

F. No.3D (3)/2/2012-PPP (Pt.)
Government of India
Ministry of Finance
Department of Economic Affairs
PPP Cell

North Block, New Delhi
31st July 2019

OFFICE MEMORANDUM

Subject:-Record of Discussion of 35th Meeting of Empowered Committee (EC) held on 23.7.2019 to discuss VGF issue of Hyderabad Metro Rail Project.

The undersigned is directed to enclose a copy of Record of Discussion of 35th Meeting of Empowered Committee (EC) held under the chairmanship of Finance Secretary & Secretary (Economic Affairs) on 23rd July 2019 at 3.00 PM in Room No.131-A, North Block, New Delhi for information and necessary action.

Encl: As above


(Mukesh Kumar Gupta)
Director (PPP)

To,

1. CEO, NITI Aayog, Yojana Bhawan, New Delhi.
2. Secretary, Department of Expenditure, North Block, New Delhi.
3. Secretary, Ministry of Housing and Urban Affairs, Nirman Bhawan, New Delhi.
4. Secretary, Department of Legal Affairs, Shastri Bhawan, New Delhi.

Copy to:

1. Shri S.K. Joshi, Chief Secretary, Government of Telangana, D Block, 2nd Floor, Telangana Secretariat, Hyderabad-500022.
2. Shri S.K. Saha, Adviser (HSR & PPP), NITI Aayog, Yojana Bhawan, New Delhi.
3. Shri N.V.S Reddy, Managing Director, Hyderabad Metro Rail Ltd., Metro Rail Bhawan, Rasoolpura, Begumpet, Secunderabad-500003.
4. Shri K.V.B. Reddy, MD & CEO L&T Metro Rail (Hyderabad) Ltd., Hyderabad Metro Rail Administrative Building, Uppal Main Road, Nagole, Hyderabad, Telangana-500039.
5. Prof. M.S. Narasimhan, Professor (Finance & Accounting) & Dean (Administration), IIM Bengaluru.
6. PPS to Secretary, Economic Affairs, North Block, New Delhi.
7. PPS to Joint Secretary (IPF), Department of Economic Affairs, North Block, New Delhi..

**35th Meeting of the Empowered Committee of the
Scheme for Financial Support to PPPs in Infrastructure**

Record Note of Discussion

The 35th Meeting of Empowered Committee (EC) chaired by Finance Secretary and Secretary, DEA was held on 23.07.2019. The list of participants is at **Annexure-I**.

Agenda Item: Hyderabad Metro Rail Project: VGF issues

1. The meeting began with a brief presentation by JS (IPF) on the agenda item, especially with regard to the status of progress on decisions taken in the last EC meeting held on 03.06.2019.
2. Chairperson took up the subject of applicability of 'Change in Law' provisions for further consideration in this matter as same issue had been raised by Hyderabad Metro Rail Limited (HMRL). After detailed deliberations, it was agreed by the EC that Change in Law provisions of the CA will remain applicable in this case. Further examination of the Viability Gap Funding issue will only be made under the provisions of Change in Law as incorporated in the Concession Agreement.
3. There was considerable discussion regarding the scope of Change in Law. Different views were expressed with participants taking different interpretation of Article 41 of the Concession Agreement. Chair summarized these differing views in three broad interpretations as under:-
 - i. Change in Law should apply only (higher fares being charged by the Concessionaire in comparison to the fares prescribed in CA) upon applicability of Central Metro Act, which is the only Change in Law event [Interpretation I].
 - ii. Upon Change in Law provision having kicked in the effect of all the relevant factors e.g. time and cost overrun due to various factors, reduction in ridership etc. would need to be considered within the scope of Change in Law along with higher fares (Interpretation II).
 - iii. Effect of only certain elements connected with fare determination like reduction in ridership (projected at the time of contract and actual ridership) would need to be considered along with impact of higher fares. For the purpose of this interpretation, implication of additional stretches/scope of real estate development provided to the Concessionaire would also need to be taken into account (Interpretation III).
4. The Chair asked every participant to state his position with respect to the three possible interpretations.

5. JS (IPF) was of the view that Change in Law provisions as per the Article 41 of the Concession Agreement, relates only to the event that has arisen due to Change in Law (higher fares being charged by the Concessionaire in this case in comparison to the fares mentioned in the Concession Agreement) [Interpretation I].
6. Adviser (NITI Aayog) also expressed his view in favour of Interpretation I.
7. Chair also expressed himself to be in favour of Interpretation I.
8. Chief Secretary, Government of Telangana, making the argument that Article 41.3 of the CA talks about the financial model and expressed his view that, not only the increase in fares but also the impact of the time and cost overrun and reduction in ridership should be considered [Interpretation II].
9. Secretary, Ministry of Housing and Urban Affairs (MoHUA) also agreed with the views of Chief Secretary, Government of Telangana adding that due to Change of Scope and Force Majeure events, the viability of the project has been affected and needs to be compensated [Interpretation II].
10. MD, HMRL (Project Authority) and MD & CEO, L&T Hyderabad Metro Rail Private Limited (Concessionaire) expressed the view that elements connected with fare like change in ridership should be considered as that would give a correct view about the true implications of the change in fares [Interpretation III].
11. Following three participants also agreed with the interpretation III:
 - i. CEO, NITI Aayog
 - ii. Deputy Legal Adviser, Department of Legal Affairs
 - iii. Secretary, Expenditure
12. Chair concluded that while in his personal opinion Interpretation I is the valid interpretation, he would accept that majority of the members are in favour of Interpretation III. Chair specifically noted that Representative of Law was in favour of the Interpretation III. As we had accepted the interpretation provided by Ministry of Law in case of applicability of Central Metro Act in this case, their interpretation of Change in Law provision should also be accepted. It was decided by the EC that interpretation III may be approved.
13. JS (IPF) further brought the letter of Mr. Gajendra Haldea dated 18.07.2019 (Annexure II) to the knowledge of EC in which he has sought the opportunity of personal hearing. MD, HMRL informed that Mr. Gajendra Haldea was trying to be the mediator between the Concessionaire and Hyderabad Metro Rail Limited and should be treated as Interested Party for this case. Considering this potential conflict of interest, the EC decided that no opportunity of hearing may be afforded to Shri Haldea.

14. To summarize, following decisions were taken:

- i. It was decided that the determination of the question of eligible viability gap would be dealt with as per the Change in Law provisions as decided in the last meeting.
- ii. On the basis of opinion provided by the Department of Legal Affairs in the EC Meeting and majority of members favouring to take into account connected elements like the ridership variations for Change in Law, it was decided that Hyderabad Metro Rail Limited will submit the financial implications of “Change in Law” taking into account the ridership variation (projected at the time of contract and actual ridership). For the purpose of viability calculation, implications of real estate development provided to the Concessionaire will also be taken into account. The Interpretation III was thus approved by EC.
- iii. Opportunity of personal hearing to Mr. Gajendra Haldea in future EC meeting is not to be given.

Annexure I

List of Participants of 35th Meeting of EC

Sl. No	Name	Designation
1.	Shri Subhash Chandra Garg	Finance Secretary & Secretary, Economic Affairs (In Chair)
2.	Shri Amitabh Kant	CEO, NITI Aayog
3.	Shri Durga Shanker Mishra	Secretary, Ministry of Housing and Urban Affairs
4.	Shri Girish Chandra Murmu	Secretary, Department of Expenditure
5.	Shri Yaduvendra Mathur	Special Secretary, NITI Aayog
6.	Shri S.K. Joshi	Chief Secretary, Govt. of Telangana
7.	Dr. Kumar V. Pratap	Joint Secretary, Infrastructure Policy & Finance Division, DEA
8.	Shri S.K. Saha	Adviser, HSR & PPP, NITI Aayog
9.	Dr. R.J.R. Kasibhatla	Deputy Legal Adviser, Department of Legal Affairs
10.	Shri Mukesh Kumar Gupta	Director (PPP), Department of Economic Affairs
11.	Shri N.V.S. Reddy	MD, Hyderabad Metro Rail Limited
12.	Shri K.V.B. Reddy	MD & CEO, L&T Metro Rail Hyderabad
13.	Shri M.S. Narasimhan	Professor, IIM , Bengaluru
14.	Shri Shubham Goyal	Assistant Director (PPP), Department of Economic Affairs

Sajendra Haldea



Dear Shri Garg,

FS
Pl bring up in the meeting 7 PPPs whether appropriate hearing should be given to Haldea.

C-I/ 69, Bapa Nagar,
New Delhi-110003

July 18, 2019

TS/PPF 37/19/5
KMG 27/7
Div LPPP

Please refer to my letter dated August 30, 2018 addressed to you regarding malfeasance in the Hyderabad Metro Rail Project which has necessitated the recovery of VGF grants released earlier by the Ministry of Finance.

2. I have been writing to you because I happen to be the author of the Concession Agreement for the Hyderabad Metro Rail Project and, therefore, have a deep and abiding interest in a fair, transparent and successful operation of this project for benefit of the millions of commuters in Hyderabad. In my previous letters, I had explained how the steep passenger fares fixed by the Concessionaire were contrary to the provisions of the Concession Agreement and the terms of the VGF grant.

3. I have been addressing you because the Department of Economic Affairs has a direct responsibility for ensuring that the large VGF grants provided by the Central Government are not misused or siphoned off. So far, DEA has stayed clear of supporting any scam in PPPs and I trust that this track record will remain unscathed. However, it is a matter of concern that steps for recovery of the VGF grants are yet to be initiated.

4. It is often argued by the supporters of the aforesaid malfeasance that the provisions of the Central Metro Act supersede the provisions of the Concession Agreement. Even if this argument is somehow accepted, then two issues would need to be addressed viz. (a) According to Clause 47.10 of the Agreement, if any provision of the Agreement cannot be enforced, the remaining provisions shall not be affected in any manner and as such, Article 41 on Change in Law will still need to be enforced, and (b) the Central Act does enable the Concessionaire to determine the passenger fares, but it does not in any manner not prevent it from adopting the same fare structure that it has agreed to follow under the Concession Agreement.

5. In case it is argued that the entire Concession Agreement has been superseded and rendered ineffective by the Central Act, then neither the Government of Telangana would have any powers with respect to this project nor can any VGF be granted by the Central Government in the absence of a valid and operative Concession Agreement.

6. Whichever way we may look at these issues, the inescapable conclusion would be the complete recovery of the entire VGF disbursed so far. Lest it becomes a subject matter of public criticism, judicial review or C&AG report, I would urge you to kindly

AD (PPP)
19/7

Gajendra Haldea

take pro-active steps to address the above in accordance with law, the provisions of the Concession Agreement and the terms of the VGF grant.

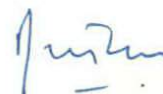
7. It is also noteworthy that the State Government has substituted a parcel of the real estate specified in the Concession Agreement by grant of another parcel of land that is apparently far more valuable. This substitution has given a huge unearned and unjustified benefit to the Concessionaire that requires independent scrutiny.

8. I take this opportunity to reiterate the humble submission made by me in the aforesaid letter of August 30, 2018 that as the author of the said Concession Agreement, which is being grossly manipulated and misused to the detriment of the very people whom it was meant to serve, I would request you to grant me a personal hearing so that I can explain the matter in detail and address any doubts that your Department may have.

9. I am enclosing copies of this letter to Shri Amitabh Kant, CEO, NITI Aayog and Shri D.S. Mishra, Secretary, MOHUA for their information and necessary action.

With regards,

Yours sincerely,



(Gajendra Haldea)

Shri Subhash Chandra Garg,
Secretary,
Department of Economic Affairs,
Ministry of Finance,
North Block, New Delhi 110001