

Guidelines for early Resolution of Stuck Public Private Partnership (PPP) projects at Major Ports

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Background

In the past decade, Government of India invited private investment into Major Port Sector and several projects were awarded under Design, Built, Finance, Operate & Transfer (DBFOT) basis across the Major Ports in the country. Since the implementation of first PPP project at Major Port in 1997, significant progress has been made through this method of implementation. Notable benefits including private investment, capacity addition and operational efficiency has contributed to the growth of the sector. Currently, 34 projects of over Rs. 27,000 crore are operational and 25 projects of over Rs. 14,000 crore are under implementation. The operational projects have added a capacity of around 350 MTPA at Major Ports.

Under Asset Monetisation, there is clear pipeline of 31 projects of Rs. 14,500 Cr. to be awarded by 2025. Apart from current pipeline of 31 projects under NMP, additional 50 projects (of value ~Rs. 27,500 crore) have been identified for offer under PPP. Out of these 50 projects, 14 projects (~Rs. 2,400 crore) are envisaged to be offered in FY 2022-23.

In order to encourage private investment in the Major Port sector and standardise the diligence process for implementation of such projects and encourage EoDB, the Ministry has undertaken many initiatives in terms of preparation of policies/ guidelines.

With the aim to reduce arbitrations and litigation in the sector, new Model Concession Agreement (MCA) was launched by the Minister of MoPSW on 21st November 2021. The new document provides clarity on responsibilities and obligations of parties along with remedial measures in case of change in law. Apart from new MCA, new Tariff Guidelines have been issued with the focus on flexibility to PPP player to fix tariffs as per market dynamics, provide level playing field for competition between private terminals at major port and private port, facilitate better utilization of the capacity and introduce differential royalty rate to promote coastal shipping and transshipment

Despite all the policy level initiatives to mitigate the possibilities of litigation and encourage EoDB and due diligence and caution at the time of conceptualizing these projects from various perspectives, the survival of some of the projects is at risk due to various reasons like aggressive bidding and optimistic projections with regard to volumes & charges, unforeseen dynamic changes in the business and absence of flexibility to overcome such dynamic changes in the Concession Agreements that were either not foreseen or are beyond the control of the collaborating partners, i.e., the Concessionaire and the Concessioneing Authority.

The Guidelines

The Ministry of Ports, Shipping & Waterways has finalized the guidelines for dealing with Stressed Public Private Partnership (PPP) Projects at the Major Ports on 10 May 2022.

These guidelines have been framed for:-

- i. **Projects which became stressed during construction stage, i.e., Pre-COD stage** i.e. where the work has stopped due to inability of Concessionaire to continue with the execution of the project because of the reasons inter-alia aggressive bidding and the optimistic projections with regard to volumes & charges, unforeseen dynamic changes in their business; and
- ii. **Projects, both at Pre-COD and Post-COD stage, which became stressed due to borrowings being categorized by the lenders to the projects as NPA and/or lenders have approached NCLT for**

recovery of their dues, i.e., the PPP projects undertaken by the Major Ports where the work has stopped due to inability of Concessionaire to continue with the execution of the project on account of borrowings of the Concessionaire having been categorized by lenders as NPA and / or proceedings initiated against it before the NCLT under the Insolvency and Bankruptcy Code 2016 or under Section 241(2) of the Companies Act 2013.

Mechanism for Resolution of Stressed Projects:

1. In case of the projects which became stressed during construction stage i.e., Pre-COD stage, the Concessioning Authority would pay to the Concessionaire or to the lenders of the Concessionaire (as the case may be), as full and final settlement for taking over the useful assets created by the Concessionaire, an amount equal to the lower of the following sums
 - a. the value of the work done by the concessionaire in accordance with the Concession Agreement and found useful by the major port (i.e. the Concessioning Authority); or
 - b. 90% of Debt Due as defined in the Concession Agreement; or
 - c. Any other amount as may be mutually agreed in writing between the Concessioning Authority and the Concessionaire as per the relevant provisions of Model Concession Agreement (MCA) 2021.
2. Projects which became stressed both at Pre-COD and Post-COD stage, due to borrowings being categorized by the lenders to the projects as NPA and/ or lenders have approached NCLT for recovery of their dues, i.e., the PPP projects undertaken by the Major Ports where the work has stopped due to inability of Concessionaire to continue with the execution of the project on account of borrowings of the Concessionaire having been categorized by lenders as NPA and / or proceedings initiated, the due process before the NCLT under the Insolvency and Bankruptcy Code 2016 or under Section 241(2) of the Companies Act 2013 will be followed.

The Benefits of the new Guidelines

The aim of the guidelines is to facilitate revival of the projects falling in the category of stressed projects. These guidelines will pave the way for resolution of the cases under arbitration. The port asset is likely to be put to use through re-bidding. This will definitely result in unlocking the blocked cargo handling capacity of approximately 27 MTPA thereby creating better trade opportunities for the prospective investors and Port Authority will start generating revenue. It will repose confidence in the investors/ concessionaires and also generate employment opportunities.

Some of the long standing disputes on stressed assets at various major ports that may see early resolution are:

- i. Development of 13th Multipurpose Cargo (Other than Liquid/ Container Cargo) Berth on BOT Basis at Deendayal Port (1.50 MTPA approx.)
- ii. Development of 15th Multipurpose Cargo Berth at Kandla at Deendayal Port (1.50 MTPA approx.)
- iii. Offshore Container Terminal (OCT) at Mumbai Port (9.60 MTPA approx.)
- iv. Construction of NCB-II at VOC Port (7.00 MTPA approx.)
- v. Berth EQ-1A at Visakhapatnam Port (7.36 MTPA approx.)

On this occasion, Shri Sarbananda Sonowal, Union Minister for Ports, Shipping and Waterways stated that “These Guidelines will facilitate for early resolution of various issues and revival of stressed projects along with unlocking the immense potential of those projects resulting in creation of more trade and job opportunities.”

MJPS

