

## CHAPTER XV: MINISTRY OF URBAN DEVELOPMENT

### Delhi Metro Rail Corporation Limited

#### **15.1 Implementation of Airport Metro Express Line Project through Public Private Partnership**

##### **15.1.1 Introduction**

Delhi Metro Rail Corporation Limited (DMRC) is a Joint Venture company of Government of India (GOI) and Government of National Capital Territory of Delhi (GNCTD). GOI accorded approval for the Airport Metro Express Line (AMEL) from New Delhi railway station to Indira Gandhi International Airport (IGIA) (May 2007) / Dwarka (January 2009) through Public Private Partnership (PPP) mode. A Special Purpose Vehicle viz. Delhi Airport Metro Express Private Limited (DAMEPL) was incorporated with the consortium Reliance Energy Limited/CAF holding 100 per cent equity. As per Concession Agreement entered into (August 2008) between DMRC and DAMEPL the work relating to design, installation, commissioning, operation and maintenance was undertaken through DAMEPL and civil work executed by DMRC. The project covering 22.7 kms was completed at a total cost of ₹ 5697 crore (₹ 2812 crore by DMRC and ₹ 2885 crore by DAMEPL). As on 31 March 2012 paid up equity of DAMEPL was just ₹ one lakh against long term borrowings of ₹ 2752.05 crore (secured loan 1932.10 crore and unsecured loan ₹ 819.95 crore). The accumulated loss of DAMEPL as on 31 March 2012 was ₹ 341.13 crore. As per Concession Agreement an Escrow Agreement was entered into on 30 April 2009 between DAMEPL, Axis Bank and DMRC to streamline appointment of Escrow Agent, Establishment and Maintenance of Escrow account\*, Operating Procedures (deposits and withdrawals) to aid in project execution.

Commercial operation of AMEL commenced with effect from 23 February 2011. The operation was suspended on 8 July 2012 due to defects in civil works. On rectification of defects by DMRC, DAMEPL recommenced operations of AMEL on 22 January 2013.

The audit covered basis of selection of PPP model, the Concession Agreement (CA) and execution and operation of the AMEL.

##### **15.1.2 Audit Findings**

###### **15.1.2.1 Planning**

Airport Authority of India (AAI) anticipated in 2004 a steep rise in air traffic at IGIA due to Commonwealth Games to be held at New Delhi in October 2010 and proposed for a metro link to connect IGIA to Connaught Place. AAI decided (July 2004) to assign the work of feasibility study to DMRC and DMRC in turn assigned the work of preparation

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\* Means an account which the concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of Concession Agreement.

of Detailed Project Report (DPR) to RITES Limited. The DPR considered three models for financing of the project and recommended the PPP model.

Under the PPP Model civil costs outside Airport were to be borne by GOI and GNCTD equally as equity contribution with the balance cost including rolling stock to be contributed by the concessionaire with a Debt:Equity ratio of 7:3. The cost of civil works within the airport was to be contributed by the Airport Operator as grant.

Empowered Committee<sup>▼</sup> and GOI accorded approval in August 2006 and May 2007, respectively, for AMEL from New Delhi Railway Station to IGIA. The 'Expression of Interest' (EOI) for selection of bidders for development of AMEL was called for in January 2007 through international competitive bidding process. All the five consortia who responded to EOI were pre-qualified for Request for Proposal (RFP) stage. However, only two consortia viz. Reliance Energy Limited /CAF and Larsen & Toubro Infrastructure Development Project Limited/ GEIPL participated in RFP. The bids were evaluated on the basis of financial and technical criteria (prior experience in developing, operating or maintaining urban transport system, minimum networth of ₹400 crore, average annual turnover of ₹ 1200 crore etc.) and the bid of M/s Reliance Energy, *inter-alia*, offering concession fee of ₹ 51 crore, was evaluated as the highest bidder. Letter of Acceptance was issued (January 2008) to M/s Reliance Energy Ltd., which incorporated a Special Purpose Vehicle (SPV), viz. Delhi Airport Metro Express (Pvt.) Ltd. (DAMEPL) to design, install, commission, operate and maintain the AMEL from New Delhi railway station to Dwarka Sector 21, for a concession period of 30 years and the Concession Agreement (CA) for the same was entered into between DMRC and DAMEPL on 25 August 2008. Upon termination of the CA the Concessionaire is required to deliver forthwith actual or constructive possession of the Airport Metro Express Line free and clear of all encumbrances. Upon termination by DMRC on account of a Concessionaire's event of default during the operation period, DMRC shall pay to the Concessionaire an amount equal to 80 *per cent* of the Debt Due. In case of termination by the Concessionaire on account of DMRC event of default, DMRC shall pay to the Concessionaire an amount equal to debt due, 130 *per cent* of the adjusted equity and depreciated value of the project assets, if any, acquired and installed on the project after the 10<sup>th</sup> anniversary of the COD. Upon termination on expiry of the Concession Period by efflux of time, no termination payment shall be due and payable to the concessionaire what so ever, provided that in the event, any project assets is acquired and installed on the project within five years of the cessation of the Concession by normal efflux of time, with prior written consent of DMRC, then an amount equal to the depreciated value of such project assets shall be made by DMRC to the Concessionaire.

Audit observed that:

- Cabinet Committee on Economic Affairs (CCEA) had mandated (October 2005) that all projects having capital cost or underlying value of assets more than ₹ 100 crore would be brought before the Public Private Partnership Appraisal Committee (PPPAC) and after clearance by PPPAC, the project would be put up to the competent authority for final approval. However, the Company did not obtain PPPAC approval at any stage of AMEL.

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<sup>▼</sup> *Consisting of Cabinet Secretary, Secretaries of Ministry of Urban Development, Road Transport and Highways, Railways, Civil Aviation, Home Affairs, GNCTD, Planning Commission, ASI, Revenue, Expenditure, and MD DMRC.*

DMRC replied (November 2012) that the Mass Rapid Transit System projects were not routed through PPPAC as the same were reviewed by Empowered Committee and EGoM.

The reply was not acceptable as the instant project was a PPP project and hence compliance to the GOI directions in this regard was mandatory.

- In contravention of guidelines (January 2006) of the Ministry of Finance restricting the quantum of financial support (VGF) in PPP in infrastructure to maximum of 40 *per cent* of the total project cost, the GOI approval for the project considered contribution by concessionaire to the extent of 46.17 *per cent* (13.92 *per cent* equity and 32.25 *per cent* debt) of the total project cost as against 60 *per cent* required as per above guidelines.

DMRC stated (November 2012) that AMEL was having a different structure of financing which was approved by EGoM. The reply was not acceptable as AMEL was not an exception and when all the envisaged benefits of PPP projects were available to the private partner, Government instructions on VGF should also have been followed.

- The criterion for selecting PPP model was that only through this mode the AMEL could be completed in time i.e. before start of Commonwealth Games. The objective however was defeated as the project could be completed five months after the Games.
- Against ridership of 42500 passengers per day projected in the DPR for the year 2011, actual average ridership during 17 months operation of AMEL ranged between 5344 and 17794 passengers per day. The DPR projections were based on certain assumptions; however, justification for adopting such assumptions was not available in the DPR. Thus correctness of methodology adopted to work out projected ridership could not be verified in audit.

It was seen that the DAMEPL had requested for deferment of concession fee for five years and invoked arbitration (October 2012) under sustainability/financial viability clause.

#### **15.1.2.2 Financing pattern of the project**

Public Private Partnership is an arrangement between a Government owned entity on the one side and a private sector entity on the other with well defined allocation of risk between the parties. In the present project, civil works including HT sub-stations were built by DMRC and balance work (i.e. procurement, installation and commission of systems, rolling stock etc.) were provided by the concessionaire. It was, however, observed that the essential element of allocation of risks was absent in the project, as discussed below:

##### **(a) Non inclusion of Debt: Equity ratio in the Concession Agreement**

As stipulated in the DPR and also approved by the Ministry vide its order dated May 2007, the Concessionaire's contribution was to be maintained in the debt equity ratio of 7:3. Accordingly, the Concessionaire was to fund ₹ 2885 crore i.e. ₹ 865.50 crore by way of equity and balance of ₹ 2019.50 crore as debt. Audit, however, observed that Ministry's orders for maintaining debt-equity ratio of 7:3 were neither incorporated in the Concession Agreement nor complied with by the Concessionaire.

Audit observed that the concessionaire brought in equity capital of only ₹ 1 lakh at the time of incorporation (April 2008) and an amount of ₹ 611.95 crore was infused as Share Application Money pending allotment (₹ 373.90 crore in 2008-09, ₹ 93.05 crore in 2009-10 and ₹ 145 crore in 2010-11). This Share Application Money was subsequently converted into interest free unsecured sub-ordinate debt in 2010-11. Thus although authorised capital was ₹ 870 crore, the paid up capital remained at only ₹ 1 lakh, which was the minimum requirement as stipulated by Section 3 of the Companies Act, 1956 for a private company.

Audit observed that reasons for conversion of share application money into sub-ordinate debt were not on record.

Audit further observed conversion of share application money pending allotment into interest free subordinate debt, aided the concessionaire to operate a project of ₹ 5697 crore with an insignificant risk of ₹ one lakh.

DMRC replied (November 2012) that debt-equity ratio was the subject matter of 'financing documents' and monitoring the same was in the interest of senior lender. It further mentioned that share application money pending allotment was to be included in equity while calculating debt equity ratio. It also stated that the subject matter of 'equity' and 'debt due' comes into play only at the time of termination of CA and only subordinate debt disbursed by lenders is considered part of debt due.

It should be noted that compliance to EOI/financing parameters was to be ensured by DMRC. Also share application money pending allotment does not form part of equity unless allotted. Instead of insisting upon the Concessionaire to maintain the defined debt-equity ratio, the DMRC merely asked (June 2012) the Concessionaire to clarify on conversion of share application money into subordinate debt, that too after 15 months of the event (March 2011).

DMRC did not furnish any justification for non-incorporation of debt equity ratio in the Concession Agreement. Clarity in the matter is necessary to avoid the eventuality of DMRC bearing major share of risk.

#### **15.1.2.3 Non-completion of punch list items**

Clause 17.6 of the CA states that if the Independent Assessor (CMRS<sup>♦</sup>) certifies the tests of the Project systems to be successful and the project can be legally, safely and reliably placed in commercial operations, then the consultant may at the request of the Concessionaire issue a provisional certificate of completion (Provisional Certificate) as per schedule 'K'. Such a Provisional Certificate would be appended with a list of outstanding items (Punch List) signed jointly by the Consultant and the Concessionaire. All punch list items were to be completed by the Concessionaire within 90 days of the date of issue of such Provisional Completion Certificate. In case of delay beyond 90 days, the Concessionaire was allowed an additional 60 days to complete the work, subject to payment of damages of ₹ 2.00 lakh per week of such delay. Failure to complete the punch list items entitled DMRC to terminate the CA in accordance with provisions of clause 29.2 of CA.

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<sup>♦</sup> *Commissioner of Metro Rail Safety*

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Provisional Completion Certificate (PCC) was issued on 22 February 2011 with Commercial Operation Date (COD) as 23 February 2011. Punch list items appended therewith included major work such as two stations out of six stations i.e., Dhaula Kuan and Delhi Aero city stations, side platforms at New Delhi and IGI Stations, down platform at Dwarka Sector-21, check-in facilities and Baggage Handling System, etc. Audit, however, observed that punch list items required to be completed within 90 days (23 May 2011) remained incomplete even after lapse of 22 months period from the date of PCC (from 22.02.2011 to 31.12.2012). Out of damages of ₹ 1.88 crore (upto February 2013) levied as per clause 17.6 of the CA an amount of ₹ 1.19 crore was recoverable from DAMEPL (February 2013). The final completion certificate has also not been issued to the Concessionaire so far (February 2013).

### **15.1.2.4 Non-receipt of payments due to DMRC as per CA**

As per Article 8 of the CA, DMRC was entitled to receive from the Concessionaire (i) license fees of ₹ 10,000 per year during the term of the agreement, to be paid in advance within 90 days of the commencement of the year to which it is due and payable (ii) yearly Concession Fee of ₹ 51 crore from COD (with 5 per cent escalation every year), to be paid in advance within 90 days of the commencement of the year for which it is due and payable; and (iii) share of gross revenue (@ 1 per cent from 1<sup>st</sup> to 5<sup>th</sup> year, and increasing subsequently) with DMRC. Share of gross revenue was to be remitted on a quarterly basis within 10 days of the end of each calendar quarter.

Further, sub-clause 23.2.1 of Article 23 of the CA directs the Concessionaire to instruct the Escrow Bank to pay all dues to DMRC, prior to debt servicing payments.

Audit noticed that since commercial date of operation to 31 March 2012 the Concessionaire had paid an amount of ₹ 51.37<sup>1</sup> crore towards Annual Licence Fee, Annual Concession Fee and share in revenue. However, as on November 2012, following amounts were outstanding against the Concessionaire:

- Annual License fee of ₹ 10,000 from August 2012,
- Annual Concession Fee, for the year 2012-13 amounting to ₹ 53.55 crore (due w.e.f. 23.05.2012); and
- 1 per cent revenue share amounting to ₹ 11 lakh for the months of April & May 2012.

Audit further observed that the CA did not contain any penal clause to act as a deterrent for delay in payments by the Concessionaire. Further, the Management also did not enforce its right to receive payments through Escrow accounts. Thus, apart from non realisation of payments of ₹ 53.67 crore, DMRC suffered loss of ₹ 3.30 crore towards interest<sup>2</sup>.

DMRC replied that although they had the option to receive the amounts directly out of the Escrow account, but considered it prudent not to take further action at that stage as there was no income to the Concessionaire due to stoppage of operations. The reply was not acceptable as on the due date of annual concession fee i.e. May 2012, the line was

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<sup>1</sup> License Fee ₹ 30, 000 for years 2009-11, Concession Fee ₹ 51.00 crore for the year 2011-12 and Revenue share of ₹ 0.36 crore upto quarter ended 31 March 2012.

<sup>2</sup> @ 8 per cent (upto February 2013)

operational and was stopped only in July 2012. Moreover, DMRC should have protected its financial interests by including a penal clause in the CA for delay in payments.

**15.1.2.5 Non-monitoring of Escrow account**

Memorandum of Operating Procedure (MOP) for operation of escrow account was executed (April 2009) between DAMEPL and Axis Bank Limited wherein Para 1.2 of MOP defines ‘Authorised investment’ which are as follows:-

- Government of India securities
- Interest bearing deposits with banks/financial institutions acceptable to the Lenders
- Short term senior debt instruments or certificates of deposit or instruments rated at least AA of investment grade by CRISIL or ICRA or CARE or any other reputed credit rating agency
- Any scheme of a mutual fund that invests only in gilt and or debt instruments of investment grade rated at least AA by CRISIL or ICRA or CARE or any other agency and which is freely redeemable and
- Any other instrument as may be approved by the Lender's Agent from time to time.

Audit, however, observed that during the period 2009-12, investments of DAMEPL were limited to a particular set of mutual funds as detailed below:

**Statement showing investments**

	(₹ in lakh)		
Short Term Investments	2009-10	2010-11	2011-12
Reliance Money Manager Fund Institutional – Daily Dividend Plan	599.99	0.51	0.54
Reliance Liquid Fund – Treasury Plan – Institutional Plan	0.18	0.19	24.02
Reliance Liquidity Fund	1.07	22230.25	30.46
<b>Total investments</b>	<b>601.24</b>	<b>22230.95</b>	<b>55.02</b>

DMRC replied (November 2012) that if the Concessionaire or escrow agent had entered into any practices which were not permissible, action shall be taken as permitted under CA. It was further stated that DMRC had decided to appoint a special auditor to thoroughly review all the investments and all transactions under the escrow account and had also served a default notice to the Concessionaire in this regard.

The fact remained that the management had failed to monitor the escrow account transactions timely.

Audit observed that ₹ 285.43 crore was released from escrow account by the DAMEPL to its Group Companies, i.e., Utility Energytech and Engineers Private Limited and Reliance Utility Engineers Private Limited during 2009-12. While verifying their relationship with Reliance Infra it was noticed that paid up equity share capital of Reliance Utility Engineers Private Limited as on 31 March 2011 was held by Spice Commerce and Trade Private Limited (an associate of Reliance Infra) and Space Trade Enterprises Private Limited. The above two companies (M/s Spice and M/s Space) had

the same registered office address and the domain address for email was that of Reliance Infra. The above findings revealed a complex ownership structure of these companies.

It was further observed that although ₹ 58.70 crore was released during 2010-11, out of escrow account, to Utility Energy Tech Private Ltd. Audit was unable to understand as to how the funds were released from escrow account to Utility Energytech when it was not in existence during this period (2010-11) as it had changed its name to Reliance Utility Engineers Private Limited as per fresh certificate of incorporation issued on 26 October 2010 by Registrar of Companies. Further, DAMEPL also contravened provisions of Accounting Standard 18 - 'Related Party Disclosures' issued by Institute of Chartered Accountants of India (ICAI) as it did not disclose 'related party' in respect of the above transactions in their accounts during the years 2009-10 to 2011-12. In the absence of details, audit could not verify the purpose and validity of such releases.

DMRC intimated (November 2012) that special auditor was being appointed to thoroughly review all transactions under the escrow account .

It is apparent from the above that DMRC did not keep a vigil as per Article 25 'Accounts and Audit' of CA, on payments released from the escrow account and thus failed to ensure proper monitoring of escrow transactions.

#### **15.1.2.6 Compliance with Operation and Maintenance clauses**

As per Article 19.1 (a), (e) and (g) of the CA the Concessionaire was to provide suitably trained personnel for O&M activities at all times, undertake routine maintenance including prompt repairs of any wear or damage found and undertake major maintenance work such as track replacement, repair to structures etc. Further, Section 4.1 of the Operation and Maintenance manual mandates monthly inspection. Article 20 of the CA enjoins DMRC to inspect the project atleast monthly and send its O&M Inspection Report to the Concessionaire. The Concessionaire was required to remedy the defects and deficiencies set forth within 30 days of its receipt and submit a compliance Report.

Audit observed that DMRC wrote to DAMEPL that the Concessionaire failed to carry out (till May 2012) any inspections (Routine, Principal and Special inspection) of viaduct and bearings as per the provisions of the O&M Manual. Moreover, the Concessionaire was not equipped with the inspection infrastructure required to carry out the inspection as per the manual. Although the Concessionaire did not comply with CA clauses but they appointed a consultant viz. M/s Shirish Patel & Associates Consultants Pvt. Ltd. (SPA) with the approval of DMRC to investigate defects in the DMRC works and on the basis of defects as brought out in the report (June 2012) of SPA, suspended the train services from 8 July 2012. In a meeting held on 4 July 2012 under the Chairmanship of the Secretary, Ministry of Urban Development, a Joint Inspection Committee (JIC) was constituted for inspection of the bearings and structure of the line. JIC's report (July 2012) identified certain defects such as (a) bearings provided at improper locations, (b) defects in cross levels (c) bearing material damaged etc., and concluded that poor execution of bearing seating work and poor workmanship during construction were the reason for problems in bearing area. Further, it also opined that secondary reason for the present state of affairs was absence of proper inspection of the girders, especially in the bearing area, both before commissioning and during initial stage of train operations.

Audit further observed that though DMRC carried out monthly inspection but failed to detect any major defects in civil construction. DMRC in its monthly inspection carried

out in March 2012 had pointed out certain defects during inspection of viaduct, which were not taken to any logical conclusion because they were stated to be as per the design of viaduct. The defects were later confirmed by JIC.

The line came to a halt in July 2012, within 16 months of commissioning. DMRC had carried out the repair work valuing ₹ 15 crore at the risk and cost of the civil contractor and operations resumed w.e.f. 22 January 2013. As the civil structure was built by DMRC and balance works as well as O&M were the responsibility of the Concessionaire, each party was holding the other responsible for the defects in the civil structure and for improper maintenance. The Concessionaire invoked arbitration (October 2012) under clause 36.2 of Concession Agreement on the grounds including sustainability/ financial viability of the project. DMRC had not taken any action, except issuing notices to civil contractor for poor workmanship and Consultant for poor quality of inspection during construction period of the project. The final report of the enquiry committee appointed by the Ministry of Urban Development was pending (February 2013).

**15.1.2.7 Undue advantage to DIAL due to relaxing payment conditions**

AMEL was envisaged by the Ministry of Civil Aviation (MoCA) in the year 2004 and MoCA agreed that DIAL would pay an upfront fee of ₹ 350 crore as grant towards civil jobs for the metro line inside the Airport, which was approved by the EGoM. Subsequently, DIAL requested (July 2007) DMRC to add one more station near NH-8 to serve its commercial areas for which it agreed to bear the additional cost of ₹ 98 crore to be paid in advance. Commercial rights of the two stations viz. NH 8 and at Airport were given to DIAL *vide* an agreement dated April 2009. However, on the request of the Secretary MoCA, DMRC allowed DIAL to make payment of ₹ 448 crore in four instalments (1 June 2009, 1 September 2009, 1 December 2009 and 1 March 2010).

Audit observed that allowing DIAL to make payment in four instalments was in contravention of GOI approval for the payment of construction costs upfront. Further, DIAL did not make the payment even as per the agreed schedule and an amount of ₹ 54.43 crore was outstanding (February 2013). Further, records relating to cost-benefit analysis of the expected revenues from the commercial rights of the two stations as against investment made by DIAL were not available with DMRC.

DMRC replied (October 2012) that this payment was beyond DIAL's agreement with MoCA and there is no favour or undue advantage to DIAL. The reply does not clarify why stage payments were accepted, when it was very clear from the conception stage of the project itself that this payment was to be made upfront.

**15.1.2.8 Concession in Customs Duty**

DAMEPL requested (3 March 2009) DMRC to forward the letter of recommendation for availing concession on custom duty to Ministry of Urban Development (MoUD). Audit observed that instead of seeking recommendation of MoUD, the Chief Project Manager (Airport Line) of DMRC directly issued a recommendation letter to the Customs Authorities. Audit further observed that cost approved for this project by EGoM was inclusive of taxes and duties. Hence, issue of a recommendation letter by DMRC to enable concession in the customs duty for capital goods valued at ₹ 991.08 crore gave an undue advantage to Concessionaire.

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DMRC replied (November 2012) that it had issued only a recommendation letter and not any certificate to customs. The reply was not acceptable as on the basis of DMRC's letter a benefit of ₹ 29.56 crore in form of concession in customs duty was availed by the contractor, which ultimately benefited the Concessionaire.

### ***Conclusion***

**In contravention of guidelines (January 2006) of the Ministry of Finance restricting the quantum of financial support (VGF) in PPP in infrastructure to maximum of 40 per cent of the total project cost, the concessionaire was allowed to contribute only to the extent of 46.17 per cent (13.92 per cent equity and 32.25 per cent debt) of the total project cost. Further, the project has been executed using a unique model of PPP wherein the Concessionaire is operating a project of ₹ 5697 crore with an insignificant equity of ₹ one lakh. DMRC failed to ensure the payments due to it and also withdrawals from the Escrow Account as per agreements.**

**The operations were suspended on 8 July 2012 due to defects in civil works. The Joint Inspection Committee constituted by the Ministry for examining defects in civil structure attributed them to poor workmanship and absence of proper inspection during construction as well as operation. Though the line has resumed operations from 22 January 2013 the Concessionaire has invoked arbitration under Clause 36.2 of CA on the grounds including sustainability/financial viability of the project.**

The matter was reported to the Ministry in February 2013; their reply was awaited (March 2013).