

**Subject: Record Note of discussion of the meeting of Public Private Partnership  
Appraisal Committee held on 29.08.2006**

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The second meeting of the Public Private Partnership Appraisal Committee (PPPAC) was held on 29.08.2006 at 5.00 PM in Room No.131-A. The list of participants is annexed.

2. Chairman, New Mangalore Port Trust (NMPT) gave a presentation on the salient features of the proposal.

3. Joint Secretary, DEA, highlighting the issues for consideration, mentioned the following:

- (a) waiver sought by Department of Shipping from 'in principle' approval of PPPAC,
- (b) the apparent contradiction between tariff fixation procedures and the bidding parameters
- (c) the viability of the project given the assumptions for traffic and other factors.

4. Adviser to Dy. Chairman, Planning Commission stated that they have no objection to the waiver sought by Department of Shipping from the 'in principle' approval of PPPAC, as it appears that the Project Authorities have followed proper procedure and the documentation appears to be in order. On the issue of due diligence required for the project, he stated that the argument that detailed due diligence is not required since there is no Viability Gap Funding is not correct since the project under consideration is a Central sector project where the contingent liabilities rest with the Central government and hence a higher level of due diligence compared to a state government project is warranted.

5. Secretary (EA) stated that since this was the first project received by the PPPAC, the technical requirements of 'in principle' approval can be waived and the PPPAC may consider the substantive issues.

6. On the substantive issue, the points (b) & (c) above were discussed in detail. On the issue of incompatibility of revenue share model, Planning Commission informed that they had earlier written to Secretary, Shipping, stating that revenue share bidding was not compatible with rate of return regulation. It was felt that if the proposed arrangement was pursued, the likely consequences would be either: (i) regulatory capture leading to higher user charges; or (ii) renegotiation of the concession agreement; or (iii) bankruptcy of the concessionaire.

7. Secretary, Shipping in response to the above stated that he was in agreement with the above view that the revenue sharing model was not necessarily the best but as there was no viable alternative under consideration and given the fact that 12-14 projects have already been awarded on this basis, the proposed structure could be approved for the time being. Adviser, Planning Commission indicated that an alternative has been suggested by the Planning Commission wherein the tariff can be fixed upfront. Secretary, Shipping was of the view that fixing tariff was not feasible for a 20-year agreement. JS, DEA reiterated that the tariff need not be fixed but the formula for fixing tariff could be determined upfront. Adviser, Planning Commission agreed with this proposition and stated that in the absence of such a formula, the traffic projections could be distorted leading to a higher return to the concessionaire than warranted.

8. Secretary, Shipping stated that the above was a complicated issue, which is being examined for the past 6 months by Department of Shipping. He was of the view that the present proposal may be approved as the bidding has already been completed on the above basis.

9. On the issue of traffic projections, it was indicated that the railway line has been completed and the project is expected to be a viable project.

10. In addition to the above, Planning Commission raised the following issues relating to the License Agreement:

(i) **Open-ended capital costs, user charges and termination payments:** The Concession Agreement does not specify any ceiling of capital costs. As such, there is no safeguard against padding of capital costs. These open-ended provisions could lead to (a) higher user charges arising out of the 'cost plus' regime; and (b) higher payments in the event of termination.

(ii) **Absence of standards and specifications for construction:** No standards and specifications have been specified for construction or equipment. As a result, the Port Trust may have no remedy against poor quality construction or equipment.

(iii) **Absence of performance standards:** The agreement does not specify any performance or service standards. As a result, users could be virtually left to the mercy of the Concessionaire. The Port Trust would have no powers to penalize the Concessionaire or compel him to take corrective measures.

(iv) **Absence of an Independent Engineer:** There is no provision for an Independent Engineer to inspect and certify the quality and safety of the construction and equipment.

(v) **Comments of Legal Counsel:** There are several other weaknesses in the draft concession agreement. These have been indicated in the comments of our legal counsels, which were circulated to the Department of Shipping (DoS).

11. It was noted that comments have also been forwarded by DEA and no response has been received from DoS. Representative from Ministry of Law stated that while comments have not been sent by their Ministry, they would need to vet the documents. DoS agreed to coordinate with Ministry of Law.

12. Summing up, Secretary (EA) stated that given the fact that the project under consideration is of only Rs. 103 crore and is the first project being considered by PPPAC, it is proposed to approve the proposal of DoS. However, the issues raised by Planning Commission above would be suitably resolved by DoS while finalizing the documents in consultation with the Ministry of Law. All future proposals from Department of Shipping should adhere to the procedure established for PPPA C projects under the Scheme.

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

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**List of Participants in the meeting of Public Private Partnership  
Appraisal Committee taken by Secretary (EA) on 29.08.2006 at 5.00 PM in  
Room No. 131-A, North Block**

1. Shri Ashok Jha, Secretary, Department of Economic Affairs
2. Shri A.K. Mohapatra, Secretary, Deptt. of Road Transport and Highways
3. Shri Gajendra Haldea, Advisor to Dy. Chairman, Planning Commission
4. Shri A.P. Aggarwal, Additional Secretary, Ministry of Law
5. Shri A.K. Bhalla, Joint Secretary, Deptt. of Road Transport and Highways
6. Shri P. Tamilvanan, Chairman, NMPT, IPA
7. Sh. D.V. Ananth, FA&CAO, NMPT
8. Shri Devdatta Bose, EE, NMPT
9. Shri R.K. Jain, MD, IPA
10. Shri S.V. Madabhair, Secretary, NMPT
11. Dr. Anuradha Balaram, Director, Deptt. of Expenditure
12. Punya Shrivastava, DS(PD), Department of Shipping
13. Ms Anna Roy, Joint Director, Deptt. of Economic Affairs
14. Shri K.R. Reddy, Dy. Secretary, Planning Commission
15. Shri S.K. Saha, Dy. Secretary, Planning Commission
16. Shri V.S. Ranganathan, IPA
17. Shri A.K., Chandra, IPA
18. Shri V.G. Koshy, IPA