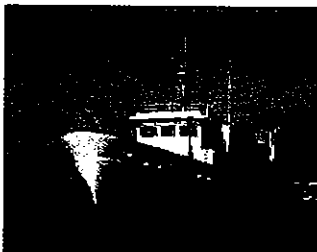
PORT DEPARTMENT GOVERNMENT OF PUDUCHERRY



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Puducherry Port during French Rule



Puducherry Port at present

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[india.gov.in](#)
The national portal of India

BRIEF HISTORY OF THE PORT

Puducherry, centuries before its merger with India in 1954, was a Port City and flourished as a Centre of International Trade and Commerce. The commercial history of Puducherry, dates back to the Roman Empire. The remnants of the ancient port town "Arikenmedu" six kilometers from Puducherry town, already prove that it had trade connections with Rome and Greece around the period 100 BC to 100 AD. Textiles, pearls and silk were the main items of exports. Puducherry continued to flourish even during the Chola period, as the discovery of Chola coins from 11th and 12th centuries indicate. Trade relations with China between the periods of 10th and 12th century A.D. also existed.

The fortune of the Port stayed linked to the successive Dynasties and Empires starting from Portuguese invasion up to 1614 A.D., Dutch invasion in 1618 A.D., and French rule from 1673 A.D. Puducherry Port flourished as a Centre of International Trade and Commerce during the French Rule.



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GOVERNMENT OF PUDUCHERRY
PUDUCHERRY

Ports

Summary

CRISIL Research expects traffic at Indian ports to grow at a CAGR of 9 per cent over the next 5 years. Non-major ports are expected to witness a faster growth as compared to major ports

Emergence of new ports is likely to lead to a shift in pattern of traffic - especially in the states of Gujarat, Andhra Pradesh and Orissa

Investment of Rs 733 billion expected in the ports sector from 2008-09 to 2013-14.

Annual Review

June 2009



Contents

Part A: Shift in port traffic expected due to emergence of new and upcoming ports

Traffic at Indian ports to continue to witness strong growth rates	A-3
Large investments planned at major and non-major ports to drive port capacity	A-9
Tariffs at ports	A-15
New and upcoming ports to lead to shift in traffic	A-19
Dedicated freight corridor (DFC)	A-55

Part B: State of the industry

Institutional framework	B-1
Legislative framework	B-5
Key Policies	B-11
Overview of the ports sector in India	B-17
Player profile – National	B-27
State Profiles	B-65
Types and classification of ships	B-91
Definitions & Glossary	B-97

Part C: Industry statistics

Cargo trends at major ports	C-1
Performance Indicator - Major ports	C-7
Capacity at major ports	C-9
Non Major Ports	C-11
Financial performance - Major ports	C-13
Planned Investments - Major ports	C-15
Tariffs at major ports	C-23

This document has been prepared by Aishwarya Ramani, Rahul Prithiani and Sudhir K Nair (Head of Research). For any queries please get in touch with our client servicing desk. (clientservicing@crisil.com). Ph -022-66913561)

Opinion

Sections

Executive summary	A-1
1.0 Traffic at Indian ports to continue to witness strong growth rates	A-3
2.0 Large investments planned at major and non- major ports to drive port capacity	A-9
- Major ports	A-9
- Non-major ports	A-10
3.0 Tariffs at ports	A-15
- Tariffs at major ports	A-15
- Non-major ports	A-16
4.0 New and upcoming ports to lead to shift in traffic	A-19
- Coal movement at ports	A-19
- Iron ore movement at ports	A-32
- Fertiliser and fertiliser raw material movement at ports	A-39
- POL movement at ports	A-46
5.0 Dedicated freight corridor (DFC)	A-55

Charts

<u>4.0 New and upcoming ports to lead to shift in traffic</u>	
01 Location of power plants in India	A-20
02 Location of Cement plants and cement clusters in India	A-27
03 Location of Iron ore mines in India	A-33
04 Location of fertiliser plants in India	A-40
05 Location of Refineries in India and their pipelines	A-47
<u>5.0 Dedicated freight corridor (DFC)</u>	
01 Dedicated freight corridor	A-56

Figures

<u>1.0 Traffic at Indian ports to continue to witness strong growth rates</u>	
01 Outlook on traffic at ports	A-3
02 Commodity mix 2008-09(E)	A-4
03 Commodity mix 2013-14 (P)	A-4
04 Outlook on POL traffic at ports	A-4
05 Outlook on Coal traffic at ports	A-5
06 Outlook on Iron ore traffic at ports	A-6
07 Outlook on Container traffic at ports	A-6

Continued...

...continued

Figures

<u>2.0</u>	<u>Large investments planned at major and non- major ports to drive port capacity</u>	
01	Outlook on capacity at major ports	A-9
02	Outlook on capacity at non-major ports	A-10
03	Outlook on traffic and capacity in the ports sector	A-12
04	Outlook on capacity and traffic at major ports	A-12
05	Outlook on traffic and capacity at non-major ports	A-12

Tables

<u>2.0</u>	<u>Large investments planned at major and non- major ports to drive port capacity</u>	
01	The key projects coming at major ports	A-10
02	Key capacity expansion projects at non-major ports include	A-11
<u>4.0</u>	<u>New and upcoming ports to lead to shift in traffic</u>	
01	Maharashtra - Imported coal based power plants	A-21
02	Gujarat - Imported coal based power plants	A-22
03	Andhra Pradesh - Imported coal based power plants	A-23
04	Tamil Nadu - Imported coal based power plants	A-24
05	Orissa - Imported coal based power plants	A-24
06	Rajasthan - Imported coal based power plants	A-25
07	West Bengal - Imported coal based power plants	A-25
08	UP and Bihar - Imported coal based power plants	A-26
09	Gujarat - Imported coal based cement plants	A-28
10	Andhra Pradesh - Imported coal based cement plants	A-29
11	Tamil Nadu - Imported coal based cement plants	A-29
12	Himachal Pradesh - Imported coal based cement plants	A-30
13	Rajasthan - Imported coal based cement plants	A-30
14	Chhatisgarh - Imported coal based cement plants	A-31
15	Goa - Iron ore mines	A-34
16	Karnataka - Iron ore mines	A-34
17	Andhra Pradesh - Iron ore mines	A-36
18	Orissa - Iron ore mines	A-37
19	Jharkhand - Iron ore mines	A-38
20	Madhya Pradesh - Iron ore mines	A-38
21	Chhatisgarh - Iron ore mines	A-39
22	Maharashtra - Imported raw material based fertilizer plants	A-41
23	Gujarat - Imported raw material based fertilizer plants	A-42
24	Orissa - Imported raw material based fertilizer plants	A-43
25	Karnataka - Imported raw material based fertilizer plants	A-43
26	Tamil Nadu - Imported raw material based fertilizer plants	A-44
27	Andhra Pradesh - Imported raw material based fertilizer plants	A-45

continued...

NO K 11911/2005-Port
DEPARTMENT OF INDUSTRIAL DEVELOPMENT (PORT)
GOVERNMENT OF PONDICHERRY

12/ (134)

Pondicherry, the 13.06.2005

993
17/6/05

2096
14/6/05
EE (Port)
7/11/05
12/6

Director of Port Management,
Madurai,
Tamil Nadu,
605 019.

Subject: DID (Port) - Development of Pondicherry Port through private investment on BOT basis - Appointment of NIPM as consultant - Reg.

I am directed to inform that the Government of Pondicherry (GOP) has decided to appoint your institution as consultant for the entire process of the Development of Pondicherry Port through Private Investment on BOT basis on usual terms and conditions on mutually agreeable basis.

As a first step, the GOP has shortlisted few private developers and one of the short listed firms has been awarded a Letter of Intent (LOI) as a developer and asked to submit a Detailed Project Report (DPR) for the development of Pondicherry Port. The DPR is expected to be ready by the end of July 2005.

3. In view of the scope of the consultancy services would involve the following works like:

- a. A detailed analysis and evaluation of the DPR from all angles (technical, financial, environmental, legal etc.) and submission of a Comprehensive Report with views, comments and recommendations to the GOP.
- b. Finalisation of DPR, which would form the basic document for the port developmental activities.
- c. Advice and assist in obtaining all the statutory clearances in connection with the Port Development Project.
- d. Preparation of a Draft Concession Agreement for the Port Development Project on BOT basis to be entered between the GOP and the successful Private entrepreneur.
- e. Assist the Government in negotiation and finalization of Final Agreement.
- f. To monitor, supervise and advise the GOP on all matters during execution and completion of the Port Development Project.
- g. Any other related works that may be sought by the GOP.

(c)

127

Therefore, I request that your terms and conditions for taking up the consultancy assignment (MOU),
fees charges payable. FTK I. CPN or Bar Chart for this assignment and the various stages in which
is to be released to you and any other relevant information pertaining to this subject may kindly
also as to approach the Government for necessary approval and sanction.

Early reply will be highly solicited.

Yours faithfully,

V. Kannabiran
(V. KANNABIRAN) 13/4/65

UNDER SECRETARY TO GOVT. (PORT)

Director,
Port Department,
Madicherry.

P. Mathew Samuel
Spl. Secy. (Port)



136
GOVERNMENT OF PUDUCHERRY
DEPARTMENT OF PORTS

40, Goubert Avenue.
Puducherry - 605 001, India.
Ph : 0413 - 2333590, Fax : 0413 - 2221022

No.5/SS(PORT)/2009

Dated: 4.11.2009

Dear Dr. Mishra,

With reference to our telecon on the evening of 3.11.2009, you had requested the following information.

- (a) When was the land handed over to the developers and when was it taken back?
- (b) Whether any real estate activity has been undertaken by the Developer in the Port Premises?

With reference to (a), I am to state that the land for the Port was handed over to the Developers on 1.2.2007. Due to the agitation by land owners to the proposed land acquisition for the project, the Port land was taken back from the Developer as of 8.6.2007. Since then the Port land has been in the physical possession of the Port Department. All the port dues and charges since then have been collected by the Port.

As for (b), I confirm that as on date no real estate activity nor any construction has been undertaken in the Port premises by the Developer.

Thanking you.

Yours faithfully,

(P. MATHEW SAMUEL)
SPECIAL SECRETARY (PORT)

To
✓ Dr. Sanjeev Mishra,
CCA (Home Ministry),
Ministry of Home Affairs,
North Block,
New Delhi- 110 001.

137 137
GOVERNMENT OF PUDUCHERRY

PORT DEPARTMENT

**JUDGEMENT OF THE
SUPREME COURT OF
INDIA**

Dated 14-05-2009

T&PSC.NO.2375/2009



Dated: 6.08.2009

From
H.P.Rajan, B.A., B.L.,
Assistant Registrar (T&P),
High Court, Madras.

To

1. The Secretary to Government, Union of India, Ministry of Surface Transport, New Delhi.
2. The Secretary to Government, Department of Industrial Development (Port), Pondicherry.
3. The Joint Secretary to Government, Revenue Department, Pondicherry.
4. The Director of Port, Department of Industrial Development (Port), Pondicherry.
5. The Director of Science, Tehnical and Environmental, Government of Pondicherry Pondicherry.
6. The Deputy Secretary to the Government, Law Department, Pondicherry.
7. The Under Secretary to Government, Finance Department, Pondicherry.
8. The Under Secretary to Government, Port Department, Pondicherry.
9. The Executive Engineer (Port), Department of Industries (Port), Pondicherry.
10. Mr. Dhiman, Director (Ports Dev.), Ministry of Shipping, New Delhi.
11. The Director, National Institute of Port Management, East Coast Road, Uthandi, Chennai - 600 119.
12. The Director, Central Bureau of Investigation, New Delhi.

Sir,

Sub: Civil Appeal Nos.3572 and 3573 of 2009 Supreme Court of India
against W.P.Nos.12337 and 3304 of 2006 High Court, Madras -
Copy of the Judgment of the Supreme Court of India dated
14.05.2009 Communication - Regarding.

Ref: Supreme Court's Letter D.No.718/2007/XII dated 15.07.2009.

Villianur Iyarkkai Padukappu Maiyam etc.

Versus

Union of India and Others

.....Appellants

.....Respondents

I am to enclose herewith a xerox copy of the Judgment of the Supreme Court of India, dated 14.05.2009 in the above case for your information and necessary action.

Yours faithfully,

Encl: Copy of Judgment.

Copy to:

The Section Officer, Writ Section, High Court, Madras.

Cy
12/12

ASSISTANT REGISTRAR (T&P).

(13)

(121)

R-802/09

327828

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3572 OF 2009
(Arising out of SLP (C) No. 6977 of 2007)

Villianur Iyarkkai Padukappu Maiyam ... Appellant

Versus

Union of India and others ... Respondents

With

CIVIL APPEAL NO. 3573 OF 2009
(Arising out of SLP (C) No. 9988 of 2007)

JUDGMENT

J.M. Panchal, J.

Certified to be a true copy
Vijay Aggarwal
Assistant Registrar (Judl.)
20/07/2009
Supreme Court of India

- Leave granted in both the special leave petitions.
- 2. Appeal arising from Special Leave Petition (C) No. 9988 of 2007 is directed against judgment dated August 10, 2006, rendered by the Division Bench of Judicature

23. It is admitted position that the Pondicherry Port is not a "major port" and as such jurisdiction and control to develop the said port vests in the Government of Pondicherry. The guidelines relied upon by the learned counsel for the appellants relate to privatisation of "major port". Those guidelines do not apply to minor ports. There is no manner of doubt that development and privatisation of minor ports can be undertaken by the respective State Government after formulating its own guidelines and modalities. The Indian Ports Act, 1908 permits the State Government to develop the minor ports. By virtue of power vested in the Parliament by Article 239A of the Constitution, the Government of Union Territories Act, 1963 was enacted and Pondicherry was provided with a Legislative Assembly. The extent of the legislative power of the State Legislative Assembly is laid down in Section 18 of the Act of 1963, which, inter alia, provides that the Legislative Assembly is empowered to make laws in respect of any matters in the State List or the Concurrent List. Entry 31 of the Concurrent List

will have jurisdiction over the ports in Pondicherry. Having considered the different provisions of the Constitution and Statutes, referred to by the learned counsel for the appellants, this Court finds that there is fundamental fallacy in the argument and it is that they rely upon Regulation 6(b) only in part. Though the said Regulation provides that reference to the State Government shall be construed as a reference to the Central Government, it also provides that reference to the State Government shall be construed as reference to the Chief Commissioner. The learned counsel for the appellants have failed to take note of the words "and also as reference to the Chief Commissioner". This phrase must be read with the definition of "Chief Commissioner" provided under Regulation 2(b), which specifies that the Chief Commissioner means the Administrator of Pondicherry (now the Lt. Governor of Pondicherry). A conjoint and meaningful reading of the provisions of the Constitution read with Regulation 6(b) of the Pondicherry (Laws) Regulation, 1963 leaves no doubt that the power

therefore, the Government of Pondicherry has no right to deal with the same in any manner.

24. It is relevant to notice that the Union Territory of Pondicherry gained its freedom in the year 1962. Therefore, several laws were passed by the Parliament for its integration with the Union of India. One such law was Pondicherry Administration Regulations Act, 1963. Article 240 of the Constitution deals with power of President to make regulations for certain Union Territories. The first proviso to Article 240, inter alia, provides that when any body is created under Article 239A to function as a Legislature for the Union Territory of Puducherry [substituted by Section 4 of the Pondicherry (Alteration of name) Act, 2006 for Pondicherry], the President shall not make any regulation for the peace, progress and good Government of that Union Territory with effect from the date appointed for the first meeting of the Legislature. Therefore, the Pondicherry Administration Regulation Act, 1963 will

question is a minor port, the Indian Major Ports Act, 1908 would not apply.

25. This Court finds that Section 5 is the provision by which all properties and assets, which earlier vested in the French Republic, stood transferred to the Union, i.e., Union of States (India). In other words, Section 5 was enacted for the purpose of transfer of properties from one sovereign State to another sovereign State. It has no power on the right of Government of Pondicherry over the properties and assets in Pondicherry. The vesting of land from French Republic to the Republic of India can have no bearing on the powers of Government of Pondicherry to dispose of land in accordance with the provisions of the Constitution. Further, it is to be noticed that the entire Pondicherry Administration Act, 1962 was a Transitional Act for transfer of power from the French Republic to the Republic of India, which is evident from the Statement of Objects and Reasons to the said Act. Therefore, the plea that the Government of Pondicherry

March 22, 1996 informed the Chief Secretary, Pondicherry Administration about the need to expand the existing capacity of the Pondicherry Port to meet the growth requirement of traffic handled by various major ports. In the said letter it was mentioned that a decision was taken to invite capital participation by private sector and from non-maritime land-locked states. Further, by Government Order dated April 30, 2003 the Ministry of Shipping, Government of India, had nominated Mr. P.C. Dhiman as a Member of the Committee. Mr. Dhiman was appointed as a Member of the Committee by the Government of Pondicherry vide Government Order dated August 20, 2003. The first meeting of the Committee was held on June 2, 2003, which was attended by all the members of the Committee. In the said meeting various courses of actions were discussed. One of the issues related to seeking the consent of Government of India for the privatisation of the port. It was also decided to seek the clarifications from the Ministry of Shipping, Government

that the Government of Pondicherry had full jurisdiction to deal with the minor port situated in the Union Territory and it was not necessary for the Government of Pondicherry to take prior approval of the Central Government before awarding the contract. However, as noticed earlier, the Joint Secretary, Ministry of Surface Transport, Government of India by letter dated March 22, 1996 informed the Chief Secretary, Pondicherry Administration about the need to extend the existing capacity of the Pondicherry Port to meet the growth requirement of traffic handled by various ports and to invite capital participation by private sector and from non-maritime land-locked states. The letter dated March 22, 1996 addressed by the Joint Secretary of India to the Chief Secretary of Pondicherry Administration read with decision taken by the Committee of which Director (Port Development), Ministry of Shipping, New Delhi, was one of the Member, to privatize the Port will have to be construed as approval/consent of the Central Government to the project for the development of

Those respondents in terms of the concession agreement have incorporated a Special Purpose Vehicle (SPV) company known as Pondicherry Port Limited for implementation of the Port Development Project. An Assignment agreement to this effect in favour of Pondicherry Port Limited is executed by the Respondent Nos. 11 and 12 and confirmed by the Government of Pondicherry. In terms of the Concession agreement, the Government of Pondicherry has entered into Lease and Possession agreement with the Special Purpose Vehicle Company on February 4, 2006. The Lease-hold occupancy is given to the Pondicherry Port Limited subject to obtaining necessary clearance including environmental clearance from the Government of India. There is no manner of doubt that no one can be permitted to carry on construction activity which is prohibited by the CRZ. However, this being a project exceeding Rs.50 crores, necessary environmental clearance has to be obtained from the Ministry of Environment and Forest Union of India. Before such

clearance must precede the award of the project is wholly misconceived and is incorrect. The application form for obtaining environment clearance under the notification of 2006 makes it very clear that the application has to be made by the entity which has been entrusted with the project. In the judgment, impugned in the appeals, appropriate directions addressing all the issues raised on behalf of the appellants relating to the environment have been issued by the High Court. In addition, the Ministry of Environment and Forest which has to given clearance for the project has to examine the proposals of the developer and follow due procedure before granting approval. Therefore, the judgment impugned is not liable to be set aside on the ground that environmental aspects were not examined by the Union Territory of Pondicherry in total violation of the Precautionary and Trusteeship principles or that the project in question is completely prohibited under the CRZ notification.

making of constructions which do not fall within the development of port. The ancillary activities to be undertaken while developing a port cannot be stopped by merely naming them as Real-estate business. The affidavit in reply filed on behalf of the Respondent Nos. 11 and 12 before the Madras High Court would indicate that the Government of Pondicherry is not going to make investment in the project at all. Therefore, the question of Government of Pondicherry favouring the Respondent No. 11 does not arise. The affidavit filed by the Respondent Nos. 11 and 12 makes it clear that they have taken up the project after conducting detailed study and have decided to make investment in the project. The Respondent Nos. 11 and 12 are permitted to develop the Port only on Build, Operate and Transfer (BOT) basis. No material was placed by the appellants before the High Court to substantiate the claim that the Respondent Nos. 11 and 12 are the Real-estate agents. The development of Port of Pondicherry on BOT basis makes it evident that, in effect and substance, the Government of

the case, this court is of the opinion that the appellants have failed to make out the case that the Pondicherry Government has permitted the Respondent No. 11 to carry on Real-estate business and therefore the appeals should be accepted.

31. For the reasons stated in the judgment, this Court does not find any merit in any of the appeals and both the appeals are liable to be dismissed. Therefore, both the appeals fail and are dismissed. Having regard to the facts of the case, there shall be no orders as to cost.

sd
.....CJI.
(K.G. BALAKRISHNAN)

sd
.....J.
(P. SATHASIVAM)

sd
.....J.
(J.M. PANCHAL)

New Delhi;
May 14, 2009.

EXTRACT PONDICHERY (ADMN.) ACT, 1962
"SECTION 5" AND "SECTION 6"

150

such adaptations and modifications, whether by way of repeal or amendment, as may be necessary or expedient and thereupon every such law shall have effect subject to the adaptations and modifications so made.

5. Property and assets.—For the avoidance of doubt, it is hereby declared that all property and assets within Pondicherry which immediately before the appointed day, vested in the Government of the French Republic shall save as otherwise expressly provided in the Treaty of Cession vest in the Union.

6. Rights and obligations.—Subject to the provisions of the Treaty of Cession, all rights, liabilities and obligations of the Government of the French Republic in relation to or arising out of the administration of the former French Establishments shall, as from the appointed day, be the rights, liabilities and obligations of the Central Government.

7. Continuance of existing taxes.—All taxes, duties, cesses and fees which, immediately before the appointed day, were being lawfully levied in the former French Establishments or any part thereof shall continue to be levied in Pondicherry and to be applied to the same purposes, until other provision is made by a competent Legislature or other competent authority.

8. Power to extend enactments to Pondicherry.—The Central Government may, by notification in the Official Gazette, extend with such restrictions and modifications as it thinks fit, to Pondicherry any enactment which is in force in a State at the date of the notification.

9. Extension of the jurisdiction of Madras High Court to Pondicherry.—As from the 6th day of November, 1962, the jurisdiction of the High Court shall extend to Pondicherry.

10. Jurisdiction of High Court.—(1) Without prejudice to the generality of the provisions of section 9, the High Court shall have, in respect of Pondicherry, all such jurisdiction as under the law in force immediately before the appointed day was exercisable in respect of the former French Establishments by the Cour de Cassation, the Cour Supérieure d'Arbitrage and the Conseil d'Etat of France:

Provided that while determining appeals from decisions of courts and tribunals in Pondicherry, the High Court shall, as far as may be, follow the same procedure and have the same power to pass any judgment, decree or order thereon, as it follows and has while determining appeals from decisions of courts in the State of Madras.

(2) All appeals and other proceedings from or in respect of any judgment, decree or order of any court or tribunal in the former French Establishments pending immediately before the appointed day before the Cour de Cassation or the Cour Supérieure d'Arbitrage or the Conseil d'Etat of France and all original proceedings in relation to those Establishments pending immediately before the appointed day before the Conseil d'Etat shall, by virtue of this Act, stand transferred to the High Court and shall be disposed of by the High Court in the exercise of jurisdiction conferred on it by this Act, as if such appeals and other proceedings had been filed before the High Court.

Explanation.—All appeals and other proceedings filed before the appointed day but not transmitted to the Cour de Cassation or the Cour Supérieure d'Arbitrage or the Conseil d'Etat shall be deemed to be appeals or proceedings, as the case may be, pending before that Court for the purposes of this sub-section.

(151)

**THE RULES OF BUSINESS OF THE GOVERNMENT OF
PONDICHERY, 1963**

GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS

New Delhi-11, the 22nd June, 1963

In exercise of the powers conferred by article 239 and the proviso to article 309 of the Constitution, section 46 of the Government of Union Territories Act, 1963 (20 of 1963) and all other powers enabling him in that behalf, the President hereby make the following rules, namely:-

CHAPTER - I

Preliminary

1. These rules may be called the Rules of Business of the Government of Pondicherry, 1963.
2. (1) In these rules, unless the context otherwise requires, -
 - (a) 'the Act' means the Government of Union Territories Act, 1963 (2) of 1963;
 - (b) 'the Administrator' means the Administrator of the Union territory of Pondicherry;
 - (c) 'Chapter' means a Chapter of these rules;
 - (d) 'the Council' means the Council of Ministers appointed under section 44 of the Act.
 - (e) 'Department' means any of the departments or officers specified in the Schedule to the Business of the Government of Pondicherry (Allocation) Rules, 1963;
 - (f) 'the Government' means the Government of Pondicherry;
 - (f-1) 'Legislative Assembly' or 'Legislature of the Union territory' means the Legislative Assembly of the Union territory;
 - (g) 'Schedule' means the Schedule appended to these rules;
 - (h) 'Secretary' means a Secretary in a Department and includes Secretary to the Administrator and the Chief Secretary.
- (2) Unless the context otherwise requires, General Clauses Act, 1897 (10 of 1897) shall apply for the interpretation of these rules as it applies for the interpretation of a Central Act.

152

CHAPTER-II

General

3. The business of the Government shall be transacted in accordance with these rules.

4. (1) The business of the Government in relation to matters with respect to which the Council is required under section 44 of the Act to aid and advise the Administrator in the exercise of his functions shall be transacted and disposed in accordance with the provisions of Chapter III.

(2) The remaining business of the Government shall be transacted and disposed of in accordance with the provisions of Chapter IV.

(3) Notwithstanding anything contained in sub-rule (1) and sub-rule (2), prior reference in respect of the matters specified in chapter V shall be made to the Central Government in accordance with the provisions of that Chapter.

✓ 5. (1) All contracts in connection with the administration of the Union territory of Pondicherry shall be expressed to be made by the President and shall be executed on behalf of the President by such person and in such manner as he may direct or authorize under article 299 of the Constitution.

(2) Where the person authorized to execute contracts is the Administrator, he shall exercise that authority with previous approval of the Central Government in all cases involving exercise of financial powers in excess of those delegated to him from time to time by the Central Government

(3) Any other person authorized to execute contract shall exercise that authority,-

(a) if the contract is in connection with public works upto the monetary limits prescribed under the Central Public Works Department Code or orders of the Central Government;

(b) in other cases upto such monetary limits and subject to such conditions as the Administrator may prescribe whether generally or in respect of specified classes of contracts to be executed by specified classes of officers;

Provided that in any case covered by clause (b), prior approval of the Central Government shall be obtained, if such approval is required in that case under sub-rule (2).

Sub-rule (2) of rule 5 has been substituted by notification No. U-11022/2/73-UTL dated 23rd November, 1973, of the MHA, GOI, New Delhi.

EXTRACT OF CONSTITUTION OF INDIA
~~ARTICLE~~ ARTICLE 239(I)

152

19. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make any such provisions as appear to it to be necessary or expedient for removing the difficulty.

(2) Any order under sub-section (1) may be made so as to be retrospective to any date not earlier than the appointed day.

20. ~~Repeal and saving~~—(1) The Pondicherry (Administration) Ordinance, 1962 (8 of 1962), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.

PART VIII
THE UNION TERRITORIES
PART VIII

Administration of Union Territories.

239. (1) Save as otherwise provided by Parliament by law, every Union territory shall be administered by the President acting to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify.

(2) Notwithstanding anything contained in Part VI, the President may appoint the Governor of a State as the administrator of an adjoining Union territory and where a Governor is so appointed he shall exercise his functions as such administrator independently of his Council of Ministers.

1. Not applicable to the State of Jammu and Kashmir.
2. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 17, for the original heading "THE STATES IN PART C OF THE FIRST SCHEDULE".
3. Sub. by s. 17 *ibid* for the original arts. 239 and 240.

Govt. Guidelines on PPP

GUIDELINES ON PRIVATISATION

(I) Leasing out existing assets of the Port :-

As far as leasing out the existing facilities to the private sector is concerned, such proposals should be normally considered only if such leasing will result in additional investment and augmentation/ up gradation of the existing facilities/ equipment and in increased traffic throughout/ profitability/ improvement in quality of service/ better productivity. The proposals will be considered on a case to case basis on merits, subject to the followings: -

- a) The need will be assessed by the Port Trust Board.
- b) Open tenders will be issued for leasing of existing assets to the private sector
- c) The period of lease will be decided upon by the respective Port Trust in each case, with the maximum period not exceeding 30 years. At the end of the lease period the assets will revert back to the Port free of cost including equipment and augmented portion of assets, if any.
- d) The lessee will undertake to keep the property of the Port leased to him in good condition and return it in the Port at the end of the lease period in good condition subject to fair wear and tear.
- e) Bids will be invited based on two cover system consisting of technical and financial bids. Financial bids of only those bidders will be opened who have been technically qualified.
- f) The bidders will be asked to indicate in their financial bids (i) an upfront fee for the lease (ii) royalty per tonne of the cargo to be handled; (iii) the minimum cargo which they will be willing to guarantee (iv) the lease rent per unit area; and (v) any other financial parameter to be specified depending upon the facility to be leased.

- g) Comparative financial evaluation of offers received from bidders who have been technically qualified will be based on the concept of maximum realisation to the Port on Net Present value basis calculated by using discounting rate as periodically fixed by the Government. Royalty for the purpose of analysis will be based on the minimum traffic which the entrepreneur guarantees.

- h) In case any additional equipments are required to be put up by the entrepreneur, the Port will ensure that private entrepreneur puts up modern equipment and in new condition.
 - (ii) Construction / creation of additional assets
 - (1) Construction and operation of container terminals
 - (2) Construction and operation of bulk, break bulk, multipurpose and specialized cargo berths
 - (3) Warehousing Container Freight Stations, storage facilities and tank farms.

CONDITIONS

- a) The need for the project and the optimum land / waterfront required will be assessed by the Port Trust Board.

- b) The requirement should be consistent with the Perspective Plan / Master Plan / Land Use Plan of the Port.

- c) Open tenders will be invited for private sector participation on DOT basis.
- d) The period of licence including construction period will be decided upon by the respective Port Trust in each case, with the maximum period not exceeding 30 years.
- e) At the end of the BOT period, all the assets shall revert back to the Port free of cost.
- f) Bids will be invited based on two cover system consisting of technical and financial bids. Financial bids of only those bidders will be opened who have been technically qualified.
- g) The bidders will be asked to indicate in their financial bids (i) an upfront fee for the licence, (ii) royalty per tonne of the cargo to be handled, (iii) the minimum cargo which they will be willing to guarantee (iv) the lease rent per unit area of land / waterfront and (v) any other financial parameter to be specified depending upon the facility to be created.
- h) Comparative financial evaluation of offers received from bidders who have been technically qualified will be based on the concept of maximum realization to the Port on Net Present Value basis; calculated by using discounting rate as periodically fixed by the Government. Royalty for the

purpose of analysis will be based on the minimum traffic which the entrepreneur guarantees.

- i) It will be ensured by Port that the private entrepreneur puts up equipment using modern technology and in new condition.

(4) Cranage / Handling Equipment
 CONDITIONS

- a) The need for providing cranage / handling equipment by the private sector on an existing berth will be assessed by the Port.
- b) Open tenders will be issued for private sector participation on BOT basis.
- c) Bids will be invited based on two cover system consisting of technical and financial bids. Financial bids of only those bidders will be opened who have been technically qualified.
- d) The financial evaluation will be done on the basis of maximum realisation to the Port. The bidders will be asked to indicate in their financial bid (i) an upfront fee for the licence; (ii) royalty per tonne of cargo to be handled; and (iii) the minimum cargo handling

which the entrepreneur is willing to guarantee or pay for.

There may not be any requirement to give any land on lease. If there is requirement for land for parking the equipment or for maintenance workshop etc. the financial bid should also contain the lease rent the bidder is willing to pay.

- e) The period of licence shall be fixed by the Port Trust in each case keeping in view the useful life of the equipment. At the end of the licence period, the assets will revert to Port Trust free of cost.
- f) The private entrepreneur will be required to install equipment using modern technology and in new condition.
- g) The financial bids will be evaluated on the basis of NPV of the returns to the Port, using a discount rate fixed periodically by the Government.

5. Setting up of Captive Power Plants.

Conditions

- a) The need for the project will be assessed by the Port.

- b) Guidelines of Ministry of Power and other authorities like Central Electricity Authority / State Electricity Board etc. have to be followed and clearances, if any. Obtained.
- c) Open tenders will be invited with the stipulation that modern machinery / technology will be installed and in new condition.
- d) Bids will be invited based on two cover system consisting of technical and financial bids. Financial bids of only those bidders will be opened who have been technically qualified.
- e) The private sector participation would be on BOT basis with a licence period to be decided by the Port Trust in each case with a maximum period not exceeding 30 years (including construction period) after which the facility will revert back to Port free of cost.
- f) The tariff for the electricity sold to the Port would be fixed by the Prot Trust in terms of the tender. It should in any case not be more than the State Electricity Board tariff applicable to the Port.
- g) The port may charge an upfront fee and lease rent for the land for the Captive Power Plant at market rates.

The basis of financial evaluation will be the lowest tariff quoted for sale of electricity to the Port.

- h) Environmental clearance and other statutory clearances will be obtained by the Port Trusts.
- i) The electricity requirement of the Port should be fully met and thereafter the entrepreneur may be permitted to sell its surplus power.
- j) Specified level of supply of power to the Port will be maintained by the BOT developer; falling which penalties should be imposed.

(G) Dry docking and ship repair facilities.

The basic principles will be the same as per the Models (II) (1), (II) (2) and (II) (3) above. However,

- a) Financial evaluation will be based upon;
 - (i) an upfront fee;
 - (ii) the minimum guaranteed amount which the entrepreneur undertakes to pay per annum; and
 - (iii) the lease rent per unit area for the land / waterfront
- b) The financial evaluation will be based on the concept of maximum realisation to the Port, using NPV analysis.

(iii) Leasing of equipment / floating crafts from the private sector

These will be lease contracts, and evaluation would be on the basis of least cost to the Port. The ports will have to ensure leasing of modern equipment / craft and in new condition. The equipment / craft can be taken on dry or wet lease. This can be combined with maintenance contract if required. If dry lease is resorted to, training of port personnel, if required, may also be included as part of the lease.

(iv) Pilotage

a) The need will be assessed by the Port Trust Board on the basis of existing floating crafts / plots.

b) Tenders with eligibility for only Indian Nationals will be floated in a two cover procedure.

c) The period of contract will be decided by the Port Trust Board

d) Subject to being technically qualified / short listed by the Tender Evaluation Committee, the bidders will be financially evaluated on the basis of lease cost to the Port.

(v) Captive facilities for Port based industries.

60

Cases where 100% captive facilities (land / water front) including captive oil jetties platforms or SBMs are sought by Port based industries, including Central / State PSUs, may be considered, if they do not conflict with the Master Plan of the Port. Such cases may be considered, without (illegible) to a tender, provided such industries are port specific and are approved by the concerned administrative Ministries and the industry is willing to pay the maximum realisation which the port may (illegible) taking into account all relevant factors. For this purpose, a port based industry will be one which requires 100% captive berths / back up area for the purposes of import of raw material export of (illegible) products and / or transportation of raw materials / (illegible) products. General guidelines of BOT wherever applicable will be applied to cases of captive facilities.

7. GENERAL TENDER CONDITIONS AND PROCEDURE

Private participation will be on the basis of open competitive bidding

The tenders would be based on two cover system containing of technical and price bids. After the issue of tender document, the port may arrange one or more pre bid conferences for clarifications, if necessary.

The tender document will not give any kind of guarantee for financial returns to the entrepreneurs.

The tender document should provide that port property, if any, being transferred to the entrepreneur, will be kept insured at the cost of the private entrepreneur. The private entrepreneur would not be permitted to transfer any asset by way of sub lease, sale, sub contract or any other method without the previous approval of the Port. The investors will not be allowed to abandon the services abruptly or dispose off land, machinery and other assets or to convert them partly or fully into non port use.

All the provisions of the Major Port Trusts Act 1963, Bye Laws, Rules and Regulations made thereunder, any administrative or other directions given under the said Act, or the Scale of Rates or a statement of conditions prescribed under the said Act, the Customs Act, and all other statutory enactments in relation to the Port including labour laws shall be fully observed and complied with by the Licensee, and the Port shall be kept indemnified harmless from all claims or demands in this behalf including any claims from labour.

The projects to be implemented through private sector should be given as wide a publicity as possible through advertisement in the national dailies. A copy of such advertisements in respect of major projects may also be sent to foreign Embassies / Consulates in India and may be given publicity in International journals.

The Tariff Regulatory Authority to be set up may fix a ceiling tariff and leave the private entrepreneur free to charge upto the

ceiling at the rates to be notified by the entrepreneur. If the Tariff Regulatory Authority is satisfied, a suitable periodic increase(s) in tariff may be permitted on justified grounds. At the time of revision of tariff, again the revised tariff, would only be a ceiling, with the Port and the entrepreneur having the freedom to charge below that tariff.

Environment clearance and other statutory clearances for privatization projects would be obtained by the Port Trust or entrepreneur depending on the project and requirement.

Where Central / State Public Sector Undertakings are Port based industries and wish to create port facilities for their own captive use, they may be treated under the guidelines for port based industries. Other Central / State PSUs who wish to create port facilities as a common user facility and not for their own captive use need to come through the tendering route at par with private entrepreneur. However, Public Sector oil units would be treated as being port specific for the purpose of allowing them captive facilities and captive oil jetties / SBMs without recourse to the tender procedure.

Approval of the Central Government would be taken wherever necessary under Major Port Trusts Act, 1963.

8. FOREIGN INVESTORS

Foreign investors can be considered for private sector projects if they have the necessary FIPB / Competent Authority clearance

and have been registered as a company under the Indian Companies Act, or have the FIPB / Competent Authority clearance and propose to be registered as a Company under the Indian Companies Act.

9. PORT LABOUR

Before tendering out for private sector participation and existing port facility, ports should examine:

- (a) the labour likely to be rendered surplus;
- (b) possibility of redeploying and retraining such labour
- (c) after the above exercise, the port should identify the labour which has to be necessarily taken over with the facility and clearly bring it out in the tender document so that the intending tenderers are aware of the liability;
- (d) no retrenchment should be done without the concurrence of labour and only in accordance with Industrial Disputes Act / relevant labour laws. However, voluntary retirement should be encouraged.
- (e) The lease would be bound by all the labour laws of the country; and
- (f) Conditions of service of transferred labour, if any, would not be interior to what they enjoyed before.

(167)
64

10. GUIDELINES ON LEASE OF LAND

The guidelines on private sector participation and lease of land issued vide No.PD/11013/3/89-Pvt. Dated 12.4.1993, No. PT-17011/55/87-Pt. dated 1.4.1995 and No. PT-17011/55/87-PT dated 25.1.1996 to the extent they may be inconsistent with these guidelines, hereby stand superseded.

TRUE COPY

F.No.1/4//2005 -PPP
Ministry of Finance
Department of Economic Affairs

.....

New Delhi, the 4th September, 2006

Subject: Guidelines for forwarding proposals for financial support to Public Private Partnerships in infrastructure under the Viability Gap Funding Scheme.

.....

In continuation of the Notification of even Number dated 23rd January, 2006 on the above subject it may be noted that prior to making a formal request to the Empowered Institution under the Viability Gap Funding (VGF) Scheme of GOI, the sponsoring Authority of a Public Private Partnership (PPP) project may if it so desires submit the project concept to the Department of Economic Affairs to ascertain the admissibility of a project under the VGF Scheme based on the mandatory conditions of the Scheme. The proposal in this regard may be submitted to the Department of Economic Affairs in the attached proforma. Within 7 (seven) working days of receipt of the duly filled proforma the Department of Economic Affairs would indicate to the Project Authority whether the project proposal could be posed for the consideration of the Empowered Institution. Such a proposal could be made in case a doubt exists regarding the admissibility of the project under the VGF Scheme. Upon receipt of the response from the Department of Economic Affairs, the Project Authority could then prepare the detailed project proposal and submit the proposal as per the prescribed proforma contained in Notification of even Number dated 23rd January along with the supporting documents for the consideration of the Empowered Institution.

sd/-
(Arvind Mayaram)
Joint Secretary
Tele : 2309 23 87

To

- 1) Finance Secretary
- 2) Member Secretary, Planning Commission
- 3) Secretary, Deptt. of Road Transport and Highways
- 4) Secretary, Deptt. of Shipping
- 5) Secretary, Ministry of Power
- 6) Secretary, Ministry of Urban Development
- 7) Secretary, Ministry of Commerce
- 8) Secretary, Ministry of Railways
- 9) Secretary, Department of Tourism
- 10) All Chief Secretaries as per the list enclosed

VIABILITY GAP FUNDING SCHEME

MEMORANDUM TO THE DEPARTMENT OF ECONOMIC AFFAIRS

Name of the Project:

State/Central Sector Project	
Name of the Applicant:	
Administrative Ministry/Department	
Sponsoring Authority	
Implementing Agency	
Location	
Sector	
Activities proposed	
Type of PPP	
Type of VGF sought	

A: Conditions of the VGF Scheme

S.No.	Condition	Comment
1.	Whether the project proposal has been posed by a Government or statutory entity which owns the underlying assets	
2.	Whether the project is to be implemented i.e. developed, financed, constructed, maintained and operated for the Project Term by a Private Sector Company	
3.	Is the project from the sectors identified in the guidelines	
4.	Whether the Private Sector Company will be selected by the Government or a statutory entity that owns the project through a transparent and open competitive bidding process	
5.	Whether the Project provides a service against payment of a pre- determined tariff or user charge	
6.	Whether user charges/tariff has been fixed by Government or a statutory authority	
7.	Whether the Government/ statutory entity making the proposal has (or will be able to) certified with reasons; (i) that the tariff/user charge cannot be increased to eliminate or reduce the viability gap of the PPP; (ii) that the Project Term cannot be increased for reducing the viability gap; (iii) that the capital costs are reasonable and based on the standards and specifications	

	normally applicable to such projects and that the capital costs cannot be further restricted for reducing the viability gap.	
8.	Is the total VGF within the gap stipulated in the guideline	
9.	Whether the proposed project is (or will be) based on standardized/model documents duly approved by the respective Government	

B. Other project related information (if available)

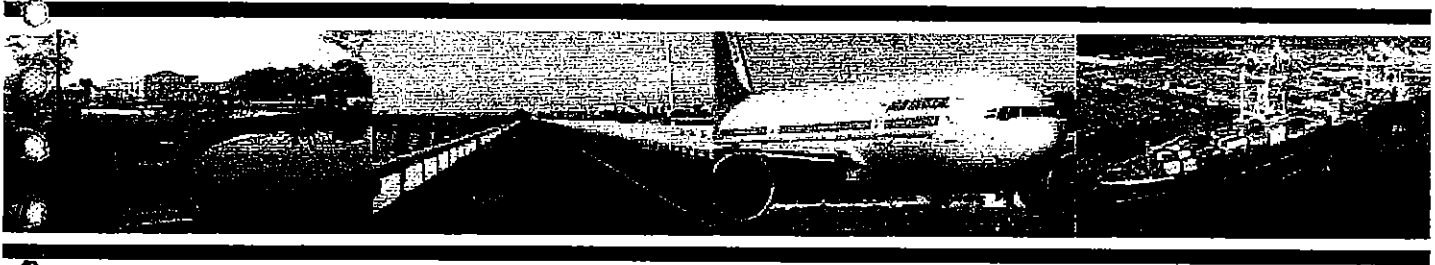
S.No.	Item	
1.	Total Project Cost (in Rs. Cr.)	
2.	VGF sought from GOI (in Rs. Cr.)	
3.	VGF as a % of Total project cost	
4.	additional grant from the sponsoring authority	
5.	Construction period (from Financial closure)	
6.	Likely year in which VGF sought	
7.	Is the project viable without VGF	
8.	If not, is it viable with VGF	
9.	Status of the concession agreement <ul style="list-style-type: none">- has it been finalized- if not, is it proposed to be based on a model document	



Government of India
Ministry of Finance
Department of Economic Affairs

SIGNATURE

171



Guidelines for Formulation, Appraisal and Approval of Central Sector Public Private Partnership Projects



INFRASTRUCTURE
Building for Growth

(172)



Government of India
Ministry of Finance
Department of Economic Affairs

Guidelines for Formulation, Appraisal and Approval of

Central Sector Public Private Partnership Projects

2008

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Contents

174

Preface	iii
Abbreviations	v
I. Guidelines for Formulation, Appraisal and Approval of Public Private Partnership Projects	I
Projects of all sectors costing Rs. 250 crore or more or under NHDP costing Rs. 500 crore or more	
1. Introduction	1
2. Institutional Structure	1
3. Applicability	1
4. Project Identification	1
5. Inter-ministerial Consultations	2
6. 'In Principle' Approval of PPPAC	2
7. Expression of Interest	2
8. Formulation of Project Documents	2
9. Appraisal/Approval of PPPAC	2
10. Invitation of Bids	3
11. Time Frame	3
12. Exemption from the above Procedure	3
Annex-I Institutional Structure	4
Annex-II Memorandum for PPP Appraisal Committee (For 'In Principle' Approval)	5
Appendix-A Term Sheet of the Proposed Concession Agreement	7
Annex-III Memorandum for PPP Appraisal Committee (For Final Approval)	9
Appendix-A Brief Particulars of the Concession Agreement	10
Annex-IV Time required for various steps under the appraisal procedure for PPP projects	12

2. Guidelines for Formulation, Appraisal and Approval of Public Private Partnership Projects	13
(i) Costing greater than Rs. 100 crore but less than Rs. 250 crore for all sectors	
(ii) Costing Rs. 250 crore or more but less than Rs. 500 crore under NHDP	
1. Introduction	13
2. Institutional Structure	13
3. Applicability	14
4. Project Identification	14
5. Formulation of Project Documents	15
6. Appraisal/Approval of SFC	15
7. Approval by Committee consisting of Secretary, DEA and Secretary of Administrative Ministry	15
8. Invitation of Bids	16
9. Time Frame	16
10. Exemption from the above Procedure	16
Annex-I Memorandum for SFC	17
Appendix-A Brief Particulars of the Concession Agreement	19
Annex-II Time required for various steps under the Appraisal Procedure	22
3. Guidelines for Formulation, Appraisal and Approval of Public Private Partnership Projects	23
Costing less than Rs. 100 crore	
1. Introduction	23
2. Institutional Structure	23
3. Applicability	23
4. Project Identification	24
5. Inter-ministerial Consultations	24
6. Formulation of Project Documents	24
7. Appraisal/Approval of SFC/EFC	24
8. Invitation of Bids	25
9. Time Frame	25
10. Exemption from the above Procedure	25
Annex-I Memorandum for SFC/EFC	26
Appendix-A Brief Particulars of the Concession Agreement	28
Annex-II Time required for various steps under the appraisal procedure for PPP projects	30
4. Procedure for Approval of Public Private Partnership Projects	31
Setting up of Public Private Partnership Appraisal Committee	
Annex-I Approval Procedures for Public Private Partnership Projects	32

Preface

Provision of quality infrastructure is critical for the economy to attain a higher growth trajectory on a sustained basis. While stepping up public investments in infrastructure, the Government has been actively engaged in finding the appropriate policy framework, which gives the private sector adequate confidence to invest in infrastructure projects and simultaneously preserves adequate checks and balances through transparency, competition and regulation. Consequently, Public Private Partnerships (PPPs) are being encouraged for execution and operation of infrastructure projects. In addition to leveraging public capital to attract private capital and undertaking a larger shelf of infrastructure projects, PPPs bring in the advantages of private sector expertise and cost reducing technologies as well as efficiencies in operation and maintenance.

The transactions involved in implementing PPP projects are complex and critical. The high initial investments, transfer of public assets to the private sector partner for the concession period, the need to balance the divergent needs of the commercial private interests with the objectives of inclusive growth underline the criticality of project structuring. In order to make the projects commercially viable, often, Government support in the form of capital grant may also be required. To achieve economically optimum gains from private participation in infrastructure projects, fair allocation of risks amongst the private and Government partners and balancing of gains to both the parties is crucial. Due diligence is also essential given the substantial contingent liability that could devolve on the State in such projects.

Recognising these requirements, Government of India has notified guidelines for formulation, appraisal and approval of central sector PPP projects to ensure speedy appraisal of projects, adopt international best practices and have uniformity in appraisal mechanism and guidelines.

The Public Private Partnership Appraisal Committee (PPPAC), with Secretary (Economic Affairs) as the Chairman and Secretary (Planning Commission), Secretary (Expenditure), Secretary (Legal Affairs) and Secretary of the Department sponsoring the project as members has been set-up with the

While stepping up public investments in infrastructure, the Government has been actively engaged in finding the appropriate policy framework, which gives the private sector adequate confidence to invest in infrastructure projects and simultaneously preserves adequate checks and balances through transparency, competition and regulation

*Government of India
has notified guidelines
for formulation,
appraisal and approval
of central sector PPP
projects to ensure
speedy appraisal
of projects, adopt
international best
practices and have
uniformity in appraisal
mechanism and
guidelines*

objective to fast track the appraisal and approval of PPP projects of all sectors, where the capital costs or underlying value of the assets is Rs. 250 crore or more or under NHDP where the capital costs or underlying value of the assets is Rs. 500 crore or more.

Guidelines have also been notified for central sector PPP projects with project cost of less than Rs. 100 crore; as well as for PPP projects of all sectors costing between Rs. 100 crore and 250 crore and under NHDP costing Rs. 250 crore or more but less than Rs. 500 crore.

This compendium brings together the guidelines notified by Government of India for the formulation, appraisal and approval of central sector PPP projects. It is hoped that the compilation will be an important reference to the Sponsoring Authorities while structuring their PPP projects.

Abbreviations

BOLT	Build Operate Lease Transfer
BOOT	Build Operate Own Transfer
BOT	Build Operate Transfer
CCEA	Cabinet Committee on Economic Affairs
CPSEs	Central Public Sector Enterprises
DEA	Department of Economic Affairs
EFC	Expenditure Finance Committee
GoI	Government of India
IRR	Internal Rate of Return
MCA	Model Concession Agreement
NHAI	National Highways Authority of India
NHDP	National Highways Development Project
PAMD	Project Appraisal and Monitoring Division
PIB	Public Investment Board
PPP	Public Private Partnership
PPPAU	PPP Appraisal Unit
RFP	Request for Proposals
RFQ	Request for Qualification
SFC	Standing Finance Committee

(177)

Guidelines for Formulation, Appraisal and Approval of Public Private Partnership Projects

Projects of all sectors costing Rs. 250 crore or more or under NHDP costing Rs. 500 crore or more*

1. Introduction

1.1 The Central Government has notified a system for appraisal/approval of projects to be undertaken through Public Private Partnership (PPP). Detailed procedure to be followed for this purpose is specified below.

2. Institutional Structure

2.1 The institutional structure for the appraisal/approval mechanism is specified at Annex-I.

3. Applicability

3.1 These guidelines will apply to all PPP projects sponsored by Central Government Ministries or Central Public Sector Undertakings (CPSUs), statutory authorities or other entities under their administrative control.

3.2 The procedure specified herein will apply to all PPP projects with capital costs exceeding Rs. 100 crore or where the underlying assets are valued at a sum greater than Rs. 100 crore. For appraisal/approval of PPP projects involving a lower capital cost/value, detailed instructions will be issued by the Department of Expenditure.

4. Project Identification

4.1 The sponsoring Ministry will identify the projects to be taken up through PPPs and undertake preparation of feasibility studies, project agreements etc. with the assistance of legal, financial and technical experts as necessary.

The guidelines and procedures will apply to all PPP projects sponsored by central government, CPSUs, statutory authorities or entities under their administrative control

Note: The Guidelines for Formulation, Appraisal and Approval of Public Private Partnership Projects were notified by Ministry of Finance, Department of Economic Affairs, vide OM No. 1/5/2005 - PPP, dated January 12, 2006.

* In accordance with procedure approved by CCEA in the meetings of October 27, 2005 and March 22, 2007.

In cases where the PPP project is based on a duly approved Model Concession Agreement, 'in principle' clearance by the PPPAC would not be necessary. In such cases, approval of the PPPAC may be obtained before inviting the financial bids

5. Inter-ministerial Consultations

5.1 The Administrative Ministry may, if deemed necessary, discuss the details of the project and the terms of concession agreement in an inter-ministerial consultative committee and comments, if any, may be incorporated or annexed to the proposal for consideration of PPPAC.

5.2 There could be projects, which involve more than one Ministry/ Department. While considering such projects, PPPAC may seek participation of such Ministries/Departments.

6. 'In Principle' Approval of PPPAC

6.1 While seeking 'in principle' clearance of PPPAC, the Administrative Ministry shall submit its proposal (in six copies, both in hard and soft form) to the PPPAC Secretariat in the format specified at Annex-II and accompanied by the pre-feasibility/feasibility report and a term-sheet containing the salient features of the proposed project agreements.

6.2 PPPAC Secretariat will circulate the copies of PPPAC memo and associated documents to all concerned. A meeting of the PPPAC will be convened within three weeks to consider the proposal for 'in principle' approval.

6.3 In cases where the PPP project is based on a duly approved Model Concession Agreement (MCA), 'in principle' clearance by the PPPAC would not be necessary. In such cases, approval of the PPPAC may be obtained before inviting the financial bids as detailed below.

7. Expression of Interest

7.1 Following the 'in principle' clearance of PPPAC, the Administrative Ministry may invite expressions of interest in the form of Request for Qualification (RFQ) to be followed by shortlisting of pre-qualified bidders.

8. Formulation of Project Documents

8.1 The documents that would need to be prepared would, *inter alia*, include the various agreements to be entered into with the concessionaire detailing the terms of the concession and the rights and obligations of the various parties. These project documents would vary depending on the sector and type of project. Typically, a PPP will involve the concession agreement that will specify the terms of the concession granted to the private party and will include the rights and obligations of all parties. There could be associated agreements based on specific requirements.

9. Appraisal/Approval of PPPAC

9.1 RFP (Request for Proposals), i.e. invitation to submit financial bids, should normally include a copy of all the agreements that are proposed to be

entered into with the successful bidder. After formulating the draft RFP, the Administrative Ministry would seek clearance of the PPPAC before inviting the financial bids.

9.2 The proposal for seeking clearance of PPPAC shall be sent (in six copies) to the PPPAC Secretariat in the format specified at Annex-III along with copies of all draft project agreements and the Project Report. The proposal will be circulated by PPPAC Secretariat to all members of the PPPAC.

9.3 Planning Commission will appraise the project proposal and forward its Appraisal Note to the PPPAC Secretariat. Ministry of Law and any other Ministry/Department involved will also forward written comments to the PPPAC Secretariat within the stipulated time period. The PPPAC Secretariat will forward all the comments to the Administrative Ministry for submitting a written response to each of the comments.

9.4 The concession agreement and any supporting agreements/documents thereof, alongwith the PPPAC Memo, will be submitted for consideration of PPPAC. The PPPAC will take a view on the Appraisal Note and on the comments of different Ministries, alongwith the response from the Administrative Ministry.

9.5 PPPAC will either recommend the proposal for approval of the competent authority (with or without modifications) or request the Administrative Ministry to make necessary changes for further consideration of PPPAC.

9.6 Once cleared by the PPPAC, the project would be put up to the competent authority for final approval. The competent authority for each project will be the same as applicable for projects approval by PIB.

10. Invitation of Bids

10.1 Financial bids may be invited after final approval of the competent authority has been obtained. However, pending approval of the competent authority, financial bids could be invited after clearance of PPPAC has been conveyed.

11. Time Frame

11.1 The time frame for the appraisal of projects under the above procedure is at Annex-IV.

12. Exemption from the above Procedure

12.1 Ministry of Defence, Department of Atomic Energy and Department of Space will not be covered under the purview of these guidelines.

PPPAC will either recommend the proposal for approval of the competent authority (with or without modifications) or request the Administrative Ministry to make necessary changes for further consideration of PPPAC

Annex-I Institutional Structure

The PPPAC has been set up pursuant to the decision of the CCEA in the meeting of October 27, 2005

Public Private Partnership Appraisal Committee

Pursuant to the decision of the Cabinet Committee on Economic Affairs (CCEA) in its meeting of October 27, 2005 a Public Private Partnership Appraisal Committee (PPPAC) has been set up comprising of the following:

- (a) Secretary, Department of Economic Affairs (in the Chair)
- (b) Secretary, Planning Commission
- (c) Secretary, Department of Expenditure
- (d) Secretary, Department of Legal Affairs and
- (e) Secretary of the Department sponsoring a project

The Committee may co-opt experts as necessary.

2. The Committee would be serviced by the Department of Economic Affairs, who will set up a special cell, called the PPPAC Secretariat for servicing such proposals.
3. The Ministry of Finance will be the nodal Ministry responsible for examining concession agreements from the financial angle, deciding on guarantees to be extended, and generally assesses risk allocation from the investment and banking perspectives. It would also ensure that projects are scrutinised from the perspective of government expenditure.
4. The Planning Commission will set up a PPP Appraisal Unit (PPPAU), similar to the existing PAMD which appraises public sector projects. This unit will prepare an appraisal note for the PPPAC providing specific suggestions for improving the concession terms, where this is possible.
5. Ministry of Law and Justice, Department of Legal Affairs, would also be represented on the PPP Appraisal Committee, as the concession agreements would require careful legal scrutiny.

Annex-II

Memorandum for PPP Appraisal Committee

For 'In Principle' Approval

S. No.	Item	Description
1	General	
1.1	Name of the Project	
1.2	Type of PPP (BOT, BOOT, BOLT, OMT etc.)	
1.3	Location (State/District/Town)	
1.4	Administrative Ministry/Department	
1.5	Name of Sponsoring Authority	
1.6	Name of the Implementing Agency	
2	Project Description	
2.1	Brief description of the project	
2.2	Justification for the project	
2.3	Possible alternatives, if any	
2.4	Estimated capital costs with break-up under major heads of expenditure. Also indicate the basis of cost estimated.	
2.5	Phasing of investment	
2.6	Project Implementation Schedule (PIS)	
3	Financing Arrangements	
3.1	Sources of financing (equity, debt, mezzanine capital etc.)	
3.2	Indicate the revenue streams of the Project (annual flows over project life). Also indicate the underlying assumptions.	
3.3	Indicate the Net Present Value (NPV) of revenue streams with 12 percent discounting	
3.4	Who will fix the tariff/user charges? Please specify in detail.	
3.5	Have any FIs been approached? If yes, their response may be indicated.	

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Projects of all sectors costing Rs. 250 crore or more or under NHDP costing Rs. 500 crore or more

S. No.	Item	Description
4	IRR	
4.1	Economic IRR (if computed)	
4.2	Financial IRR, indicating various assumptions (attach separate sheet if necessary)	
5	Clearances	
5.1	Status of environmental clearances	
5.2	Clearance required from the State Government and other local bodies	
5.3	Other support required from the State Government	
6	Gol Support	
6.1	Viability Gap Funding, if required	
6.2	Gol guarantees being sought, if any	
7	Concession Agreement	
7.1	Term sheet of the proposed Concession Agreement (Attached at Appendix-A)	
8	Criteria for shortlisting	
8.1	Is shortlisting to be in one stage or two stages?	
8.2	Indicate the criteria for shortlisting (attach separate sheet if necessary)	
9	Others	
9.1	Remarks, if any	

Appendix-A

Term Sheet of the Proposed Concession Agreement

- A. Sponsoring Ministry: C. Legal Consultant:
B. Name and location of the Project: D. Financial Consultant:

S. No.	Item	Description
1	General	
1.1	Scope of the Project (Please state in about 200 words)	
1.2	Nature of Concession to be granted	
1.3	Period of Concession and justification for fixing the period	
1.4	Estimated capital cost	
1.5	Likely construction period	
1.6	Conditions precedent, if any, for the concession to be effective	
1.7	Status of land acquisition	
2	Construction and O&M	
2.1	Monitoring of construction; whether an independent agency/engineer is contemplated	
2.2	Minimum standards of Operation and Maintenance	
2.3	Penalties for violation of prescribed O&M standards	
2.4	Safety related provisions	
2.5	Environment related provisions	
3	Financial	
3.1	Maximum period for achieving financial close	
3.2	Nature and extent of capital grant/subsidy contemplated	
3.3	Bidding parameter (capital subsidy or other parameter)	
3.4	Provisions for change of scope and the financial burden thereof	
3.5	Concession fee, if any, payable by the Concessionaire	
3.6	User charges/fee to be collected by the Concessionaire	
3.7	Indicate how the user fee is to be determined; the legal provisions in support of user fee (attach the relevant rules/notification); and the extent and nature of indexation for inflation	

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Projects of all sectors costing Rs. 250 crore or more or under NHDP costing Rs. 500 crore or more

S. No.	Item	Description
3.8	Provisions, if any, for mitigating the risk of lower revenue collection	
3.9	Provisions relating to escrow account, if any	
3.10	Provisions relating to insurance	
3.11	Provisions relating to audit and certification of claims	
3.12	Provisions relating to assignment/substitution rights relating to lenders	
3.13	Provisions relating to change in law	
3.14	Provisions, if any for compulsory buy-back of assets upon termination/expiry	
3.15	Contingent liabilities of the government	
	a. Maximum Termination Payment for Government/ Authority Default	
	b. Maximum Termination Payment for Concessionaire Default	
	c. Specify any other penalty, compensation or payment contemplated under the agreement	
4	Others	
4.1	Provisions relating to competing facilities, if any	
4.2	Specify the proposed Dispute Resolution Mechanism	
4.3	Specify the proposed governing law and jurisdiction	
4.4	Other remarks, if any	

Annex-III

Memorandum for PPP Appraisal Committee

For Final Approval

S. No.	Item	Description
1	General	
1.1	Name of the Project	
1.2	Type of PPP (BOT, BOOT, BOLT, OMT etc.)	
1.3	Location (State/District/Town)	
1.4	Administrative Ministry/Department	
1.5	Name of Sponsoring Authority	
1.6	Name of the Implementing Agency	
2	Project Description	
2.1	Brief description of the project	
2.2	Justification for the project	
2.3	Possible alternatives, if any	
2.4	Estimated Capital costs with break-up under major heads of expenditure. Also indicate the basis of cost estimation	
2.5	Phasing of investment	
2.6	Project Implementation Schedule (PIS)	
3	Financing Arrangements	
3.1	Sources of financing (equity, debt, mezzanine capital etc.)	
3.2	Indicate the revenue streams of the Project (annual flows over project life). Also indicate the underlying assumptions	
3.3	Indicate the NPV of revenue streams with 12 percent discounting	
3.4	Who will fix the tariff/user charges? Please specify in detail	
3.5	Have any FIs been approached? If yes, their response may be indicated	
4	IRR	
4.1	Economic IRR (if computed)	
4.2	Financial IRR, indicating various assumptions (attach separate sheet if necessary)	
5	Clearances	
5.1	Status of environmental clearances	
5.2	Clearance required from the State Government and other local bodies	
5.3	Other support required from the State Government	
6	Govt Support	
6.1	Viability Gap Funding, if required	
6.2	Govt guarantees being sought, if any	
7	Concession Agreement	
7.1	Is the Concession Agreement based on MCA? If yes, indicate the variations, if any, in a detailed note (to be attached)	
7.2	Details of Concession Agreement (Attached at Appendix-A)	
8	Criteria for shortlisting	
8.1	Is shortlisting to be in one stage or two stages?	
8.2	Indicate the criteria for shortlisting (attach separate sheet if necessary)	
9	Others	
9.1	Remarks, if any	

Projects of all sectors costing Rs. 250 crore or more or under NHDP costing Rs. 500 crore or more

Brief Particulars of the Concession Agreement

A. Sponsoring Ministry:

C. Legal Consultant:

B. Name and location of the Project:

D. Financial Consultant:

S.No.	Item	Clause No.	Description
1	General		
1.1	Scope of the Project (Please state in about 200 words)		
1.2	Nature of Concession to be granted		
1.3	Period of Concession and justification for fixing the period		
1.4	Estimated capital cost		
1.5	Likely construction period		
1.6	Conditions precedent, if any, for the concession to be effective		
1.7	Status of land acquisition		
2	Construction and O&M		
2.1	Monitoring of construction; whether an independent agency/engineer is stipulated		
2.2	Minimum standards of Operation and Maintenance		
2.3	Penalties for violation of prescribed O&M standards		
2.4	Safety related provisions		
2.5	Environment related provisions		
3	Financial		
3.1	Maximum period for achieving financial close		
3.2	Nature and extent of capital grant/subsidy stipulated		
3.3	Bidding parameter (capital subsidy or other parameter)		
3.4	Provisions for change of scope and the financial burden thereof		
3.5	Concession fee, if any, payable by the Concessionaire		
3.6	User charges/fee to be collected by the Concessionaire		

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S.No.	Item	Clause No.	Description
3.7	Indicate how the user fee has been determined; the legal provisions in support of user fee (attach the relevant rules/notification); and the extent and nature of indexation for inflation		
3.8	Provisions, if any, for mitigating the risk of lower revenue collection		
3.9	Provisions relating to escrow account, if any		
3.10	Provisions relating to insurance		
3.11	Provisions relating to audit and certification of claims		
3.12	Provisions relating to assignment/substitution rights relating to lenders		
3.13	Provisions relating to change in law		
3.14	Provisions, if any for compulsory buy-back of assets upon termination/ expiry		
3.15	Contingent liabilities of the government		
	a. Maximum Termination Payment for Government/Authority Default		
	b. Maximum Termination Payment for Concessionaire Default		
	c. Specify any other penalty, compensation or payment contemplated under the agreement		
4	Others		
4.1	Provisions relating to competing facilities, if any		
4.2	Specify the Dispute Resolution Mechanism		
4.3	Specify the governing law and jurisdiction		
4.4	Other remarks, if any		

Annex-IV

Time required for various steps under the appraisal procedure for PPP projects

S.No.	Action	Time taken
1.	'In principle' approval by PPPAC	Three weeks from the time of submission of the proposal by the Administrative Ministry
2.	Comments of Planning Commission, DEA or any other Ministry/Deptt. on the final documents forwarded by the Administrative Ministry	Four weeks from the time of submission of the final documents by the Administrative Ministry
3.	Final approval by PPPAC	Three weeks from the submission of the PPPAC Memo along with final documents by the Administrative Ministry

Guidelines for Formulation, Appraisal and Approval of Public Private Partnership Projects

- (i) Costing greater than Rs. 100 crore but less than Rs. 250 crore for all sectors
- (ii) Costing Rs. 250 crore or more but less than Rs. 500 crore under NHDP

1. Introduction

1.1 The procedure approved for appraisal of Public Private Partnership (PPP) projects by decision of CCEA in its meeting of October 27, 2005, as notified vide DEA notification No. 2/10/2004-INF dated November 29, 2005, has been modified by decision of CCEA in its meeting of March 22, 2007, as notified vide DEA notification No. 10/32/2006-INF dated April 2, 2007.

1.2 Detailed procedure to be followed for appraisal/approval of PPP projects (i) of all sectors of cost greater than Rs. 100 crore but less than Rs. 250 crore and (ii) under NHDP of cost Rs. 250 crore or more but less than Rs. 500 crore and fulfilling certain conditions as stated in para 3.1 (ii) (a) to (c) is specified below.

2. Institutional Structure

2.1 Pursuant to the decision of the CCEA notified vide notification of DEA dated April 2, 2007,

- i. For appraisal of PPP projects of all sectors of cost greater than Rs. 100 crore but less than Rs. 250 crore, a Committee has been set up comprising of the following:
 - a. Secretary, Department of Economic Affairs
 - b. Secretary of the Ministry/Department sponsoring the project
- ii. For appraisal of projects under NHDP of cost Rs. 250 crore or more but less than Rs. 500 crore and which fulfill conditions as specified in para 3.1 (ii) (a) to (c) below, the Committee shall be as follows:
 - a. Secretary, Department of Economic Affairs
 - b. Secretary, Department of Road Transport and Highways

For appraisal of PPP projects, a Committee comprising the Secretary, DEA and Secretary of the Ministry/Department sponsoring the project has been set up

Note : These guidelines have been notified by Ministry of Finance, Department of Economic Affairs vide OM No 10/3/2006-Infra dated July 24, 2007

2.2 Initially the projects will be appraised by the Standing Finance Committee (SFC). The composition of SFC will be as follows:

Secretary of the Administrative Ministry	Chairman
Financial Adviser	Member
Joint Secretary of the concerned Division	Member
Representative of the Department of Legal Affairs	Member

Representative of Planning Commission and any other Ministry/Department may also be invited, if required. SFC will either recommend the proposal for approval to the Committee in para 2.1 above or request the Administrative Ministry to make necessary changes for further consideration of SFC.

2.3 The competent authority for each project will be the same as applicable for normal investment proposals costing more than Rs. 100 crore but less than Rs. 500 crore.

3. Applicability

3.1 The procedure specified below will apply to the following PPP projects sponsored by Central Government Ministries, statutory authorities or other entities under their administrative control:

- i. Projects of all sectors costing more than Rs. 100 crore and less than Rs. 250 crore
- ii. NHDP projects of cost Rs. 250 crore or more but less than Rs. 500 crore which fulfill the following conditions:
 - a. The bidding is according to the procedure endorsed by PPPAC. This includes the process of two-stage bidding, pre-bid qualification norms etc. This implies that in the first stage, NHAI could short list and pre-qualify bidders on the basis of pre-bid qualification norms for inviting financial bids in the second stage.
 - b. The Model Concession Agreement (MCA) approved by the Competent Authority is being followed.
 - c. The project has been designed in accordance with the manual of standards and specifications as approved by the competent authority in the Administrative Ministry and stipulated in the approved MCA.

The bidding is according to the procedure endorsed by Public Private Partnership Appraisal Committee

3.2 Projects of cost Rs. 250 crore or more and less than Rs. 500 crore which do not fulfill the conditions as stated in para 3.1 (ii) (a) to (c) above would be submitted by the Administrative Ministry to the PPPAC for approval.

4. Project Identification

4.1 The sponsoring Ministry/entity will identify the projects to be taken up through PPPs and undertake preparation of feasibility studies, project

agreements etc. with the assistance of legal, financial and technical experts as necessary.

5. Formulation of Project Documents

5.1 The documents that would need to be prepared would, *inter alia*, include the various agreements to be entered into with the Concessionaire detailing the terms of the concession and the rights and obligations of the various parties. These project documents would vary depending on the sector and type of project. Typically, a PPP will involve the concession agreement that will specify the terms of the concession granted to the private party and will include the rights and obligations of all parties. There could be associated agreements based on specific requirements.

6. Appraisal/Approval of SFC

6.1 RFP (Request for Proposals), i.e. invitation to submit financial bids should include a copy of all the agreements that are proposed to be entered into with the successful bidder. After formulating the draft RFP, the Administrative Ministry would seek clearance of the SFC.

6.2 The proposal for seeking clearance of SFC shall be circulated to all members of SFC in the format specified at Annex-I along with copies of all draft project agreements and the Project Report within one week of receipt.

6.3 Planning Commission will appraise the project proposal and forward its Appraisal Note to the Administrative Ministry. Ministry of Law and any other Ministry/Department involved will also forward written comments to the Administrative Ministry. The SFC will take a view on the Appraisal Note and on the comments of different ministries, along with the response from the Administrative Ministry.

6.4 SFC will either recommend the proposal for approval of the Committee in para 2.1 (i) or 2.1 (ii) above whichever is applicable (with or without modifications) or request the Administrative Ministry to make necessary changes for further consideration of SFC.

7. Approval by Committee in Para 2.1

7.1 Once cleared by the SFC, the project would be put up for approval of the Committee in para 2.1 on file. The Committee may either recommend the proposal for approval of the competent authority or request the Administrative Ministry to make necessary changes for further consideration of the Committee.

7.2 Once cleared by the Committee, the project would be put up to the competent authority for approval.

*Once cleared by
the SFC, the project
would be put up
for approval of the
Committee on file*

The competent authority for each project will be the same as applicable for normal investment proposals costing more than Rs. 100 crore

8. Invitation of Bids

8.1 Financial bids may be invited after approval of the competent Authority has been obtained. The competent authority for each project will be the same as applicable for normal investment proposals costing more than Rs. 100 crore. However, pending approval of the Competent Authority, financial bids could be invited after the approval/clearance by the Committee.

9. Time Frame

9.1 The time frame for the appraisal of projects under the above procedure is at Annex-II.

10. Exemption from the above Procedure

10.1 Ministry of Defence, Department of Atomic Energy and Department of Space will not be covered under the purview of these guidelines.

Annex-I

Memorandum for SFC

S. No.	Item	Description
1.	General	
1.1	Name of the Project	
1.2	Type of PPP (BOT, BOOT, BOLT, OMT etc.)	
1.3	Location (State/District/Town)	
1.4	Administrative Ministry/Department	
1.5	Name of the Sponsoring Authority	
1.6	Name of the Implementing Agency	
2.	Project Description	
2.1	Brief description of the project	
2.2	Justification for the project	
2.3	Possible alternatives, if any	
2.4	Estimated capital costs with break-up under major heads of expenditure. Also indicate the basis of cost estimation	
2.5	Phasing of investment	
2.6	Project Implementation Schedule (PIS)	
3.	Financing Arrangements	
3.1	Sources of financing (equity, debt, mezzanine capital etc.)	
3.2	Indicate the revenue streams of the Project (annual flows over project life). Also indicate the underlying assumptions	
3.3	Indicate the NPV of revenue streams with 12 percent discounting	

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Projects costing Rs. 100 crore to Rs. 250 crore for all sectors and Rs. 250 crore to Rs. 500 crore under NHDP 17

S. No.	Item	Description
3.4	Who will fix the tariff/user charges? Please specify in detail	
3.5	Have any FIs been approached? If yes, their response may be indicated	
4	IRR	
4.1	Economic IRR (if computed)	
4.2	Financial IRR, indicating various assumptions (attach separate sheet if necessary)	
5	Clearances	
5.1	Status of environmental clearances	
5.2	Clearance required from the State Government and other local bodies	
5.3	Other support required from the State Government	
6	Gol Support	
6.1	Viability Gap Funding, if required	
6.2	Gol guarantees being sought, if required	
7	Concession Agreement	
7.1	Is the Concession Agreement based on MCA? If yes, indicate the variations, if any, in a detailed note (to be attached)	
7.2	Details of Concession Agreement (Attached at Appendix-A)	
8	Criteria for shortlisting	
8.1	Is shortlisting to be in one stage or two stages?	
8.2	Indicate the criteria for shortlisting (attach separate sheet if necessary)	
9	Others	
9.1	Remarks, if any	

Appendix-A

Brief Particulars of the Concession Agreement

A. Sponsoring Ministry:

C. Legal Consultant:

B. Name and location of the Project:

D. Financial Consultant:

S. No.	Item	Clause No.	Description
1	General		
1.1	Scope of the project (please state in about 200 words)		
1.2	Nature of Concession to be granted		
1.3	Period of Concession and justification for fixing the period		
1.4	Estimated capital cost		
1.5	Likely construction period		
1.6	Conditions precedent, if any, for the concession to be effective		
1.7	Status of land acquisition		
2	Construction and O&M		
2.1	Monitoring of construction; whether an independent agency/ engineer is stipulated		
2.2	Minimum standard of Operation and Maintenance		
2.3	Penalties for violation of prescribed O&M standard		
2.4	Safety related provisions		
2.5	Environment related provisions		
3	Financial		
3.1	Maximum period for achieving financial close		
3.2	Nature and extent of capital grant/subsidy stipulated		
3.3	Bidding parameter (capital subsidy or other parameter)		

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Projects costing Rs. 100 crore to Rs. 250 crore for all sectors and Rs. 250 crore to Rs. 500 crore under NHDP 19

S. No.	Item	Clause No.	Description
3.4	Provisions for change of scope and the financial burden thereof		
3.5	Concession fee, if any, payable by the Concessionaire		
3.6	User charges/fee to be collected by the Concessionaire		
3.7	Indicate how the user fee has been determined; the legal provisions in support of user fee (attach the relevant rules/ notification); and the extent and nature of indexation for inflation		
3.8	Provisions, if any, for mitigating the risk of lower revenue collection		
3.9	Provisions relating to escrow account, if any		
3.10	Provisions relating to insurance		
3.11	Provisions relating to audit and certification of claims		
3.12	Provisions relating to assignment/substitution rights relating to lenders		
3.13	Provisions relating to change in law		
3.14	Provisions, if any for compulsory buy-back of assets upon termination/expiry		
3.15	Contingent liabilities of the government		
	a. Maximum Termination Payment for Government/Authority Default		
	b. Maximum Termination Payment for Concessionaire Default		
	c. Specify any other penalty, compensation or payment contemplated under the agreement		

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S.No.	Item	Clause No.	Description
4	Others		
4.1	Provisions relating to competing facilities, if any		
4.2	Specify the Dispute Resolution Mechanism		
4.3	Specify the governing law and jurisdiction		
4.4	Other remarks, if any		

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Projects costing Rs. 100 crore to Rs. 250 crore for all sectors and Rs. 250 crore to Rs. 500 crore under NHDP 21

Annex-II

Time required for various steps under the appraisal procedure

S.No.	Action	Time taken
1.	Comments of Planning Commission, or any other Ministry/Department on the documents circulated by the Administrative Ministry	Three weeks from the time of circulation of the SFC memo by the Administrative Ministry
2.	Appraisal of proposal by SFC	Five weeks from the time of circulation of the SFC memo by the Administrative Ministry
3.	Clearance by Committee consisting of Secretary, DEA and Secretary of Administrative Ministry/ Secretary, DORTH on file	Seven weeks from the time of circulation of the SFC memo by the Administrative Ministry
4.	Approval by competent authority	Nine weeks from the time of circulation of the SFC Memo by the Administrative Ministry

Guidelines for Formulation, Appraisal and Approval of Public Private Partnership Projects

Costing less than Rs. 100 crore

1. Introduction

1.1 The Central Government has notified a system for appraisal/approval of projects to be undertaken through Public Private Partnership (PPP). Department of Economic Affairs has issued Guidelines for formulation, appraisal and approval of PPP projects with capital costs of Rs. 100 crore or where the underlying assets are valued at an amount greater than Rs. 100 crore. Detailed procedure to be followed for appraisal/approval of PPP projects involving less than Rs. 100 crore is specified below.

2. Institutional structure

2.1 Projects costing upto Rs. 5 crore will be appraised by the Administrative Ministry. Projects costing above Rs. 5 crore but less than Rs. 25 crore will be appraised by the Standing Finance Committee (SFC). The forum for appraisal of projects costing Rs. 25 crore and above but less than Rs. 100 crore will be the Expenditure Finance Committee (EFC) chaired by the Secretary of the Administrative Ministry. The composition of SFC and EFC will be the same as laid down for appraisal of normal investment proposals costing less than Rs. 100 crore, except that Department of Legal Affairs would also be represented on these Committees, as the concession agreements would require careful legal scrutiny. The competent authority for each project will be the same as applicable for normal investment proposals costing less than Rs. 100 crore.

The composition of SFC and EFC will be the same as laid down for appraisal of normal investment proposals except that Department of Legal Affairs would also be represented on these Committees

3. Applicability

3.1 These guidelines will apply to all PPP projects sponsored by Central Government Ministries, statutory authorities or other entities under their administrative control. In respect of CPSEs, these guidelines will apply only in respect of proposals which are beyond the existing delegated powers of CPSEs for normal investment decisions.

4. Project Identification

4.1 The sponsoring Ministry/entity will identify the projects to be taken up through PPPs and undertake preparation of feasibility studies, project agreements etc. with the assistance of legal, financial and technical experts as necessary.

5. Inter-ministerial Consultations

5.1 The Administrative Ministry will circulate the details of the project and the terms of concession agreement to the appraising agencies and comments received will be incorporated or annexed to the proposal for consideration of SFC/EFC.

5.2 There could be projects, which involve more than one Ministry/Department. While considering such projects, participation of such Ministries/Departments will be sought.

6. Formulation of Project Documents

6.1 The documents that would need to be prepared would, *inter alia*, include the various agreements to be entered into with the concessionaire detailing the terms of the concession and the rights and obligations of the various parties. These project documents would vary depending on the sector and type of project. Typically, a PPP will involve the concession agreement that will specify the terms of the concession granted to the private party and will include the rights and obligations of all parties. There could be associated agreements based on specific requirements.

7. Appraisal/Approval of SFC/EFC

7.1 RFP (Request for Proposals), i.e. invitation to submit financial bids, should normally include a copy of all the agreements that are proposed to be entered into with the successful bidder. After formulating the draft RFP, the Administrative Ministry would seek clearance of the SFC/EFC before inviting the financial bids.

7.2 The proposal for seeking clearance of SFC/EFC shall be circulated to all members of SFC/EFC in the format specified at Annex-I along with copies of all draft project agreements and the Project Report.

7.3 Planning Commission will appraise the project proposal and forward its Appraisal Note to the Administrative Ministry. Ministry of Law and any other Ministry/Department involved will also forward written comments to the Administrative Ministry within the stipulated time period. The SFC/EFC will take a view on the Appraisal Note and on the comments of different Ministries, alongwith the response from the Administrative Ministry.

While considering projects which involve more than one Ministry/Department, participation of such Ministries/Departments will be sought

7.4 SFC/EFC will either recommend the proposal for approval of the competent authority (with or without modifications) or request the Administrative Ministry to make necessary changes for further consideration of SFC/EFC.

7.5 Once cleared by the SFC/EFC, the project would be put up to the competent authority for approval.

8. Invitation of Bids

8.1 Financial bids may be invited after approval of the competent authority has been obtained. The competent authority for each project will be the same as applicable for normal investment proposals costing less than Rs. 100 crore.

Financial bids may be invited after approval of the competent authority has been obtained

9. Time Frame

9.1 The time frame for the appraisal of projects under the above procedure is at Annex-II.

10. Exemption from the above Procedure

10.1 Ministry of Defence, Department of Atomic Energy and Department of Space will not be covered under the purview of these guidelines.

204

Annex-I Memorandum for SFC/EFC

S. No.	Item	Description
1	General	
1.1	Name of the Project	
1.2	Type of PPP (BOT, BOOT, BOLT, OMT etc.)	
1.3	Location (State/District/Town)	
1.4	Administrative Ministry/Department	
1.5	Name of Sponsoring Authority	
1.6	Name of the Implementing Agency	
2	Project Description	
2.1	Brief description of the project	
2.2	Justification for the project	
2.3	Possible alternatives, if any	
2.4	Estimated capital costs with break-up under major heads of expenditure. Also indicate the basis of cost estimation	
2.5	Phasing of investment	
2.6	Project Implementation Schedule (PIS)	
3	Financing Arrangements	
3.1	Sources of financing (equity, debt, mezzanine capital etc.)	
3.2	Indicate the revenue streams of the project (annual flows over project life). Also indicate the underlying assumptions.	
3.3	Indicate the NPV of revenue streams with 12 percent discounting	
3.4	Who will fix the tariff/user charges? Please specify in detail	
3.5	Have any FIs been approached? If yes, their response may be indicated	

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S. No.	Item	Description
4	IRR	
4.1	Economic IRR (if computed)	
4.2	Financial IRR, indicating various assumptions (attach separate sheet if necessary)	
5	Clearances	
5.1	Status of environmental clearances	
5.2	Clearance required from the State Government and other local bodies	
5.3	Other support required from the State Government	
6	Gol Support	
6.1	Viability Gap Funding, if required	
6.2	Gol guarantees being sought, if any	
7	Concession Agreement	
7.1	Is the Concession Agreement based on MCA? If yes, indicate the variations, if any, in a detailed note (to be attached)	
7.2	Details of Concession Agreement (Attached at Appendix-A)	
8	Criteria for shortlisting	
8.1	Is shortlisting to be in one stage or two stages?	
8.2	Indicate the criteria for shortlisting. (attach separate sheet if necessary)	
9	Others	
9.1	Remarks, if any	

Brief Particulars of the Concession Agreement

- A. Sponsoring Ministry: C. Legal Consultant:
 B. Name and location of the Project: D. Financial Consultant:

S. No.	Item	Clause No.	Description
1	General		
1.1	Scope of the project (please state in about 200 words)		
1.2	Nature of Concession to be granted		
1.3	Period of Concession and justification for fixing the period		
1.4	Estimated capital cost		
1.5	Likely construction period		
1.6	Conditions precedent, if any, for the concession to be effective		
1.7	Status of land acquisition		
2	Construction and O&M		
2.1	Monitoring of construction; whether an independent agency/engineer is stipulated		
2.2	Minimum standard of Operation and Maintenance		
2.3	Penalties for violation of prescribed O&M standard		
2.4	Safety related provisions		
2.5	Environment related provisions		
3	Financial		
3.1	Maximum period for achieving financial close		
3.2	Nature and extent of capital grant/subsidy stipulated		
3.3	Bidding parameter (capital subsidy or other parameter)		
3.4	Provisions for change of scope and the financial burden thereof		
3.5	Concession fee, if any, payable by the Concessionaire		
3.6	User charges/fee to be collected by the Concessionaire		

S. No.	Item	Clause No.	Description
3.7	Indicate how the user fee has been determined; the legal provisions in support of user fee (attach the relevant rules/notification); and the extent and nature of indexation for inflation		
3.8	Provisions, if any, for mitigating the risk of lower revenue collection		
3.9	Provisions relating to escrow account, if any		
3.10	Provisions relating to insurance		
3.11	Provisions relating to audit and certification of claims		
3.12	Provisions relating to assignment/substitution rights relating to lenders		
3.13	Provisions relating to change in law		
3.14	Provisions, if any for compulsory buy-back of assets upon termination/expiry		
3.15	Contingent liabilities of the government		
	a. Maximum Termination Payment for Government/Authority Default		
	b. Maximum Termination Payment for Concessionaire Default		
	c. Specify any other penalty, compensation or payment contemplated under the agreement		
4	Others		
4.1	Provisions relating to competing facilities, if any		
4.2	Specify the Dispute Resolution Mechanism		
4.3	Specify the governing law and jurisdiction		
4.4	Other remarks, if any		

200

Annex-II

Time required for various steps under the appraisal procedure for PPP projects

S.No.	Action	Time taken
1.	Comments of Planning Commission, Deptt. Of Expenditure or any other Ministry/ Deptt. On the documents circulated by the Administrative Ministry	Four weeks from the time of circulation of the SFC/EFC memo by the Administrative Ministry
2.	Appraisal of proposal by SFC/EFC	Six weeks from the time of circulation of the SFC/EFC memo by the Administrative Ministry
3.	Approval by Competent authority	Eight weeks from the time of circulation of the SFC/EFC Memo by the Administrative Ministry

(201)

Procedure for Approval of Public Private Partnership Projects

Setting up of Public Private Partnership Appraisal Committee

The Cabinet Committee on Economic Affairs (CCEA) in its meeting of October 27, 2005 approved the procedure for approval of public private partnership (PPP) projects. Pursuant to this decision, a Public Private Partnership Appraisal Committee (PPPAC) is being set up comprising of the following:

- (a) Secretary, Department of Economic Affairs (in the Chair);
 - (b) Secretary, Planning Commission;
 - (c) Secretary, Department of Expenditure;
 - (d) Secretary, Department of Legal Affairs; and
 - (e) Secretary of the Department sponsoring a project.
2. The Committee would be serviced by the Department of Economic Affairs, who will set up a special cell for servicing such proposals. The Committee may co-opt experts as necessary.
 3. The procedure approved by the CCEA for the approval of the PPP projects is enclosed at Annex-I. Detailed guidelines for the appraisal/ approval procedure will be notified separately by this Department.

Pradeep K. Deb
Joint Secretary to Government of India

Note: The procedure has been notified vide F.No.2/10/2004-INF, Ministry of Finance, Department of Economic Affairs, dated November 29, 2005.

Annex-I Approval Procedures for Public Private Partnership Projects

1. The Central Government has in place an elaborate system for investment approval relating to Public sector projects revolving around the Public Investment Board (PIB) chaired by Secretary, Department of Expenditure with the Planning Commission providing independent appraisal through the Project Appraisal Division, followed by approval of the Cabinet/CCEA. Expenditure on approved projects is governed by financial rules and delegation of powers.

2. As government shifts to development through Public Private Partnership (PPP), it would be necessary to establish suitable approval mechanisms that aim at securing value for money. PPP projects in sectors such as roads, ports, airports and urban infrastructure are not ordinary private sector projects, which are governed by competitive markets, where prices are determined competitively and government resources are not involved. In the PPP projects, there would be need for due diligence by the government because the projects typically involve:

As government shifts to development through Public Private Partnership, it would be necessary to establish suitable approval mechanisms that aim at securing value for money

- i. Transfer of public assets, including land (e.g. an existing road or airport facility);
- ii. Delegation of governmental authority to collect and appropriate user charges that are levied by force of law and must therefore be 'reasonable';
- iii. Provision of services to users in a monopoly or semi-monopoly situation, which imposes a special obligation on the government to ensure adequate service quality; and
- iv. Sharing of risks and contingent liabilities by the government, e.g. when claims are made under the respective agreements or when the Central Government has to provide a backup guarantee for non-performance by the entity granting the concession. Even where an explicit guarantee is not included there is a danger that

non-performance on part of the State Governments could attract claims under bilateral investment promotion agreements.

3. PPPs are still at a nascent stage in India, but as reliance on PPPs increase, the terms of the projects will invite close scrutiny. Disputes arising out of project terms could also lead to significant payouts by the government, underscoring the importance of careful design of concession terms.

4. These concerns are not addressed even if project sponsors are selected through competitive bidding. In fact competitive bidding only creates a level playing field for selection of bidders; it may not necessarily secure good value in terms of performance standards, user concerns, public revenues and contingent liabilities. Project terms are, therefore, crucial.

5. Recognising these problems, it has been decided to stipulate the following mechanism for approving the PPP projects henceforth:

PPP Appraisal Committee

6. A PPP Appraisal Committee (PPPAC) on the model of the PIB will be set up comprising of the following:

- (a) Secretary, Department of Economic Affairs (in the Chair);
- (b) Secretary, Planning Commission;
- (c) Secretary, Department of Expenditure;
- (d) Secretary, Department of Legal Affairs; and
- (e) Secretary of the Department sponsoring a project.

The Committee would be serviced by the Department of Economic Affairs, who will set up a special cell for servicing such proposals. The Committee may co-opt experts as necessary.

7. The Ministry of Finance will be the nodal Ministry responsible for examining concession agreements from the financial angle, deciding on guarantees to be extended, and generally assesses risk allocation from the investment and banking perspectives. It would also ensure that projects are scrutinised from the perspective of government expenditure.

8. The Planning Commission will set up a PPP Appraisal Unit (PPPAU), similar to the existing PAMD which appraises public sector projects. This unit will prepare an appraisal note for the PPPAC providing specific suggestions for improving the concession terms, where this is possible.

Disputes arising out of project terms could also lead to significant payouts by the government, underscoring the importance of careful design of concession terms.

9. Ministry of Law and Justice, Department of Legal Affairs, would also be represented on the PPP Appraisal Committee, as the concession agreements would require careful legal scrutiny.

10. In view of the size and complexity of PPP projects, it may be necessary to secure the assistance of qualified legal, financial or technical experts to undertake the requisite due diligence. This may be necessary in order to protect government interest, particularly in the face of highly qualified expertise that the private sector participants may employ while negotiating these projects. Planning Commission and the Finance Ministry would engage the experts as necessary.

11. Projects where the capital cost or underlying value of the assets is more than Rs. 100 crore would be brought before the PPP Appraisal Committee. Once cleared by the Committee, the project would be put up to the Competent Authority for final approval.

Project Formulation and Appraisal

12. The Ministry concerned may develop individual proposals using legal, financial and technical consultants and also avail the benefit of an inter-ministerial consultative group, if necessary. The proposal as formulated by the Ministry would be considered by the PPP Appraisal Committee for 'in principle' clearance before inviting expressions of interest from prospective investors.

Concession agreements thus finalised for the purposes of inviting financial bids should be cleared by the PPP Appraisal Committee before technical and financial bids are invited

13. Following the 'in principle' clearance of the PPP Appraisal Committee, the concerned Ministry may invite expressions of interest and develop the documents further. Where necessary inter-ministerial consultations and pre-bid conferences with bidders may also be held. The concession agreements thus finalised for the purposes of inviting financial bids should be cleared by the PPP Appraisal Committee before technical and financial bids are invited.

14. In cases where the PPP project is based on a duly approved Model Concession Agreement (MCA), 'in principle' clearance by the PPP Appraisal Committee would not be necessary. In such cases, approval of the PPP Appraisal Committee may be obtained only before inviting the technical and financial bids.

15. In case there are departures from the MCA which are not material or substantive, such departures may be cleared by the PPP Appraisal Committee with the approval of Finance Minister. Where the departures are material or substantive, approval of the authority that approved the MCA would be necessary.

16. For projects where the capital costs or underlying value of the assets is less than Rs. 100 crore, the Department of Expenditure would issue detailed guidelines for appraisal of concession agreements. Such projects would not require appraisal/approval of the PPP Appraisal Committee and would be cleared by the EFC/SFC as applicable.

17. The above arrangement enshrines an independent approval process. The administrative Ministry can adopt a "pro-active" developmental approach while the Planning Commission can focus on due diligence, consistency with processes in other sectors and consideration of best practice. The Finance Ministry can consider the extent of direct and indirect Central Government exposure and also act as an arbiter.

In case there are departures from the MCA which are not material or substantive, such departures may be cleared by the PPP Appraisal Committee with the approval of Finance Minister



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Link to Guidelines for Qualification of Bidders

Guidelines for Bidders

No. 6/4/2001-DD-II
Government of India
Department of Disinvestment

Dated 13th July, 2001

OFFICE MEMORANDUM

Subject: Guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment

Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for bidders interested in PSE-disinvestment so that the parties selected through competitive bidding could inspire public confidence. Earlier, criteria like net worth, experience etc. used to be prescribed. Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the qualification / disqualification of the parties seeking to acquire stakes in public sector enterprises through disinvestment:-

- (a) In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment / adverse order by a regulatory authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government.
- (b) In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government / conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/persons.
- (c) In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.
- (d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.
- (e) The disqualification criteria would come into effect immediately and would apply to all bidders for various disinvestment transactions, which have not been completed as yet.
- (f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.

(g) Henceforth, these criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI). The bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors/Managers/employees, full details of such investigation including the name of the investigating agency, the charge/offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

(A.K. Tewari)
Under Secretary to the Government of India.



Guidelines for Advisors

No. 6/4/2001-DD-II
Government of India
Department of Disinvestment

Dated 13th July, 2001

OFFICE MEMORANDUM

Subject: Guidelines for qualification of Advisors for disinvestment process

Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for selection of Advisors, so that the parties selected through competitive bidding inspire public confidence. Earlier, a set of criteria like sector experience, knowledge, commitment etc. used to be prescribed. Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the qualification / disqualification of the parties to act as Advisors to the Government for the disinvestment transactions:-

- (a) Any conviction by a Court of Law or indictment / adverse order by a regulatory authority for a grave offence against the Advising concern or its sister concern would constitute a disqualification. Grave offence would be defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of offence would be taken on a case to case basis after considering the facts of the case and relevant legal principles by the Government. Similarly, the decision in regard to the relationship between the sister concerns would be taken, based on relevant facts and after examining whether the two concerns are substantially controlled by the same person/persons.
- (b) In case such a disqualification takes place, after the entity has already been appointed as Advisor, the party would be under an obligation to withdraw voluntarily from the disinvestment process, failing which the Government would have the liberty to terminate the appointment / contract.
- (c) Disqualification shall continue for a period that Government deems appropriate.
- (d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.
- (e) The disqualification criteria would come into effect immediately and would apply to all the Advisors already appointed by the Government for various disinvestment transactions, which have not yet been completed.
- (f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.
- (g) Henceforth, these criteria will be prescribed in the advertisements seeking Expressions of Interest (EOI) from the interested parties to act as Advisor. Further, the interested parties shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against the CEO or any of its Directors/Managers/Employees, full details of such investigation including the name of the investigating agency, the charge/offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched

(218)

and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, similar undertaking will be obtained along with EOI. They would also have to give an undertaking that if they are disqualified as per the prescribed criteria, at any time before the transaction is completed, they would be required to inform the Government of the same and voluntarily withdraw from the assignment.

- (h) The interested parties would also be required to give an undertaking that there exists no conflict of interest as on the date of their appointment as Advisors in handling of the transaction and that, in future, if such a conflict of interest arises, the Advisor would immediately intimate the Government of the same. For disinvestment proposes, 'conflict of interest' is defined to include engaging in any activity or business by the Advisor in association with any third Party, during the engagement, which would or may be reasonably expected to, directly or indirectly, materially adversely affect the interest of Government of India or the Company (being disinvested) in relation to the transaction, and in respect of which the Advisor has or may obtain any proprietary or confidential information during the engagement, that, if known to any other client of the Advisor, could be used in any manner by such client to the material disadvantage of Government of India or the Company (being disinvested) in the transaction. The conflict of interest would be deemed to have arisen if any Advisor firm/concern, has any professional or commercial relationship with any bidding firm / concern for the same disinvestment transaction during the pendency of such transaction. In this context, both Advisor firm and bidding firm would mean the distinct and separate legal entities and would not include their sister concern, group concern or affiliates etc. The professional or commercial relationship is defined to include acting on behalf of the bidder or undertaking any assignment for the bidder of any nature, whether or not directly related to disinvestment transaction.
- (i) On receiving information on conflict of interest, the Government would give the option to the Advisor to either eliminate the conflict of interest within a stipulated time or withdraw from the transaction and the Advisor would be required to act accordingly, failing which Government would have the liberty to terminate the appointment/contract.

(A.K. Tewari)
Under Secretary to the Government of India.

Viability gap funding for Infrastructure

9.116 Infrastructure projects have long gestation periods and, in most cases, are not financially viable on their own. It may not be possible to fund the very large investment requirements of these projects fully from the budgetary resources of the Government of India alone. In order to remove this shortcoming and to bring in private sector resources and techno-managerial efficiencies, the Government is promoting Public Private Partnerships (PPP) in infrastructure development through a special facility envisaging support to PPP projects through 'viability gap funding'. Primarily, this facility is meant to reduce capital cost of the projects by credit enhancement, and to make them viable and attractive for private investments through supplementary grant funding. Provisions for this facility is made on an year to year basis.

Criteria

9.117 The criteria for eligibility for funding are:

- (i) The project must be implemented, i.e. constructed, maintained and operated during the project term, by an entity with at least 40 per cent private equity.
- (ii) The project must belong to one of the following sectors:
 - a. Roads, railways, seaports, airports;
 - b. Power;
 - c. Water supply, sewerage and solid waste disposal in urban areas and
 - d. International convention centers.
- (iii) The projects should have been vetted/endorsed by the concerned line ministries in the Government India.
- (iv) All central projects should have received requisite Government approval at the appropriate level.
- (v) The total Government support required by the project, including support from the Government of India under this facility, or any other sources of the Government of India and its agencies, must not exceed

twenty per cent of the total project cost as estimated in the preliminary project appraisal, or the actual project cost, whichever is lower.

- (vi) The implementing agency must be selected through a transparent and open competitive process. The main criterion for selection will be the extent of viability gap funding required by the private partner to successfully implement the project. The extent of viability gap funding shall be determined on the basis of the net present value of the actual viability gap funding required. For this purpose and for all calculations under these guidelines, the rate of discount shall be the rate of interest on 10-year gilts on the date of submission of the bid.

Funding

9.118 Viability gap funding can take various forms, including but not limited to capital grant, subordinated loans, O&M support grants or interest subsidy. A mix of capital and revenue support may also be considered.

- The funding is to be disbursed contingent on agreed milestones, preferably physical, and performance levels being achieved, as detailed in funding agreements.
- The funding is to be provided in installments, preferably in the form of annuities, and with at least 15 per cent of the funding to be disbursed only after the project is fully functional.
- In the first year of the facility, funding is to be allocated to projects on a first-come, first served basis subject to meeting the eligibility criteria.

Appraisal and approval procedures

9.119 An Empowered Committee has been set up in the Department of Economic Affairs under the Additional Secretary (EA) to consider and authorize sanction of funds up to Rs. 50 crore beyond which approval of the Finance Minister will be required. The projects may be posed by any (a) public agency at the center, state or urban local body which owns the underlying assets; (b)

private agency, with sponsorship from the relevant central or state government agency. Project proposals must be accompanied by a preliminary project appraisal (covering (a) techno-economic viability of the project, (b) financial appraisal and project financing arrangements, and (c) extent and nature of viability gap funding proposed) and a commitment letter on behalf of the lending institutions. After approval of the project by the Committee within 30 days of submission, the project will be put to bid by the public agency concerned through transparent and

open competitive bidding indicating the extent of viability gap funding that is actually required. The lead financial institution will present its detailed appraisal of the technical and economic viability of the project as proposed by the successful bidder, for the consideration of the Committee. The transfer of viability gap funds and the schedule of such transfers will be approved by the Committee. The lead financial institution will undertake regular monitoring and evaluation of project compliance with agreed milestones and performance levels.

I. Name(s) of the members of the Port Privatisation Committee during 2004-2005.

1. Shri. C.S.Khairwal,
Chief Secretary/Secretary to Government (Port) Chairman
2. Shri. Ragesh Chandra,
Joint Secretary to Government (Revenue) Member
3. Shri John Claude Pompei Mariadassou,
Deputy Secretary (Law) Member
4. Shri B.Ramkumar/Shri S.D.Sundaresan,
Director of Ports Member
5. Shri Rudra Goud,
Director of Science, Technology & Environment Member
6. Shri P.M.Balachandran,
Under Secretary to Government (Finance) Member
7. Shri RaviDeep Singh Chahar,/Shri V.Kannabiran
Under Secretary to Government (Port) Member
8. Shri M.Sivapragassam,
Executive Engineer (Port) Member-Secretary
9. Shri P.C.Dhiman
Director, Ministry of Shipping, New Delhi Co-opted Member

II. Name of Lt.Governor/Hon'ble Chief Minister/Hon'ble Port Minister during 2004-05.

1. Shri.Lahera
Lt.Governor of Puducherry.
2. Shri.N.Rangasamy
Hon'ble Chief Minister of Puducherry.
3. Shri E.Valsaraj,
Hon'ble Minister for Ports.

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GOVERNMENT OF PONDICHERRY

PORT DEPARTMENT

Invitation for "Expression of Interest" (EOI) from Consultants for the preparation of Feasibility Study Report for the Development of Pondicherry Port.

The Government of Pondicherry (GOP) as a part of its ongoing Economic growth and infrastructure development strategy invites EOI from reputed consultants for undertaking a feasibility study for the development of Pondicherry Port.

The Pondicherry port is a minor port functioning under the Government of Pondicherry. Situated on the East Coast of India, it is about 170 km south of Chennai and at latitude 11.55'N and Longitude 79.50' E. The port is vested with good depths of 10 meters and above at about 1 kilometer and beyond from the shore and has excellent infrastructure facilities like uninterrupted power, water supply, well connected roads and railhead.

Consultants having experience in Port development project studies may submit their EOI (One original and One copy) with the following supporting documents / papers.

1. Details of the firm, including its annual turnover, field of experience with supporting documents

- 88
2. Name and Address along with contact persons & contact details.
 3. C.V's of the Resource persons / Professionals employed
 4. Background of the firm with details of similar studies undertaken with its Terms of Reference.

After assessing the response from the Consultancy firms / companies the terms and conditions, scope of the work etc. will be formulated and issued to shortlisted parties responding to this EOI.

This notice is issued only to elicit an EOI from Consultants interested in undertaking a Feasibility Study for Pondicherry Port Development and does not constitute any binding commitment from the Government of Pondicherry to invite any or all the firms in the subsequent selection process.

Correspondence clearly marked "Submission of EOI for Feasibility Study for Pondicherry Port development" may be addressed to the Director of Ports, Port Department, No Rue Dumas, Pondicherry 605 001 within twenty one (21) days from the date of release of this advertisement.

Phone: 0413 2337114
Email: port@pondy.pon.nic.in
Web: <http://port.pon.nic.in>

DIRECTOR OF PORTS
PORT DEPARTMENT
GOVERNMENT OF PONDICHERRY

No. 541Info/Adv./2004-2005;

Invitation for "Expression of Interest" (EOI) from Consultants for the preparation of Feasibility Study Report for the Development of Pondicherry Port.

~~ANNEXURE XX-A~~

(226)

The Government of Pondicherry (GOP) as a part of its ongoing Economic growth and Infrastructure development strategy invites EOI from reputed consultants for undertaking a feasibility study for the development of Pondicherry Port.

The Pondicherry port is a minor port functioning under the Government of Pondicherry. Situated on the East Coast of India, it is about 170 km South of Chennai and at latitude 11 55' N and Longitude 79 50' E. The port is vested with good depths of 10 metres and above at about 1 kilometre and beyond from the shore and has excellent infrastructure facilities like uninterrupted power, water supply, well connected roads and railhead.

Consultants having experience in Port development project studies may submit their EOI (One original and One copy) with the following supporting documents/papers.

1. Details of the firm, including its annual turnover, field of experience, with supporting documents.
2. Name and Address along with Contact persons & Contact details.
3. C.V's of the Resource persons/Professionals employed.
4. Background of the firm with details of similar studies undertaken with its Terms of Reference.

After assessing the response from the Consultancy firms/companies, the terms and conditions, scope of the work etc., will be formulated and issued to shortlisted parties responding to this EOI.

This notice is issued only to elicit an EOI from Consultants interested in undertaking a Feasibility Study for Pondicherry Port development and does not constitute any binding commitment from the Government of Pondicherry to invite any or all the firms in the subsequent selection process.

Correspondence clearly marked "Submission of EOI for Feasibility Study for Pondicherry Port development" may be addressed to the Director of Ports, Port Department, No.1, Rue Dumas, Pondicherry-605001 within twenty one (21) days from the date of release of this advertisement.

Phone: 0413-2337114

E-mail: port@pondy.pon.nic.in

Website: http://port.pon.nic.in

**DIRECTOR OF PORTS
PORT DEPARTMENT**

Date of advt: 18.10.2004

Tender Notice

Sealed tenders in form "A" are invited from the contractors registered in appropriate classes in C.G. P.W.D. on behalf of Governor of Chhattisgarh for the following work on the S.O.R. issued by the Engineer-in-Chief P.W.D. Raipur (C.G.) w.e.f. 1.11.02 (with all amendments). The tender forms should be submitted in two cover system through registered post (A.D.) or speed post in the office of the Superintending Engineer P.W.D. N.H. Circle Bilsaipur on date 02.11.2004 up to 5.30 PM & same will be opened on date 03.11.2004 at 11.30 AM before the contractors intending to be present.

The tender form can be obtained from the office of the Executive Engineer P.W.D. N.H. Division Ambikapur on any working day upto 26.11.2004 till 5.30 P.M. by submitting application along with the attested copy of valid registration certificates, current income tax clearance certificate, appropriate bank solvency (not older than 12 months) & commercial tax registration certificates etc.

No.	Name of work	P.A.C.	Earnest Money	Cost of tender form	Time Allowed	Eligible to contractors	No. of Call
1	2	3	4	5	6	7	8
1. (Group No. - 1)	I.R.Q.P. Work in Km. 453 to 462 on Katni Gumla Road N.H. - 78. (Under Risk and cost of original Contractor)	91.33 Lakhs	70,000.00	3,000.00	4 (Four) Months Excluding rainy season	A-3 to A-5 Class	First Call
2. (Group No. - 2)	I.R.Q.P. Work in Km. 374 to 379 on Katni Gumla Road N.H. - 78. (Under Risk and cost of original Contractor)	67.76 Lakhs	51,000.00	3,000.00	4 (Four) Months Excluding rainy season	A-3 to A-5 Class	First Call

Notes:-

- (1) Contractors has to submit the certificate in Form-2 B regarding the ownership of Hot-mix-Plant, Power Roller and Vibratory Roller and Other Machinerics certified by not less than the rank of Executive Engineer while purchasing the tender form.
- (2) Contractor will submit the Labour Registration Certificate after receiving the work order.
- (3) After completion of work contractor will have to produce the Royalty Clearance Certificate from Concerning Collector (Mining Branch).
- (4) Other terms and conditions can be seen in the office during the office hours.

G 16448

Executive Engineer
P.W.D. N.H. Division, Ambikapur.

SE/G-5072/2004

**GOVERNMENT OF PONDICHERRY
PORT DEPARTMENT**

Invitation for "Expression of Interest" (EOI) from Consultants for the preparation of Feasibility Study Report for the Development of Pondicherry Port.

The Government of Pondicherry (GOP) as a part of its ongoing Economic growth and Infrastructure development strategy invites EOI from reputed consultants for undertaking a feasibility study for the development of Pondicherry Port.

The Pondicherry Port is a minor port functioning under the Government of Pondicherry. Situated on the East Coast of India, it is about 170 Km South of Chennai and at latitude 11 55' N and Longitude 79 50' E. The port is vested with good depths of 10 metres and above at about 1 kilometre and beyond from the shore and has excellent infrastructure facilities like uninterrupted power, water supply, well connected roads and railhead.

Consultants having experience in Port development project studies may submit their EOI (One original and One copy) with the following supporting documents/papers.

1. Details of the firm, including its annual turnover, field of experience, with supporting documents.
2. Name and Address along with Contact persons & Contact details.
3. C.V's of the Resource persons/Professionals employed.
4. Background of the firm with details of similar studies undertaken with its Terms of Reference.

After assessing the response from the Consultancy firms/companies, the terms and conditions, scope of the work etc., will be formulated and issued to shortlisted parties responding to this EOI.

This notice is issued only to elicit an EOI from Consultants interested in undertaking a Feasibility Study for Pondicherry Port development and does not constitute any binding commitment from the Government of Pondicherry to invite any or all the firms in the subsequent selection process.

Correspondence clearly marked "Submission of EOI for Feasibility Study for Pondicherry Port development" may be addressed to the Director of Ports, Port Department, No. 1., Rue Dumas, Pondicherry-605001 within twenty one (21) days from the date of release of this advertisement.

Phone: 0413-2337114
E-mail: port@pondy.pon.nic.in
Website: http://port.pon.nic.in
No.: 541 Info/ADVT/2004-2005

**DIRECTOR OF PORTS
PORT DEPARTMENT
GOVERNMENT OF PONDICHERRY**



भारत हेवी इलेक्ट्रिकल्स लिमिटेड
(भारत सरकार का उपक्रम)
Bharat Heavy Electricals Limited
(A Govt. of India Undertaking)

Heavy Power Equipment Plant
Ramachandrapuram, Hyderabad-500 032. A.P.
Phs 040-23021869, 23182292 Fax: 040-23021910
Email: dbr@bhelhyd.co.in
(Stores Department / Collection Cell)

TENDER NOTICE
Ref. No. CMM-STORES/CC/024/2004 Date: 01-10-2004
**ALL INDIA TRANSPORT
CONTRACT 2004-2006**

Offers are invited from reliable and reputed transporters for the transportation of raw material, equipment, finished goods, etc, on All India basis as Smalls, Part Loads and by Mini Trucks, Lorries and Trailers for a period of 24 months. Approximate value of the contract is Rupees Twelve Crores per annum.

Tender documents can be obtained from Sr. Manager/Stores (CMM), 36/11 Building, BHEL, Ramachandrapuram, Hyderabad-502 032 on payment of Rs.5000/- (Rupees five thousand only) by DD from a Nationalised Bank drawn in favour of BHEL payable at Hyderabad on all working days from 18-10-2004 to 09-11-2004 (08.00 Hrs. to 14.00 Hrs.); Due date for submission of completed tenders is 10-11-2004 - 14.00 Hrs.

To download the documents, please visit our web site www.bhel.com. Those transporters who have downloaded the documents shall have to register with Sr. Manager/ Stores (CMM) on or before 09-11-2004 on payment of Rs.5000/- (five thousand only) as detailed above.

Sd/-
Sr. Manager / Stores (CMM)

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