

**F. No. 2/2/2018 - PPP**  
**Government of India**  
**Ministry of Finance**  
**Department of Economic Affairs**  
**Infrastructure Finance Secretariat**  
**Infrastructure Support & Development Division**  
**Private Investment Unit (PIU)**

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5<sup>th</sup> Floor, Jawahar Vyapar Bhawan,  
Tolstoy Marg, New Delhi  
Dated: 14<sup>th</sup> October, 2024

**Subject: - Record of Discussion of the 44<sup>th</sup> EC Meeting to consider the changes in the Concession Agreement based on the Settlement Agreement in the project 'Development of Vizhinjam International Multipurpose Seaport Terminal': -**

The undersigned is directed to forward the Record of Discussion of the 44<sup>th</sup> EC Meeting held on 27<sup>th</sup> July, 2024 at 01.15 PM to consider the changes in the Concession Agreement based on Settlement Agreement in the project, 'Development of Vizhinjam International Multipurpose Seaport Terminal', for information and necessary action.

2. This issues with the approval of the Competent Authority.



(Arya Balan Kumari)  
Joint Director, PIU  
011-2370 1219

To,

1. The Finance Secretary & Secretary, D/o Expenditure, North Block, New Delhi-01
2. The CEO, NITI Aayog, Yojana Bhawan, New Delhi-01
3. The Secretary, Ministry of Ports, Shipping & Waterways, Parivahan Bhawan, New Delhi-01
4. The Chief Secretary, Government of Kerala, Thiruvananthapuram

Copy to:

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

**Record of Discussion of 44<sup>th</sup> EC meeting held on 27<sup>th</sup> July, 2024 to consider the changes in the Concession Agreement based on Settlement Agreement in the project, 'Development of Vizhinjam International Multipurpose Seaport Terminal' on PPP mode.**

1. The 44<sup>th</sup> EC meeting was held on 27<sup>th</sup> July, 2024 at 13.15 hrs to consider the changes in the concession agreement after the final approval for VGF and allow signing of Tripartite Agreement and the Premium Sharing Agreement.

**Background**

2. The development of Vizhinjam International Multipurpose Sea Port Terminal is a proposal to build an International Deepwater Multipurpose Sea Port on DBFOT basis at Vizhinjam in the State of Kerala. The advantage of Vizhinjam Port is that the land is connected to potential primary hinterland of upto 300 km from Trivandrum and will eliminate one extra move at foreign transshipment terminals (Colombo, Dubai, Salalah, Singapore). This project is also part of Maritime India Vision, 2030.

The proposal was then considered and recommended for In-Principle approval in the 23rd meeting of EC held on 26.12.2014. The In-Principle approval of the competent authority to this proposal was given on 03.02.2015 with revised TPC of Rs 4089 crore and the applicable VGF as per the extant GoI's Scheme and Guidelines for Financial Support to PPPs in Infrastructure.

The bidding was held by the GoK in two stages: RFQ and RFP. Global Tender/RFQ notice was issued on December 4, 2013. The concession agreement of the project was executed between GoK and the Concessionaire, M/S Adani Vizhinjam Port Private Limited (the SPV formed by APSEZ for development, operation and maintenance of the project) on 17.08.2015. The Government of Kerala (GoK) in 2018, has submitted the project for Final Approval for the VGF. The EC in its 41<sup>st</sup> meeting, recommended the project for final approval of the VGF and the final approval of the competent authority was given on 10.10.2022 for the GoI VGF support of Rs 817.80 crores.

In the In-Principle as well as final approval of the project, the TPC of the project was Rs. 4089 crores. In the In-Principle approval, VGF upto 40% (out of which first 20% is GoI's share) of the TPC or approx. Rs. 1636 crores was approved. The market discovered VGF through bidding came out to be Rs. 1635 crores. Therefore, the final approval was given for the GoI VGF support of Rs 817.80 crores.

In the In-Principle as well as final approval of the project, the concession period of the project (excluding extension part) was approved as 40 years with 4 years as construction period and 36 years as operating period.

After the final approval, the Tripartite Agreement and the Premium Sharing Agreement has to be signed before disbursing the VGF grant. The Government of Kerala subsequently informed the DEA that due to ongoing arbitration, litigation and delays in achieving scheduled completion date, they were unable to come for signing of Tripartite Agreement and the Premium Sharing Agreement. It is further informed by the Government of Kerala that both the parties have resolved their differences amicably and arrived at Settlement Agreement in the month of February, 2024. As per the Settlement Agreement, both the parties have withdrawn their claims and counter claims from the arbitration and arrived at the following arrangements: -

- I. The delay occurred in completing the Vizhinjam International seaport by AVPPL<sup>1</sup> is condoned and the Scheduled Completion Date is extended for a period of five years (i.e. from 03/12/2019 to 03/12/2024).
- II. The concession period is extended for five years (i.e. from 2055 to 2060), subject to following conditions.
  - a) AVPPL shall withdraw all the arbitration claims filed before the Arbitral Tribunal;
  - b) The revenue sharing should remain the same i.e., the 15<sup>th</sup> Anniversary of the original Scheduled Completion Date, i.e., from 2034 as per the Concession Agreement;
  - c) The capacity augmentation shall be achieved by 2028 itself;
- III. In addition to the above, the following financial arrangement shall be made with AVPPL;
  - a) An amount of Rs. Two Hundred and Nineteen Crores is withheld as Commitment Fee Deposit from the Equity Support to be given by Government of Kerala to AVPPL.
  - b) From the amount so withheld, an amount of Rs. 175.2 Crores (43.8 x 4) shall be released to AVPPL once the 2nd and 3rd phases of the project are completed in 2028.
  - c) An amount of Rs. 43.8 Crores shall be retained by GoK.

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<sup>1</sup> Adani Vizhinjam Port Private Limited.

- IV. Chief Secretary is entrusted to ensure that AVPPL shall comply with the above conditions and also to sign the Tripartite Agreement as Conforming Party once AVPPL takes action to withdraw the arbitration proceeding.
3. The above-mentioned Settlement Agreement includes changes in the concession agreement such as,
  - I. Condoning the five years delay in achieving Scheduled Completion Date (SCD) and extending the Scheduled Completion Date by five years.
  - II. The Concession period has been extended from 40 to 45 years while keeping the operation period same. The original concession period was 40 years including 4 years construction period and 36 years of operation period. As per the proposed arrangement, the Scheduled Completion Date is extended by five years. Accordingly, the concession period was extended by another five years to ensure that the operation period remains the same, i.e., 36 years.
  - III. The revenue sharing commencement will remain the same i.e., the 15<sup>th</sup> Anniversary of the Original Scheduled Completion Date as per the Concession Agreement.
  - IV. The Concessionaire has to achieve capacity augmentation by 2028, which is 17 years prior to the Scheduled Capacity Augmentation Date.
4. As the abovementioned changes were not part of the concession agreement submitted to the EC at the time of giving in-principle and final approval for VGF and these changes were agreed upon by both the parties after signing of the concession agreement. Therefore, it was decided to bring these changes to the EC for consideration. Accordingly, the request of the GoK was duly circulated to all the EC members and the 44<sup>th</sup> EC held its meeting on 27<sup>th</sup> July, 2024 at 13.15 hrs on virtual mode. The list of attendees is placed at **Annexure I**.
5. On behalf of the Chair, the Joint Secretary (ISD) welcomed all the participants to the meeting and with the permission of the Chair, the GoK was invited to give a presentation.
6. At the outset, the Chief Secretary, GoK stated that the state government views this project as a game changer and provider of competitive advantage to the nation. The GoK has funded ~Rs. 5500 crores from its resources to make this project a reality. The Chief Secretary further highlighted that despite facing formidable obstacles such as cyclones, Covid-19 Pandemic and local agitations, the project has made remarkable progress and achieved key milestones since the award of the concession in 2015. The port was formally inaugurated in the presence of the Hon'ble Union Minister of Ports, Shipping and Waterways upon arrival of the mother vessel on 11<sup>th</sup> July, 2024.

7. The Principal Secretary, Ports, GoK made a detailed presentation on the contours of the project. He informed that the completion of the project was delayed beyond the Scheduled Completion Date (SCD) primarily because of the difficulty in sourcing huge quantity of rock (87 lakh metric tonnes) needed for the breakwater construction, most of which (70%) had to be procured from the quarries of Tamil Nadu. In addition, force Majeure events like cyclone (Ockhi), flood of 2018, covid-19 pandemic and the agitation from the local community has affected the progress of project. Due to the aforementioned reasons, Concessionaire demanded an extension of SCOD by 5 years period but the GoK did not agree for the same. Thereafter the Concessionaire invoked arbitration claiming an extension of 5 years from the SCD and compensation of Rs.3855 Cr including equity support of Rs.1227 Cr. Then The Vizhinjam International Seaport Limited (VISL), Government of Kerala, filed counter claim for non-extension of SCD, non-extension of concession period and an amount of Rs.911 Cr including damages for delay in construction of the port. However, for the success of such a critical and important project for the state and the nation, it was decided to mutually and amicably resolve the differences and both the parties have arrived at an arrangement by signing a Settlement Agreement as mentioned at Para 2 of this RoD.

8. After the presentation, the GoK submitted the following for the consideration of the EC: -

- I. Both parties (the GoK and the Concessionaire) have withdrawn their respective claims and counter claims and arrived at Settlement through the settlement agreement dated 23.02.2024;
- II. There is no demand to increase the VFG support approved by the GoI. The GoI's VGF shall be restricted to the amount mentioned in the final approval;
- III. The approval of the EC may be granted for signing of Tripartite Agreement and Premium Sharing Agreement;
- IV. Considering the huge financial support to the project given by the GoK, premium sharing may be waived off.

9. The Chair then raised the following observations.

- I. Who has the dredging responsibility? GoK or the Concessionaire?
- II. What is the status of the road connectivity of the project to NH-66?
- III. Can PPP mode be explored for the rail connectivity of 19 km to the port?
- IV. What is the timeline for signing supplementary agreement?

10. The Chair then asked the EC members to raise any pending substantive issue. The members submitted the following: -

- I. **MoPSW** suggested that instead of Lead Financial Institution (LFI), VISL may take up the role of monitoring of the project considering the fact that GoK has substantial investment in the project. It was further suggested that the term “supplementary agreement” may be used in the Tripartite Agreement along with ‘Concession Agreement’ wherever referred to.
- II. **DoE** stated that they have no comments to offer and supported the signing of Tripartite and Premium Sharing Agreement.
- III. **NITI Aayog** suggested that the Tripartite Agreement may be signed either after the signing of the supplementary agreement or along with the supplementary agreement. The impact of the settlement agreement on the VGF requirement may also be clarified.
- IV. **DEA** noted the mutual settlement of the dispute by the Concessionaire for the success of the project. However, as the premium sharing was one of the conditions of in-principle as well as the final approval for the VGF support, it may not be revisited now.

11. The Chief Secretary, Government of Kerala submitted the following with respect to the issues raised.

- I. The requirement of VGF has not come down due to the following facts: -
  - a) The original concession period was 40 years including 4 years of construction period and 36 years of operation period. As per the present arrangement, the five years delay in achieving Scheduled Completion Date was condoned. Accordingly, the concession period was extended by another five years to ensure that the operation period remains the same, i.e., 36 years.
  - b) Further, there is no change in Premium Sharing start date and in a sense, it has become more stringent for the Concessionaire. As per the Concession Agreement, the premium shall commence from the 15th Anniversary of the Original Scheduled Completion Date i.e., 3rd Dec, 2034. Now even after extending the Scheduled Completion Date to 03.12.2024, the premium sharing shall still commence from 3rd Dec,

2034 and no extension in the commencement of premium sharing is allowed.

- c) Further, the Scheduled Capacity Augmentation has been preponed. As per concession agreement, the Concessionaire has to augment capacity on or before 30th anniversary of the Appointed Date (i.e. 5th Dec 2045). However, now the Concessionaire has agreed to achieve capacity augmentation before December, 2028 which is 17 years prior to the Scheduled Capacity Augmentation Date.
- d) Because of the time overrun, there is a probable cost overrun to the tune of 30% to 40% of the project TPC. However, this extended cost is to be borne by the Concessionaire. No change in TPC is allowed and the TPC of the project is kept at Rs.4089 Crores only.
- e) However, the GoK is not requesting the GoI for any VGF enhancement. The GoI's VGF shall be restricted to the amount mentioned in the final approval.

- II. With regard to the responsibility of dredging, the PS (Port), GoK stated that the dredging is the responsibility of the Concessionaire. However, this port does not require much of dredging as the port has a natural draft of 18 m and biggest ships can be accommodated.
- III. With respect to road connectivity, the Chief Secretary, GoK informed that the land acquisition is already in progress. For smooth transportation, it is planned to go for cloverleaf arrangement. NHAI is also kept in loop in the matter.
- IV. With respect to rail development, the Chief Secretary, GoK informed that there is a requirement of 10.7 Kms of land, of which 9.02 Kms is underground. The DPR for this is prepared and entrusted to Konkan Railways. The Southern Railways has approved the DPR and is going to the cabinet for approval. This rail connectivity would be completed by 2028 and will put an additional funding load of Rs. 1500 crore on the GoK. The Chief Secretary, GoK also stated that as suggested, the possibility of adopting PPP shall be explored.
- V. With regard to the expected time taken for signing Supplementary Agreement to the Concession Agreement, the GoK has submitted that the Supplementary Agreement is likely to be signed soon.

**12.** With regard to monitoring by Lead Financial Institution (LFI), the JS(ISD) clarified that the monitoring by the LFI is mandated in the VGF Scheme for the purpose of releasing VGF grant. Whereas, the project monitoring is done by the Authority and the Concessionaire as per Article 13 and Article 19 of the Concession Agreement.

**13.** After detailed deliberations: -

- I. The EC noted the amicable settlement between the Parties (the GoK and the Concessionaire) for the success of such a critical and important project.
- II. The EC noted that fixing responsibility of delay in achieving the Scheduled Completion Date is a matter either to be decided by the PSA and the concessionaire through mutual agreement or by the arbitration/Court. This issue has been amicably settled between the Parties (the GoK and the Concessionaire) with condoning of five years of delay in achieving Scheduled Completion Date and, accordingly, the extension of concession period by another five years to ensure that the operation period remains the same, i.e., 36 years, The EC noted this decision of the GoK.
- III. The EC noted that submission of the GoK that there is a probable cost overrun for the project to be borne by the Concessionaire without asking for any enhancement in the VGF support.
- IV. The EC agreed with the submission of the GoK given in Para 11 above that proposed changes in Concession Agreement as per the mutual settlement agreement between the GoK and the Concessionaire (Para 2 of this RoD) will not have any material impact on the quantum of VGF required.
- V. The EC decided that at this stage after the final approval, the issue of waiving off premium sharing cannot be reopened. Therefore, the request of the GoK to waive off the premium sharing cannot be accepted.
- VI. The Model Tripartite Agreement is approved by the EC and is used for all VGF projects. The monitoring by the LFI is mandated in the VGF Scheme and Guidelines, therefore, the monitoring responsibility shall remain with the LFI.
- VII. The EC decided that the Tripartite Agreement and Premium Sharing Agreement may be signed either along with the signing of supplementary agreement or after signing of supplementary agreement.

**14.** After detailed deliberations and in the light of Para 13 above, the EC unanimously recommended to the competent authority, the approval of changes (as mentioned in para 3



above) in the concession agreements pursuant to the settlement agreement signed between the GoK and the concessionaire. It was also decided that after the approval of the recommendation of the EC by the competent authority, Tripartite Agreement and Premium Sharing Agreement may be signed either along with the signing of the Supplementary Agreement or after the signing of Supplementary Agreement.

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**List of Attendees**

**Department of Economic Affairs**

1. **Shri Ajay Seth, Secretary-in Chair**
2. Shri B. Purushartha, JS(ISD)
3. Ms. Arya Balan Kumari, Joint Director
4. Ms. Anmol Waraich, Assistant Director
5. Shri Gaurav Jumrani, Consultant
6. Shri Rajender Singh, Section Officer

**Department of Expenditure**

1. Ms. Preeti, Joint Director

**NITI Aayog**

1. Shri CPS Reddy, Senior Advisor
2. Ms. Nidhi Arora, Consultant

**Ministry of Ports, Shipping and Waterways**

1. Shri Rajesh Asati, Deputy Secretary

**Government of Kerala**

1. Dr. V Venu, Chief Secretary
2. Shri K Srinivasan, Principal Secretary
3. Dr. Divya S. Iyar, MD, VISL
4. Shri Sreekumar K Nair, Chief Executive Officer

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