
HARYANA MASS RAPID TRANSPORT CORPORATION LIMITED

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**AGENDA FOR
38th MEETING**
(CONFIDENTIAL)

DATE	19.09.2019
TIME	11:00 AM
VENUE	CS's Committee Room, 4 th floor, Haryana Civil Secretariat, Chandigarh.

Item No 38.1

Civil Writ Petitions No.24949 of 2019 and 24951 of 2019, titled as HMRTC & Anr. Vs. RMGL/RMGSL before the Hon'ble Punjab and Haryana High Court.

1. Board is apprised that the above referred CWPs were listed for hearing on **17.09.2019**. RMGL/RMGSL verbally made submissions before the Hon'ble Court that they are ready to operate the Metro link for some time during which the debt due may be got worked out by Govt. of Haryana and a commitment may be made for payment of 80% of the debt due. The matter was adjourned for hearing on **18.09.2019**.
2. In the meantime, an e-mail dated 17.09.2019 (**Annexure-I**) was received from Sh. Rajiv Banga, MD, RMGL/RMGSL. In the said e-mail, it has been mentioned that *"in order to safeguard the larger public interest represented by the public sector bank loans and to facilitate an efficient transition under the two concession agreements, made the following without prejudice proposal:*
 - i. *RMGL/RMGSL will continue to operate their Metro Link for a period of 30 days (i.e. until October 16, 2019) during which (a) the 'debt due' as per financing documents in terms of the concession agreement may be determined by an auditor appointed by the Hon'ble Court; and (b) the process for transfer of the Metro Links may be undertaken under the supervision of two Hon'ble (retired) High Court judges, one being nominated by RMGL/ RMGSL and one being nominated by HSVP ;*
 - ii. *during this extended period since 9 Sept 2019 RMGL/RMGSL will act as agents of HSVP. RMGL and RMGSL will be responsible for all liabilities arising on account of their gross negligence and fraud during this time ;*
 - iii. *the conditions set forth in (i) and (ii) above are subject to an undertaking from HSVP that once the debt due is determined by the auditor appointed by the Hon'ble Court at least 80% of the 'debt due' so determined shall be deposited in the escrow account inter alia in terms of the Concession Agreement, Escrow Agreement and Substitution Agreement.*
 - iv. *the above proposal is made to safeguard immediate interest of the public sector lenders of the project and is without prejudice to the rights and remedies of RMGL/RMGSL under contract or applicable laws including inter alia the right to claim any differential amounts that may be due and payable to the lenders or RMGL/RMGSL as Termination Payments or any other payments."*

3. During the resumed hearing held on 18.09.2019, RMGL/RMGSL placed on record the above e-mail with the request that HSVP/HMRTC may submit reply before the Hon'ble High Court and by that time they will continue to operate the Metro. The Hon'ble High Court adjourned the matter for **20.09.2019** and directed that the petitioner may seek instructions from the Govt. on the above offer of RMGL/RMGSL and submit the same on the next date of hearing. Copies of the orders of the Hon'ble High Court dated 17.08.2019 & 18.09.2019 are yet to be uploaded on the website of the Hon'ble Punjab and Haryana High Court.
4. A reply in the form of an affidavit was got prepared through the law firms. However, Sh. Chetan Mittal, ASG (engaged by HSVP/HMRTC) proposed to send a communication in the form of a letter/email. The draft of the communication has been vetted by Ld. ASG & Ld. Advocate General, Haryana. A copy of the draft of the communication to be sent to RMGL/RMGSL is placed at **Annexure-II** for consideration and approval of the Board. The Board may pass the following resolution:
"**RESOLVED THAT** draft of the communication placed before the Board as **Annexure-II** is hereby approved.
RESOLVED FURTHER THAT MD, HMRTC-cum-CA, HSVP be and is hereby authorized to sign and send draft of the communication to RMGL/RMGSL and placed the same on record in the Hon'ble Punjab and Haryana High Court, Chandigarh on the next date of hearing i.e. 20.09.2019"

URGENT

7 messages

Rajiv.Banga@ilfsindia.com <Rajiv.Banga@ilfsindia.com> Tue, Sep 17, 2019 at 6:22 PM
To: Chief Administrator <cahuda@gmail.com>, Nadim Akhtar <adphmrtc@gmail.com>, Nadim Akhtar <adphmrtc1@gmail.com>

Without Prejudice

Haryana Urban Development Authority
C-3, Sector 6
Panchkula, Haryana 134109
Attention: Chief Administrator/ Advisor Planning

Dear Sirs,

Re: Writ Petition 24951 of 2019 and Writ Petition 24949 of 2019 filed before the Hon'ble High Court of Punjab and Haryana at Chandigarh

Background:

As you would know, the Respondents in the captioned writ petitions, Rapid MetroRail Gurgaon Limited ("RMGL") and Rapid MetroRail Gurgaon South Limited ("RMGSL") are subsidiaries of Infrastructure Leasing and Financial Services Limited ("IL&FS").

We specifically draw your attention to the reconstitution of the board of IL&FS vide an order dated October 1, 2018 by the Hon'ble NCLT, Mumbai ("NCLT Order") with the nominees of Ministry of Corporate Affairs. The current Board of Directors are working towards finding an appropriate resolution of affairs of IL&FS group of companies including RMGL and RMGSL. Such resolution is being undertaken keeping public interest, financial stability, legality, various stakeholder interests (including various lenders) and commercial feasibility in view.

The concession agreements which are subject matter of the captioned writ petitions stand terminated as recorded by the order dated September 9, 2019 of Hon'ble High Court of Punjab and Haryana, and accordingly certain termination payments are due and payable to RMGL and RMGSL. While the concession agreements are absolutely clear on quantification of such amounts, various doubts have been expressed by HSVP.

In light of the above, RMGL and RMGSL, in order to safeguard the larger public interest represented by the public sector bank loans and to facilitate an efficient transition under the two concession agreements, made the following without prejudice proposal:

- (i) RMGL/RMGSL will continue to operate their Metro Link for a period of 30 days (i.e. until October 16, 2019) during which (a) the 'debt due' as per financing documents in terms of the concession agreement may be determined by an auditor appointed by the Hon'ble Court; and (b) the process for transfer of the Metro Links may be undertaken under the supervision of two Hon'ble (retired) High Court judges, one being nominated by RMGL/ RMGSL and one being nominated by HSVP ;
- (ii) during this extended period since 9 Sept 2019 RMGL/RMGSL will act as agents of HSVP. RMGL and RMGSL will be responsible for all liabilities arising on account of their gross negligence and fraud during this time ;
- (iii) the conditions set forth in (i) and (ii) above are subject to an undertaking from HSVP that once the debt due is determined by the auditor appointed by the Hon'ble Court at least 80% of the 'debt due' so determined shall be deposited in the escrow account inter alia in terms of the Concession Agreement, Escrow Agreement and Substitution Agreement.

- (iv) the above proposal is made to safeguard immediate interest of the public sector lenders of the project and is without prejudice to the rights and remedies of RMGL/RMGSL under contract or applicable laws including inter alia the right to claim any differential amounts that may be due and payable to the lenders or RMGL/RMGSL as Termination Payments or any other payments.

Mr. Chetan Mittal, Senior Advocate appearing on behalf of HSVP informed the Hon'ble Court that since the offer has been made for the first time HSVP would need to consider the same and seek appropriate instructions in relation thereto. In view thereof, the Hon'ble Court was pleased to list the matter for further consideration tomorrow i.e. 18th September '19. Accordingly you are requested to consider the above in the larger public monies involved as represented by the public sector lenders and seek appropriate instructions for informing the Hon'ble Court at the hearing tomorrow.

Dear Mr. Banga,

This is in reference to your email, and the subsequent order passed by the Hon'ble Division Bench on 18.09.2019, the proposal as was submitted has been examined with an intent to resolve the dispute in the larger public interest. The response/ comments thereto, without prejudice to all and any other rights of HMRTC/HSVP which are or which may be accrue to it, is as under:

1. Rapid MetroRail Gurgaon Ltd. (RMGL) & Rapid MetroRail South Gurgaon Ltd. (RMGSL) have forwarded an email dated Sept 17, 2019 at 6.22 PM wherein certain proposal has been made to run the said Metro Lines ("**the Metro Lines**") and was placed before this Hon'ble Court in its hearing on 18th September, 2019.
2. At the outset, HMRTC and HSVP appreciates the deep concern that the RMGL and RMGSL have acknowledged in the said email that the running of the said Metro Lines is in public interest and as such in view of this aspect wherein the public interest has been shown to be of paramount importance, HMRTC/HSVP do hereby submit as under:-
 - (i) With respect to the request of the RMGL and RMGSL to continue to operate the said Metro Lines for a period of 30 days, it is stated that HMRTC and HSVP have already entered into a formal agreement with the Delhi Metro Rail Corporation Ltd. ("**DMRC**") on 16th September, 2019 for Operations and Maintenance ("**O&M**") of the said Metro Lines. And it is categorically stated that HMRTC and HSVP has signed the said agreement on account of the fact that previously RMGL/RMGSL were not acceding to the request of HMRTC/HSVP to run the said Metro Lines for sufficient period during which effective resolution of the entire matter could be achieved. Now, after having signed the said agreement with DMRC, HMRTC/HSVP is also of the view that the entire process of handover of O&M for the said Metrolines to DMRC be done under the supervision of Hon'ble (Retd.) High Court Judge as may be appointed by the Hon'ble Court within reasonable time.
 - (ii) Secondly, the aspect of ascertainment of "debt due" is linked with the definition of the words "debt due" in the concession agreement linked with the ascertainment of the Total Project Cost. However, the HMRTC and HSVP do hereby agree with the proposal of the RMGL and RMGSL that an auditor may be appointed to ascertain the actual figures in that respect. In this matter, the HMRTC and HSVP proposes that Comptroller and Auditor General of India ("**CAG**") may be given the assignment of financial audits under the order of the

Hon'ble Court to ascertain financial aspects including determination of over invoicing into the project. HMRTC/HSVP are agreeable for the appointment of CAG subject to full cooperation by RMGL and RMGSL and all documents and other information pertaining to the 'debt due' may be provided to CAG or the auditor so appointed with a copy to HMRTC and HSVP.

- (iii) Thirdly, during the transition period i.e. the period during which O&M of the said Metro Lines shall be transferred from the RMGL and RMGSL to DMRC, RMGL & RMGSL have proposed to act as an agent of the HMRTC and HSVP during the said period. In this respect it is stated that it will lead to further complications. HMRTC and HSVP have transferred the amount of insurances and the entire control will remain with the RMGL and RMGSL during this period. RMGL and RMGSL shall continue their O&M in terms of the concession agreements and the HMRTC and HSVP have no objection that RMGL/RMGSL may receive all the revenues arising from O&M and incur all expenses therefrom itself and pay the same as is being done currently. In other words the RMGL and RMGSL remain responsible and liable for all their acts and deeds which are generally associated with the running of the said Metro Lines, not limited to only the Gross negligence and fraud during this time.
- (iv) Fourthly, the aspect of HMRTC and HSVP undertaking to deposit the 80% of the debt due in Escrow Account as would be ascertained by the auditors depends solely on the outcome of the report as would be submitted by the learned auditor as shall be appointed by the Hon'ble Court and the HMRTC and HSVP do hereby commit and confirm to adhere to the directions as would be passed by the Hon'ble High Court or NCLAT or any other court dealing with the matter in that respect, in terms of the concession contract subject to the all other rights and entitlements in favour of both the parties arising out of the same.
- (v) With respect to the submission that RMGL/RMGSL is reserving their right to claim differential payment, it is apprised that by having stated that, RMGL/RMGSL are trying to keep options open to challenge whereby RMGL/RMGSL may rekindle this entire matter again after having settled the matter in the light of aforesaid statement i.e. after having settled the amount which becomes due i.e. 80% of the debt due in terms of the definition contained in the concession agreement as linked with the total project cost which shall be

ascertained by an auditor as shall be appointed by the Hon'ble Court. As such the same cannot be acceded to since this would lead to multiplicity of litigations and could be a serious dampener on this entire matter. This matter is being settled under the directions of the Hon'ble Court and as such the same should be acceptable to you gracefully.

- (vi) That the HMRTC and HSVP hereto reserves its right to make any further submissions in light of any further arguments or facts that may be brought to light in this matter during the audit process and course of proceedings.

Please note that all the aforesaid issues, if finally settled, shall be subject to further examination of other necessary facts and deeds which may come to light during the course of examination(s) which shall be carried out during and after the entire process of handing over of the Metro Link to DMRC and all other requirements/obligations as may flow from the Concession Agreement.

The HMRTC and HSVP expects that in view of the aforesaid terms the matter would be finally settled as amongst parties in a cordial manner and the HMRTC and HSVP assures all cooperation to resolve the same.