F. No. 2/2/2018-ISD
Government of India
Ministry of Finance
Department of Economic Affairs
Private Investment Unit
*****

North Block, New Delhi
27th July, 2022

Office Memorandum

Record of Discussion of the 41st Meeting of the Empowered Committee to consider granting Final approval for VGF support for the development of Vizhinjam International Multipurpose Seaport Project, received from Government of Kerala-reg.

The undersigned is directed to forward Record of Discussion of the 41st Meeting of the Empowered Committee to consider granting Final approval for VGF support for the development of Vizhinjam International Multipurpose Seaport Project, received from Government of Kerala, held on 27th June, 2022 for information and necessary action.

2. This issues with the approval of Secretary, Economic Affairs.

(Dr. Molishree)
Deputy Secretary to the Government of India

To,

1. CEO, NITI Aayog, Yojana Bhawan, New Delhi
2. Finance Secretary & Secretary, D/o Expenditure, North Block, New Delhi
3. Secretary, Ministry of Ports, Shipping & Waterways, Parivahan Bhawan, New Delhi
4. Chief Secretary, Government of Kerala

Copy to:

1. Sr. PPS to Secretary (EA)
2. Sr. PPS to JS (ISD)

Record of Discussion of the 41st Meeting of the Empowered Committee to consider granting final approval for VGF support to the project proposal for the development of Vizhinjam International Multipurpose Seaport Project received from Government of Kerala.

1. The 41st Meeting of the Empowered Committee chaired by Secretary, Department of Economic Affairs was held on 27th June, 2022 for considering Final approval for VGF support for the development of Vizhinjam International Multipurpose Seaport Project, received from Government of Kerala. List of attendees is placed at **Annexure – I.**

2. The basic details of the project is provided in the table below:

Name of the Project	Development of Vizhinjam International Multipurpose Seaport Project
Type of PPP (BOT, BOOT, BOLT, OMT)	Design, Build, Finance, Operate and Transfer (DBFOT)
TPC (In- Principle)	Rs. 4,089 Cr
Grant (In- Principle)	Government of India: Rs. 817.80 Cr Government of Kerala: Rs. 817.18 Cr Total: Rs. 1,634.98 Cr
Appointed Date	05.12.2015
Concession Period	40 years extendable by 20 years on capacity augmentation and further extendable by 20 years on mutual agreement.
Capacity	Capacity planned for 1 million TEUs with 800 m long berth

3. On behalf of the Chair, JS (ISD) welcomed the attendees to the meeting. It was apprised that VGF support for the project was accorded In-principle approval by the Hon'ble Finance Minister in 2015 based on the recommendation of 23rd Empowered Committee. After obtaining In-principle Approval, Government of Kerala (GoK) in 2018 posed the project for Final Approval. In 2019, GoK intimated that two changes were carried out in the bidding documents and Concession Agreement with respect to funded work and mortgage of port sites post In-principle approval from GoI. In addition, CAG has also raised a few issues with respect to the project. These issues were discussed in the 84th EI meeting held in 2020 and clarifications were sought from GoK. The clarifications received from GoK were also shared with all EC members. Further, a meeting was held with GoK on 8th April 2022 under the Chairmanship of JS (ISD) to discuss the clarifications provided by GoK. Department of Expenditure (DoE), NITI Aayog,

Ministry of Port, Shipping and Waterways (MoPSW) were participants in the said meeting. With the GoK responses to the issues raised, the proposal of the GoK was submitted to the EC for considering final approval. The table below provides a consolidated overview of the issues raised by the EC Members, 84^{th} EI on the basis of CAG observations and DEA, along with the responses provided by GoK in this regard:

Issues Raised	**GoK Response**
Funded Works: Funded Works was modified from Rs.1,210 Cr to Rs.1,463 Cr subsequent to the receipt of In-principle approval under VGF Scheme.	Funded work is the amount that the GoK would provide to the Concessionaire to carry out certain construction works such as fishery berth and breakwater. Funded work is not a part of Total Project Cost of the project and does not have any impact on VGF. The RFQ floated on 04.12.2013 stated funded work to be Rs.1400 Cr. The DPR of March 2013 was revised at 2014 prices by excluding Navy and Coast Guard Berth and as a result, the funded work reduced to Rs.1210 Cr. This amount was submitted as a part of project to DEA as Funded Works at In-principle approval for VGF support (accorded on February 3, 2015) and the RFP was floated on 12.05.2014 with a funded work of Rs.1210 Cr. In May 2014 Basic Engineering Report was prepared for PPP tender and a revision in price was carried out at 2014 level leading to increase in funded work to Rs.1317 Cr. However, an amendment to the RFP to this effect was not issued. Thereafter, the no-bid scenario in February 2015 and after the meeting with the bidders in March 2015, the funded work was increased by providing

	average annual escalation of 6.6% to BER cost leading to further rise in funded work to Rs.1404 Cr. Further, incorporating Rs. 59 Cr as interest on working capital, the total funded work was increased to Rs.1463 Cr. This was made available to all the qualified bidders vide Addendum No.8 dated 23.03.2015. Also, In the RFQ issued by GoK, it is clearly mentioned that the project cost is only indicative.
Mortgage of Site & Project Assets: Mortgage of site & project assets was allowed after In-principle approval.	After the no-bid scenario in February 2015, bidders requested change/modification in Clause 41.2 of DCA, requesting absolute mortgage on all the project assets. Therefore, the clause enabling securitization of site and assets as requested by the Bidders were incorporated for increasing the biddability of projects and was made available to all the qualified bidders vide addendum No.9 dated 08.04.2015. The clauses enabling securitization of site and assets as requested by the Bidders, were provided in congruence to Clause 40.6 of the Model Power Purchase Agreement for PPP in Generation of Electricity published by the Planning Commission, Government of India in April 2014, which allows mortgage of site and power station for the benefit of lenders. Mortgaging of Project Assets including land is only an enabling clause exercisable only on a request made by the lenders.
Port Estate Development: The 23rd EC had capped the residential use of	The residential use of project estate is to be capped at 30% of the port area. The provision regarding the same has been incorporated in the Concession agreement at Schedule A of Annexure-IV that reads "the land used for Port Estate Development shall not exceed 30% of the

project estate at 30% of the port area. The same appears to not have been adhered to in the agreement. Furthermore, the commercial development rights were to be made pari-passu and co-terminus with the concession period, which as per the provisions of the concession agreement does not occur.	total area of the site and the maximum area used for residential purposes shall not exceed 1/3rd thereof." Furthermore, GoK has clarified that the amount of land set aside for Port Estate development is 120 Acres. The port estate development including residential building was made co-terminous with the concession period. As per the Concession Agreement, in the event of termination prior to expiry of such maximum permissible period, the tenure of the sub-licenses and the rights of the sub-licenses were granted by the Authority, and the Authority shall, for the remaining period of each sub-license, be deemed to be the grantor of the sub-license by stepping into such sub-license in pursuance of the Covenants. Similar provisions for sub-lease have been observed in other PPP projects. This Clause is in line with the In-Principle approval provided to the Project.
Waiver off conditions precedent (CPs): The Authority had waived CPs pertaining to Escrow Agreement, Substitution Agreement,	Waiver off the conditions precedent was in accordance with the provisions of Article 4.1.3 of Concession Agreement, which states that "*upon request in writing by the Concessionaire, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3. For the avoidance of doubt, the Authority may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit*". GoK states that this waiver was done to start work by December 5^{th} 2015 and make use of the fair weather

Applicable Permits & execution of Financial Agreement and confirmed the appointed date as 05.12.2015. It is not a standard practice for concessionaire to declare appointed date without financial closure.	season for dredging and reclamation, otherwise this would have resulted in losing working season (six months). Thus, the Construction Works commenced on December 5, 2015, which is the Appointed Date. The Financial Closure was achieved, within the stipulated 270 days from the date of agreement on 13^{th} May 2016. The Escrow Agreement, Substitution Agreement & Deed of Accession were signed on 13^{th} May 2016. For want of an escrow account, the company has used its SBI account. Furthermore, the concurrent auditor has verified this SBI account and certified that the company has received around 25 crore and made payments of around 24.48 crore for this project during the period of approx. 4 months when there was no escrow account.
Unsecured loan: The unsecured loan from Parent company should be treated as equity component and should not be considered as Debt to avail VGF from DEA.	There was no mention regarding the limits on senior & subordinate loan that could be taken up by the concessionaire at the time of In-principle approval. Therefore, the concessionaire has structured the project in such a manner wherein Rs. 1593 Cr has been borrowed by the concessionaire from Adani Ports & SEZ and the Senior Lender, M/s. ICICI has released an amount of Rs. 500 Cr to the Escrow Account. Confirmation from the auditing authority has also been received in this regard.
Concession period: The 23rd EC agreed to the original request of GoK to fix the	The Concession Period is based on erstwhile Planning Commission's Model Concession Agreement for Public Private Partnership ("**PPP**") in State Ports and the relevant clause (Clause 3.1.1 providing for the Concession Period) has been adopted therefrom.

concession period to 40 extendable to 20 years on Concessionaires request. The same has not been adhered to in the Concession Agreement (CA).	The Draft Concession Agreement including the above clause was submitted to DEA for In-principle approval of VGF, which was granted on 03.02.2015.
Pre-fixed Tariff: One of the conditions for eligibility under VGF Scheme is that Project should provide the service against payment of a pre-determined tariff or user charge. Leaving tariff to the market rate makes calculation of VGF redundant.	As per Schedule Q to the Concession Agreement, the rates pertaining to Container cargo are fixed and listed. In the case of Bulk Cargo, these are pegged with the rates offered at any Indian Major Port. Hence there is no open-ended tariff structure. There is no deviation in the relevant clause, in the Executed Concession Agreement from the Draft Concession Agreement submitted to DEA for In-principle approval of VGF, which was granted on 03.02.2015.
Revenue Sharing with DEA: The existing CA does	The In-principle approval was accorded with the condition that GoK would share 20% of the revenue with GoI after 15 years, until the entire GoI grant is repaid in NPV terms.

not have any clause on Revenue Share.	However, in GoKs response to 84th EI's observation, they have requested DEA to consider waiving off this condition.
Capacity: At the RFQ stage, the capacity of the port is 1 MTEU by COD which was changed to 0.6 MTEU by COD and 1 MTEU within 10 years after COD at RFP stage. It implies that initially Concessionaire will invest only part of the TPC of Rs.4089 Cr to attain only 1 million TEUs capacity and therefore, the quoted VGF of 39.98% of TPC of Rs.4089 crores could not hold its sanctity.	As per the Concession Agreement, the rated annual capacity of the Port on COD shall be 6,00,000 (six lakh) TEUs, which shall be augmented to 10,00,000 (ten lakh) TEUs no later than the 10th (tenth) anniversary of COD. This is only given in terms of traffic and not in terms of capacity creation. The investment to be made in the Project Assets by the concessionaire is to attain the 1 million TEUs capacity. This change was made vide Addendum No.2 dated 14.08.2014 before obtaining In-principle approval.

Model for Project Development: It was observed that the implementation model for Ports has changed from Landlord Model to a Combination of landlord and private service models.	It is stated in the RFQ that the development of port is through PPP basis (DBFOT). Therefore, there is no change in the model of the project (RFQ Clause 1.1.1).
Termination Payment: Termination payment is equal to the product of 30 and the Realisable Fee recovered for and in respect of the last month of the Concession Period shall be due and payable to the Concessionaire. Clauses empowering similar	Clause pertaining to Termination is as contained in the Model Concession Agreement for State Ports (2014) and the same have been adopted as such. The provisions are in line with the similar provision in other PPP agreements. Similar clauses exist in the MCA for Greenfield Airports (2014 - Article 42.3) as well as Brownfield Airports. (Article 42.3)

termination payment were not included in the Concession Agreements executed for other infrastructure PPP projects.	
Viability: In spite of 67% investment by the GoK, the NPV of its investment in the project is (-) Rs.3,866.33 crore and at the same time the NPV of the investment accrued to the Concessionaire for the 40-year period with 33 per cent investment is `607.19 crore. Therefore it may be clarified as why the financial benefits accruing to the States is	In the TPC incurred so far on the project, the cost of land acquisition for the project amounts to Rs. 695.18 Cr and the same should not be considered while computing the return on investment. In addition, the economic/strategic benefits are also to be considered while considering the benefits to the State. The MIV 2030 vision document emphasizes the importance and need of deepwater trans-shipment hubs in Southern India, with 25% of Indian cargo currently handled by Indian ports. The MIV 2030 is aiming for a 75% of trans-shipment cargo within a decade, which calls for the immediate implementation of a trans-shipment port at Vizhinjam.

not commensurate with its investment.	
Safety Consultant: Clause 3 of Schedule L of the Concession Agreement mandated GoK to appoint Safety Consultant within 90 days of agreement for carrying out safety audit of the Port at the design stage. It was observed that VISL had not appointed Safety Consultant in spite of the fact that the Concessionaire had commenced the construction activities from 05 December 2015.	GoK through the response provided on June 3rd 2022 to DEA have confirmed on the appointment of the Safety Consultant.
Total Project	The Master Plan Report (MPR) prepared by AECOM

Cost: Final TPC of 4,089 crore was worked out based on Basic Engineering Report prepared by AECOM. While preparing the BER in December 2014, AECOM hiked the rates of equipment included in the Detailed Project Report (2013) from 631.87 crore to 934.61 crore. However, there was nothing on record to justify the increase.	during Nov 2012 considered equipment to service 12500 TEU vessels (having 50m beam) calling at the port in Phase I. The cost of equipment estimated in MPR, Nov 2012 is Rs. 632 Cr at 2012 price level, based on the then existing market price of equipment. Accordingly, the cost of equipment estimated MPR, 2012 (ie. Rs. 632 Cr at 2012 price level) was adopted in the DPR, May 2013 as well. Subsequently, bidding stage design was carried out and the Basic Engineering Report (BER) was prepared by AECOM during Dec, 2014. The BER, Dec 2014 considered equipment to service 18000 TEU vessels (having 59m beam) in Phase I, unlike 12500 TEU vessels (having 50 m beam) considered in MPR, Nov, 2012 & DPR, May, 2013. AECOM has estimated the cost of equipment [to service 18000 TEU vessels (having 59m beam)] in this report as Rs. 934 Cr at 2014 price level based on the then existing market price of equipment.
Change in Concession Period due to change in Traffic: DEA had, while considering the VGF application submitted by GoK/ VISL,	The same provisions are found in the MCA of State Ports. The higher band of 10 % would have resulted in the bidder apportioning higher risk factor to the bid to adjust such high difference in traffic. Furthermore, deliberations of EI and EC were iterative and all queries in respect of this were satisfactorily replied which resulting in In Principle Approval for the proposal

stated that the proposal of a two per cent trigger for traffic for adjustment of concession period was too small and that normally, a band of 10 per cent was factored in bids. The DEA had, therefore, requested GoK to set the trigger at a reasonable level of 10 per cent which was not acted upon by GoK	

After appraising the EC about the background of the project, JS (ISD) invited the GoK to make a detailed presentation on the project.

4. GoK made their presentation and highlighted that the Vizhinjam Project is of *Strategic Importance* to the country as it is connected to potential primary hinterland of up to 300 km from Trivandrum and will eliminate one extra move at foreign transhipment terminals (Colombo, Dubai, Salalah, Singapore). Further, the port is being developed ~ 10 nautical miles away from international shipping routes and due to natural deep waters (20 m within a nautical mile) can cater to very large container vessels (24000 TEU+). GoK also highlighted that the PPP portion of the project is a small segment of the overall project. The TPC of the entire project is Rs. 7,700 Cr, which includes the cost of land, funded work,

external infra-development, rail connectivity, the PPP component etc. The TPC of the PPP component approved at the time of In-principle is Rs. 4,089 Cr and the VGF grant sought by the concessionaire is Rs. 1,635 Cr (which is less than 40% of TPC of the PPP component). The concessionaire has currently brought in Rs. 4,400 Cr into the project (Rs. 897 Cr in equity, Rs. 1593 Cr as Shareholder loan, Rs. 500 Cr as LFI debt and Rs 1450 Cr as letter of credit issued by banks). This is more than the approved TPC as cost escalations are to be borne by the concessionaire. Out of Rs.4,400 Cr raised as means of finance, Rs. 3614.44 Cr has already been spent on the project.

5. The planned capacity for the port is 1 million TEUs with 800 m long berth. The concessionaire shall augment the capacity on or before the earlier of (i) 30th anniversary of the Appointed Date and (ii) 5th Anniversary of the close of accounting year in which the throughput exceeds 75% of the existing capacity for a continuous period of 3 years. The Concessionaire may augment the capacity in phases as provided in Annexure III (Schedule B) of the Concession Agreement. At the end of capacity augmentation, the port capacity would increase to 3 million TEUs with 2 Km berth length. As a result of the capacity augmentation, the concession period of 40 years will be extended by 20 years. It may be further extended by another 20 years based on mutual agreement between the GoK and the Concessionaire. With respect to the tariff, it is guided by Schedule Q of the Concession Agreement, which is applicable for 10 years from the appointed date. The Authority may cap the charges that may be levied and recovered by the Concessionaire to 125% of the fees recoverable under Schedule Q. Further, the Concessionaire can undertake Port Estate Development for commercial purposes with the right to sub-license. The Right to sub-licence exists only after 2nd anniversary of the Appointed Date and its validity shall not extend beyond the concession period including the extended period. At the end of the presentation, GoK requested that (i) priority revenue share with GoI as discussed during the 84th EI may not be imposed; (ii) waiving off of repayment of GoI grant in NPV terms as accorded at the time of In-principle approval.

6. The Chair invited the EC Members to raise their comments regarding the project by presenting them into two parts:

a. Comments based on the response of the GoK to the issues raised by 84thEI, CAG observations or any other outstanding issues of concern.
b. Comments based on the request of the GoK on waiving off the Revenue Share with GoI.

7. With the permission of the Chair, the following comments were made:
   a. Comments made by NITI Aayog:
      i. Concession period and pre-determination of tariff as approved during the In-principle approval should be adhered to. The Authority should ensure that the tariff is accordingly capped for the entire project life.
      ii. Revenue Sharing with GoI by GoK, should be in line with the conditions laid down during the In-principle approval of the project.
   b. Comments made by Ministry of Ports, Shipping & Waterways:
      i. MoPS&W stated that the project is a part of Maritime India Vision 2030. It would help in the development of sea trade, container transhipment and will contribute to overall economic growth of India. They hence, support the proposal. In addition, MoPS&W also supported the observations raised by NITI Aayog.
   c. Comments made by Department of Expenditure (DoE):
      i. The project received In-principle approval in 2015 and is expected to be commissioned by the end of 2023. As a result of the time lapsed, there is bound to be an escalation in cost. GoK was requested to clarify whether this would impact the VGF component committed by GoI or GoK.
      ii. Revenue Share should be in line with the conditions laid down during In-principle approval of the project.
   d. Comments made by Department of Economic Affairs (DEA):
      i. At the outset, it was mentioned that it is a State PPP project and that the responsibility of the project structuring, execution and implementation rests with GoK which is responsible for the project structuring, bidding out and changes made etc. EC

appraisal has a limited role in a state PPP project which is mainly focused around the VGF requirement. EC, during its appraisal looks into factors and aspects, which if improved upon, can make the PPP project more biddable and viable from the point of view of the market or can lower down the grant component (VGF) required to make the project viable. Therefore, in Principle approval of the EC, it should not be taken as every comma, full stop or clause of the bid documents has been seen, appraised and approved by the EC.

ii. Post EC approval (In Principle or Final), if any change in the project contours is undertaken by the Project Sponsoring Authority (PSA) then, the responsibility for the same also rests with the PSA. EC before giving final approval has to see if such changes are resulting in an increase of VGF requirement or not and in such case may decline the final approval. In addition, the VGF contribution of DEA is capped at Rs 817.8 Cr (an absolute number).

iii. As per GoK submission, after according In-principle approval, two changes were carried out in the bidding documents and Concession Agreement with respect to funded work and mortgage of port sites. GoK has already intimated that funded work is not part of the TPC. Whereas, mortgage of port sites was allowed to enhance the viability and biddability of the project because of the no bid situation on 21st February 2015. Both these changes have either no impact or reducing impact on the VGF requirement.

iv. The RoD of 23rd EC meeting states that as *20% of the TPC is estimated to be provided as VGF by Government of India, GoK would share 20% of the revenues that come to GoK after 15 years, until the entire GoI contribution of Grant under VGF Scheme is repaid in NPV terms.* The repayment of GoI grant in NPV terms has been approved by Hon'ble Finance Minister at the time of In-principle approval. However, with such a revenue sharing mechanism, it seems that GoI grant in NPV terms may not be repaid in full in the project lifetime. That is why priority payment issue was raised. Even then, there may be a possibility that GoI grant in NPV terms may not be repaid in full.

8. The Chair then made the following observations:
    a. If the port is of strategic importance with many long-term benefits, the rationale behind a single bid situation may be clarified by GoK;
    b. The details regarding the expenditure incurred by GoK on account of funded works may be provided;
    c. Currently ~88% (i.e. Rs. 3,614.44 Cr) of the TPC approved during In-principle has been spent on the project; however the physical progress seems to be lagging in comparison to the expenses incurred on the project;
    d. The rationale behind GoK providing O&M support in project may be provided;
    e. Whether GoK has taken any action regarding CAG observations;
    f. At what stage will the disbursement of VGF commence?

9. GoK submitted the following with respect to the observation made by the Chair and other EC members:
    a) With regard to the **concession period issue raised by NITI Aayog & MoPSW**, GoK stated that the Concession Period is based on Planning Commission's Model Concession Agreement for Public Private Partnership ("PPP") in State Ports and the relevant clause (Clause 3.1.1 providing for the Concession Period). The principal concession period is only 40 years and subsequent extension of 20 years depends on capacity augmentation by the concessionaire. The next 20 years is based on mutual negotiation and cannot be deemed as extension granted or claimed as a matter of right. They further stated that this was what was proposed at the time of in-principle approval and approved by the EC.
    b) DEA clarified that at the time of In-principle approval the proposed concession period was 40 years, extendable to 20 years on capacity augmentation and further extendable to another 20 years on mutual agreement. 21st EC recommended the concession period of 40 years

extendable by 10 years on capacity augmentation. The 23rd EC however agreed to the original request of GoK to fix the concession period to 40 years extendable to 20 years on Concessionaire's request. The issue of another 20 years extension of concession period on mutual agreement was never brought up during the discussion. Hence, although it may be inferred in both ways, however, the language suggests that the In-principal approval of the EC was given for the original request by GoK, i.e. 40+20+20 years.

c) With regards to the issue on **tariff fixation raised by NITI Aayog & MoPSW**, GoK stated that tariff for the project will be guided by Schedule Q of the concession agreement. Wherein the rates pertaining to Container cargo are fixed and listed. In the case of Bulk Cargo, these are capped at the maximum rates offered at any Indian Major Port. Hence there is no open-ended tariff structure. The Concessionaire may, in its discretion, revise the fee annually on April 1st to reflect the variation in Price Index or in accordance with the rates prevailing at other Major Ports, as the case may be. For any goods or services not specified in the Fee Schedule, the Concessionaire shall specify the fee not exceeding the rates prevalent from time to time in other similar ports in India and Asia. Schedule Q is applicable for 10 years from the appointed date. After which the Authority may cap on the charges that may be levied and recovered by the Concessionaire to 125% of the fees recoverable under Schedule Q. GoK further assured that for tariff fixation after 10 years from appointed date, upper cap of the tariff will be enforced as per the provisions of the concession agreement.

d) With regards to the issue on **cost escalation & its impact on VGF raised by DoE**, it was stated the escalation of costs due to time delays is the responsibility of the concessionaire and it will not affect VGF grant. In addition, the VGF contribution is capped at Rs. 1635 Cr.

e) With regards to the issue of **single bid raised by the Chair**, GoK informed that bidding was held in two stages: RFQ and RFP. Five applicants responded to the RFQ & submitted their bids. Out of the five bidders, only three bidders participated in the RFP. In the end, only Adani Vizhinjam Port Private Limited submitted the financial bid. It was further added that as per DoE OM dated 29th October 2021, this project cannot be considered as a single bid situation because (i) procurement was suitably advertised and sufficient time was given for submission of bids (ii) the qualification criteria were not unduly restrictive and (iii) prices were reasonable in comparison to the market. Furthermore, multiple private parties did show interest in the RFQ & RFP stage.

f) With regards to the issue on the status of **funded works raised by the Chair**, GoK stated that the payment for funded work is based on reaching certain milestones. Physical progress regarding breakwater is slow on account of delay in sourcing rocks for the same. Till date, Rs. 292 Cr has been disbursed on account of funded works and a claim of approximately Rs. 400 Cr has been received from the concessionaire for further payment.

g) With regards to the issue on **physical progress raised by the Chair,** GoK informed that ~33% of the dredging & reclamation work, ~75% of berth construction and ~20% of container yard construction has been completed. Port Equipment is being procured from abroad and are expected to be delivered shortly. The project is expected to be completed by December 2024.

h) With regards to the issue on **O&M support raised by the Chair,** GoK stated that concession agreement of the project is based on the MCA of State Ports 2014 prepared by Planning Commission. As per the agreement, the VGF is payable to the Concessionaire in two parts (i) equity support payable during the construction of the project and (ii) operation and maintenance support payable after COD. Equity support is to be 150% of the equity brought in by the Concessionaire subject to a limit of 30% of the TPC. Due to this only Rs. 408.90 Cr is paid by GoK as VGF during the construction period. The remaining Rs. 408.30 Cr is paid as operation and maintenance support. Further, this O&M support acts as an incentive for the concessionaire to be involved in the project for at least two years after COD.

i) With regards to **action taken by GoK on CAG observations,** GoK informed that a Judicial Commission was appointed by GoK in 2017. The Commission has submitted their report but the same is yet to be made public.

j) With regards to the clarification on **disbursement of VGF,** it was stated that in this project, the entire equity amount has already been brought in by the concessionaire, the LFI has already disbursed the entire loan amount and loan from other sources have also been taken. Once the final approval is accorded by EC, the Concessionaire and the LFI will enter into a tripartite agreement with DEA (on behalf of EC) and thereafter, VGF will be disbursed as per the established process.

k) With regards to the issue on **revenue share highlighted by GoK in their presentation and the positions presented by each EC member on the same,** GoK emphasised that the PPP component is only one part of the overall project. The total cost of the project is Rs. 7,700 Cr. Revenue share of GoI should be based on Rs. 7,700 Cr and not Rs. 4,089 Cr. Hence, only 11% of the money received by GoK should be given to GoI as repayment of VGF. Furthermore, VGF is a grant and expecting repayment of VGF in NPV terms makes it akin to a loan. GoK hence, has made a request to do away with the repayment of GoI grant.

10. Considering all the above discussions, the Empowered Committee unanimously decided the following:

a. To ensure that the concessionaire abides by clauses of tariff fixation after 10 years from the appointed date, the GoK shall enforce the upper cap of the tariff as per the provisions of the concession agreement.

b. To dispel the ambiguity about the concession period, the concession period of the project shall be taken as 40 years, extendable by 20 years on capacity augmentation and further extendable by another 20 years on mutual agreement between the GoK & the concessionaire.

c. To ensure that the VGF claim doesn't increase due to changes in the TPC, the TPC of the project shall be fixed at Rs. 4,089 Cr for computation of VGF and the total VGF to the concessionaire is capped at Rs. 1635 Cr, out of which the GoI share shall be Rs 817.8 Cr only.

d. It is observed that the changes made after the in-principle approval in respect of the funded works and mortgage of port site & project assets have either nil or minor impact on the VGF required for the project.
e. The request of GoK for waiving the revenue share with the GOI is not accepted. The GoK should enter into an agreement with GOI (DEA), before disbursement of the VGF, for sharing of the revenue.
f. The request of GoK for not imposing an additional condition of giving the priority to GOI in the revenue share is accepted. The formula given in the in-principle approval for the revenue share between GOI and GoK shall prevail.
g. The responses provided by the GoK to the issues raised by the EC members, 84^{th} EI in light of CAG observations and subsequent issues raised by the DEA appear satisfactory. However, since the State Government has appointed a Judicial Commission to examine the issues raised by CAG, therefore it would be prudent to look at the verdict of the Judicial Commission about the Project before obtaining final disbursement for the VGF. GoK is advised to share the report at the earliest in order to facilitate the DEA to process the proposal for the final approval of the VGF Support for the project expeditiously.

11. The meeting ended with a vote of thanks to the Chair.

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Annexure – I

List of attendees of the 41st Meeting of the Empowered Committee for considering granting final approval of VGF support for development of Vizhinjam International Multipurpose Seaport Project, received from Government of Kerala held on 27.06.2022.

1. **Department of Economic Affairs, Ministry of Finance**
    1. Shri Ajay Seth, Secretary, EA - In Chair
    2. Shri Baldeo Purushartha, JS(ISD)
    3. Dr. Molishree, Deputy Secretary to the Government of India
    4. Ms. Arya Balan Kumari, Deputy Director
    5. Dr. Kartik Agrawal, Deputy Director
    6. Shri Rohan Nair, OSD
2. **Government of Kerala**
    1. Dr. V.P Joy, Chief Secretary
    2. Ms. Tinku Biswal, Principal Secretary, Fisheries & Port
    3. Shri Gopalakrishnan K, MD, Vizhinjam International Seaport Ltd.
    4. Dr. Jayakumar, CEO, Vizhinjam International Seaport Ltd.
    5. Ms. Suma Sankaran, CFO, Vizhinjam International Seaport Ltd.
3. **Ministry of Ports & Waterways**
    1. Shri P K Roy, Director (PPP)
4. **Department of Expenditure**
    1. L.K. Trivedi, Deputy Secretary
5. **NITI Aayog**
    1. Shri. Partha Sarthi Reddy, Adviser (PPP)

No. 2/2/2018-ISD
Government of India
Ministry of Finance
Department of Economic Affairs
Infrastructure Finance Secretariat
Infrastructure Support & Development Division
*****

5th Floor, Jawahar Vyapar Bhawan,
Tolstoy Marg, New Delhi
Dated 10th October, 2022

Office Memorandum

Addendum to the RoD of 41st Meeting of the Empowered Committee to consider granting Final approval for VGF support for the development of Vizhinjam International Multipurpose Seaport Project, received from Government of Kerala-reg.

The undersigned is directed to forward the Addendum to the RoD of 41st Meeting of the Empowered Committee to consider granting Final approval for VGF support for the development of Vizhinjam International Multipurpose Seaport Project, received from Government of Kerala for information and necessary action.

2. This issues with the approval of Secretary, Economic Affairs.

(**Dr. Molishree**)
Deputy Secretary to the Government of India

To,

1. CEO, NITI Aayog, Yojana Bhawan, New Delhi
2. Finance Secretary & Secretary, D/o Expenditure, North Block, New Delhi
3. Secretary, Ministry of Ports, Shipping & Waterways, Parivahan Bhawan, New Delhi
4. Chief Secretary, Government of Kerala

Copy to:

1. Sr. PPS to Secretary (EA)
2. Sr. PPS to JS (ISD)

Addendum to the RoD of 41st Meeting of the Empowered Committee to consider granting final approval for VGF support to the project proposal for the development of Vizhinjam International Multipurpose Seaport Project received from Government of Kerala.

1. The 41st Meeting of the Empowered Committee (EC) chaired by Secretary, Department of Economic Affairs (DEA) was held on 27th June, 2022 for considering Final approval for VGF support for the development of Vizhinjam International Multipurpose Seaport Project, received from Government of Kerala (GoK).

2. During the course of the meeting, it was unanimously decided that *the responses provided by the GoK to the issues raised by the EC members, 84th EI in light of CAG observations and subsequent issues raised by the DEA appear satisfactory. However, since the State Government has appointed a Judicial Commission to examine the issues raised by CAG, therefore it would be prudent to look at the verdict of the Judicial Commission (JC) about the Project before obtaining final disbursement for the VGF. GoK is advised to share the report at the earliest in order to facilitate the DEA to process the proposal for the final approval of the VGF Support for the project expeditiously.*

3. In light of the above, GoK vide letter dated 12th August 2022 submitted the JC report which was duly circulated to all the EC Members. Although Department of Legal Affairs (DoLA) is not a member of EC, the report was also forwarded to DoLA also for their comments. The comments by the EC members and DoLA are provided as below:

   i. **Department of Expenditure:**
   The Department has no comments to offer. Department of Economic Affairs is to follow existing rules and regulations for disbursal of VGF support to the instant proposal.

   ii. **Ministry of Ports Shipping & Waterways:**
   This project is part of Maritime India Vision 2030 and Ministry of Ports, Shipping & Waterways has already supported the project. The Ministry has no further comments to offer in this matter. Department of Economic Affairs may take further action in the project proposal as per the extant policy and precedents.

   iii. **NITI Aayog:**
   The Commission Report circulated has been seen and NITI Aayog has no comments thereon. With respect to disbursal of VGF support to the project,

the same is to be in accordance with the conditions and process prescribed in the VGF Scheme and the Guidelines thereto.

iv. **Department of Economic Affairs:**
The Report was looked at by DEA with an objective to find out the impact of its findings on the VGF committed by GoI. There is no adverse finding in the Report which has an impact on the VGF disbursal committed by the Government

v. **Department of Legal Affairs**:
The JC report recommends some action on the part of the state government. Some deviations from the concession agreement were also reported. No specific legal issue is raised for our consideration. In the absence of any legal issue, we have no comments to offer. It is for the Department of Economic Affairs to examine the report from the angle of policy and precedent and take further course of action in consultation with the State government.

4. Being a state project executed by the state government, and the judicial commission appointed by the state government, the limited point to look at the verdict of the judicial commission was to observe the impact of its findings on the VGF committed by GoI. without passing any value judgement on the JC report. Overall, there is no adverse finding in the Report which has an impact on the VGF disbursal committed by the Government. Moreover, the Commission concluded by stating that *unless the Government actively renders support and assists the Concessionaire, the project will not be completed within the scheduled time, which will adversely affect the Government also.*

5. Therefore, the Empowered Committee unanimously recommended to the Competent Authority the approval of the VGF support of Rs.817.80 Crore from the GoI for the development of Vizhinjam International Multipurpose Seaport Project, as requested by the GoK.

6. Further actions regarding execution of Tripartite Agreement, Premium Sharing agreement on the lines of the Tripartite Agreement, and the disbursal of VGF support may be undertaken by DEA as per process prescribed in the VGF Scheme and the Guidelines.

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