

Chapter 2

Planning



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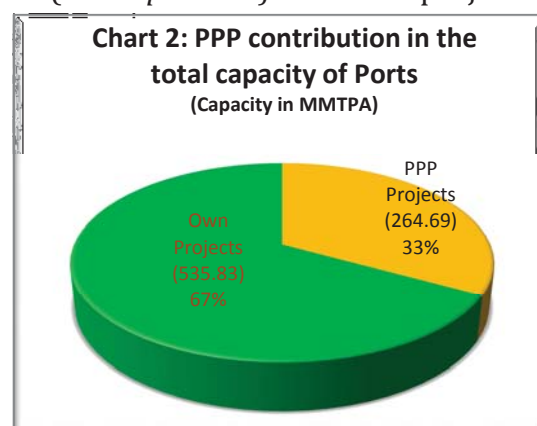
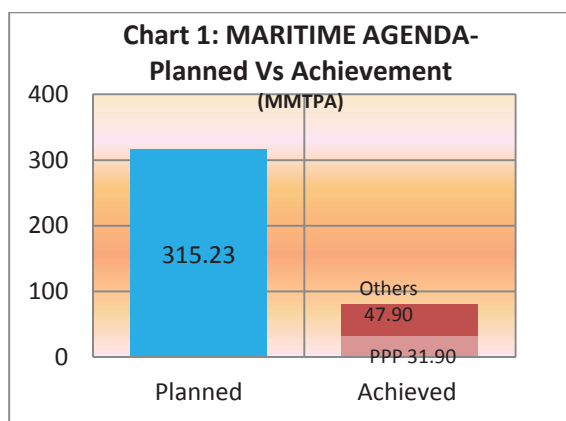
Modernization of port infrastructure involves the expansion/upgradation of berths, construction of new berths/terminals, installation of new and modern equipments, automation of port operations and implementation of web based port community system. Long term strategic plans were prepared by MoS and Major Ports (2006 and 2011) to achieve these objectives.

2.1 National Maritime Development Programme and Maritime Agenda 2010-20

GOI formulated the National Maritime Development Programme (NMDP) in 2006 to facilitate enhanced private investment and improve service quality. However, as NMDP covered only the Major Ports, at the instance of the Planning Commission, MoS prepared (January 2011) the Maritime Agenda for the decade 2010-20 to be taken up in three phases during 2010-12, 2012-17 and 2017-20.

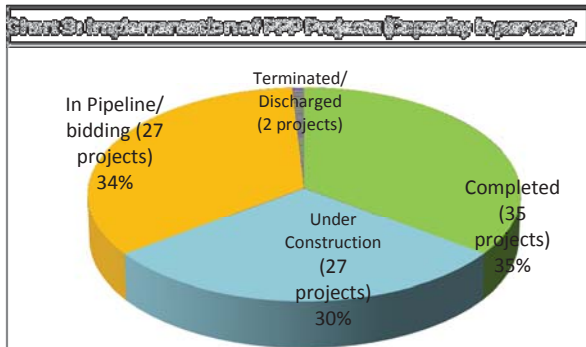
The Maritime Agenda proposed a capacity addition of 767.15 MMTPA through 352 projects during April 2010 to March 2020 in three phases (Phase I: 2010-12 which would raise capacity by 315.23 MMTPA through 141 projects, Phase II: 2012-2017 which would raise capacity by 340.22 MMTPA through 146 projects and Phase III: 2017-20 which would raise capacity by 111.70 MMTPA through 65 projects).

During the period 2010-12 the Ports achieved a capacity addition of 79.80 MMTPA (25.31 per cent) against the planned capacity addition of 315.23 MMTPA and the contribution of PPP projects was 31.90 MMTPA (10.12 per cent) from four projects as shown in Chart 1 and 2 below:



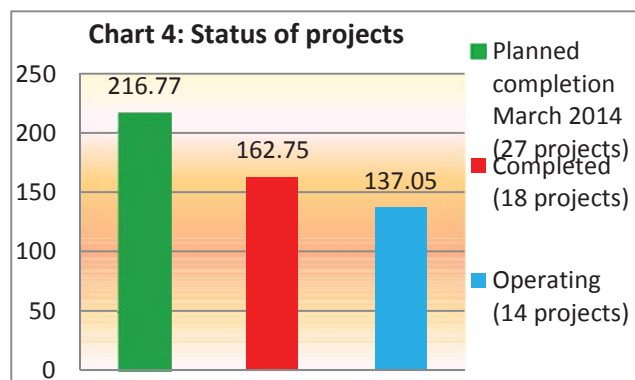
2.2 Implementation of PPP Projects

GoI has sanctioned (up to March 2014) 91 PPP Projects proposing a total capacity addition of 751.71 MMTPA at a cost of ₹63712.95 crore. 35 out of the 91 projects have already been completed with a capacity addition of 264.69 MMTPA by March 2014. 27 projects were under construction involving a cost of ₹19910.55 crore with capacity addition of 221.94 MMTPA (expected to be completed by June 2020) and 27 projects costing ₹26213.38 crore



were under pipeline⁸/bidding process with a proposed capacity addition of 257.97 MMTPA as depicted in **Chart 3**. One project each was terminated and dropped (**Annexure I**).

Out of the 61 projects selected for audit, CAs were signed in 41 projects involving a capacity addition of 374.20 MMTPA. Of these 41 projects, 27 would have been completed by March 2014 with a capacity addition of 216.77 MMTPA, against which only 18 projects were completed with a capacity addition of 162.75 MMTPA as depicted in **Chart 4**. However, four⁹ projects having capacity of 25.70 MMTPA (15.03 per cent) are not operational (June 2015).



This indicates slow progress in implementation of projects defeating the basic objective of resorting to PPP route for faster augmentation of infrastructure resources by infusing private funds, inducting latest technology and improved management practices.

Audit observed delays in various stages of implementation of projects and lapses in monitoring the projects and weak controls in revenue collection mechanism, which are dealt in subsequent chapters.

2.3 Project Formulation, Appraisal and Approval

MoF, Department of Expenditure (DoE) issued (January 2006) Guidelines for Formulation, Appraisal and Approval of projects to be undertaken through PPP. Once the project to be taken up through PPP is identified by the sponsoring ministry, the details of the projects and terms of concession agreements would be discussed in inter-ministerial consultative committee. Thereafter, the proposal (where the project cost is more than ₹250 crore) is submitted to the PPPAC for in-principle clearance. After obtaining in-principle clearance, a proposal for final

⁸ All projects upto the stage of signing of CA are included under pipeline.

⁹ Berth 11 and 12 (7.20 MMTPA) at KPT, Berth 15 (1.5 MMTPA) at KPT, LNG Regasification Terminal (5 MMTPA) at CoPT and Iron Ore Terminal (6 MMTPA) at KPL.

clearance of PPPAC would be submitted along with draft project agreement, project report and draft RFP [where the project cost is less than ₹250 crore, the proposal is submitted to Standing Finance Committee (SFC)/ Expenditure Finance Committee (EFC)]. The PPPAC/SFC/EFC after obtaining concurrence of Planning Commission, Ministry of Law (MoL) and any other Ministry/ Department involved, clears the proposal and submits to CCEA/ CCI¹⁰ (Competent Authority) for final approval. In cases where the PPP project is based on MCA, 'in-principle' clearance by the PPPAC is not required. The appraisal powers for PPP projects were subsequently revised (September 2014) and only projects valuing more than ₹1000 crore were referred to PPPAC for clearance.

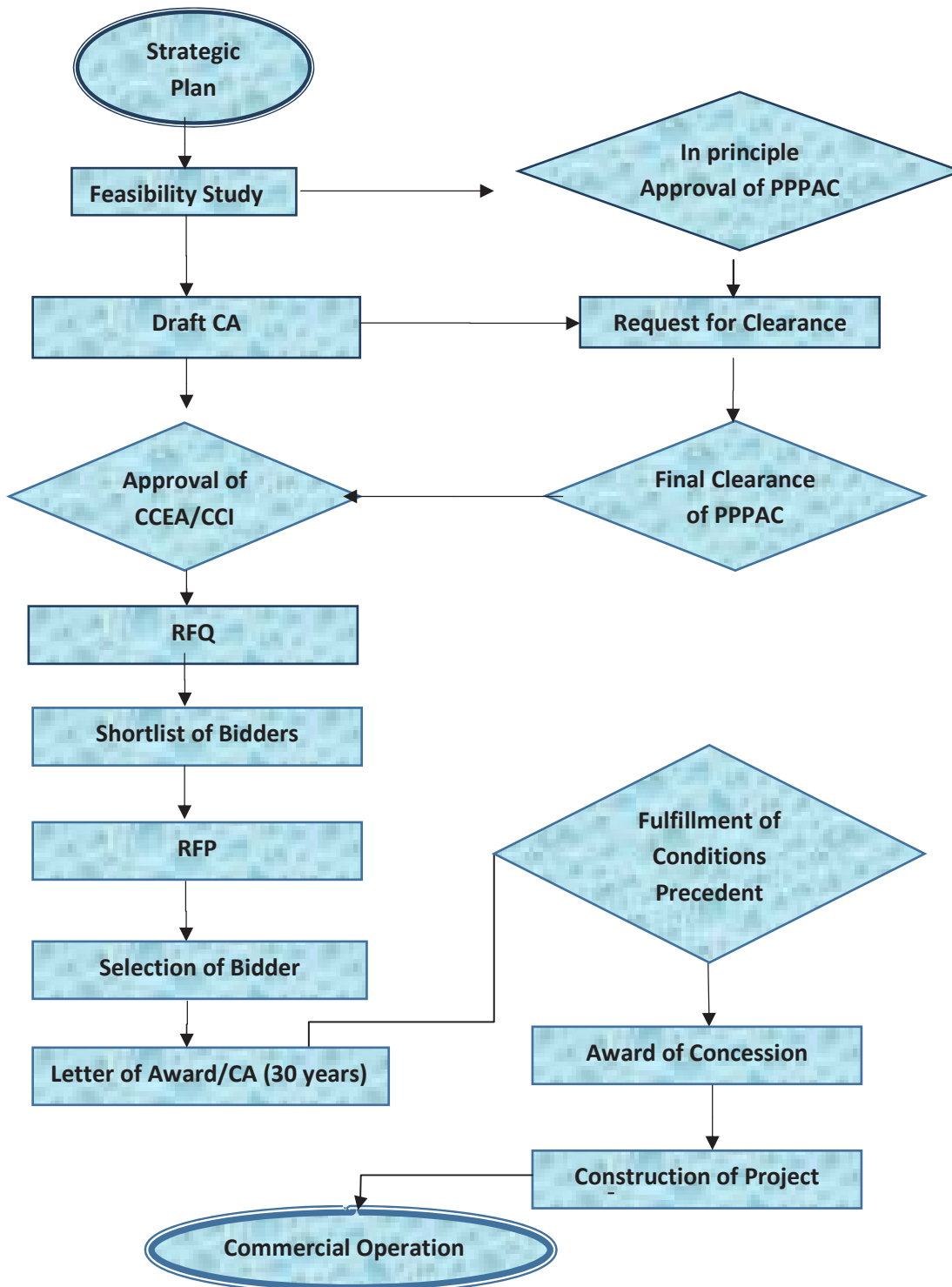
After the approval of the competent authority, the process of bidding ie., engaging a concessionaire commences that consists of different stages such as Request for Qualification (RFQ), Request for Proposal (RFP) evaluated by the Evaluation Committee formed by ports and final award of the project to the successful bidder. The Concessionaire forms an SPV to execute the work.

As per the prevailing delegated powers, Ports had obtained clearance for 36 projects from PPPAC/SFC. 16 projects were taken up prior to the issue of the above guidelines and hence approval from PPPAC/SFC was not sought while 9 projects are awaiting clearance.

¹⁰ Based on the delegated financial powers that change from time to time.

Flow chart of establishment of Public Private Partnership projects in Major Ports is given below:

Flow Chart 1: Establishment of a PPP project



2.4 Deficiencies in Planning

A PPP Project would succeed only if the risks are uniformly apportioned between the two parties. A Concession Agreement is unlikely to succeed if it has conditions which are harsh on the operator. It was noted that many of the projects had serious design issues as would be discussed in the succeeding paragraphs.

2.4.1 Faulty Structuring of NSICT Project

Jawaharlal Nehru Port Trust (JNPT) entered into an agreement with Nhava Sheva International Container Terminal (NSICT) (July 1997) for operation of a Container Terminal. The royalty was initially fixed at ₹47 per TEU¹¹ (1.57 per cent) from an amount of ₹3000¹² collected by the operator per TEU. The royalty progressively increased to ₹2670 per TEU as against a collection of ₹3341 per TEU. The proposed royalty for the 30th year was as high as ₹5610 per TEU. The project thus became progressively less remunerative to the operator and threatened the viability of the project. JNPT erred in structuring the project by including a royalty model that was incompatible with the tariff.

A comparison of rates fixed by TAMP from time to time and royalty agreed by NSICT is given below:

Table 2.1 Minimum Guaranteed Throughput (MGT), Actual traffic and rates with share

Years	MGT (in TEU)	Actual TEUs handled	Royalty rate in ₹/TEU	Tariff Charged by NSICT		JNPT's share (%)	Revenue of NSICT (₹ in crore)	Royalty to JNPT (₹ in crore)	Actual Royalty received by JNPT as per Annual Account (₹ in crore)	Net revenue to NSICT (₹ in crore)
				Moved by Road	Moved by Rail					
1	2	3	4	5	6	7=4/5*100	8=3*5	9=8*7/100	10	11=8-10
1999-00	175000	343187	47	3000	3900	1.57	102.96	1.61	1.40	101.56
2000-01	350000	694899	52	3480	4524	1.49	241.82	3.61	3.55	238.27
2001-02	500000	943928	143	3480	4524	4.11	328.49	13.50	11.71	316.78
2002-03	500000	1201119	157	3480	4524	4.51	417.99	18.86	18.47	399.52
2003-04	550000	1230555	348	3480	4524	10.00	428.23	42.82	36.82	391.41
2004-05	550000	1232470	378	3480	4524	10.86	428.90	46.59	45.62	383.28
2005-06	550000	1323801	615	3000	3900	20.50	397.14	81.41	73.28	323.86
2006-07	550000	1359125	886	2640	3432	33.56	358.81	120.42	111.19	247.62
2007-08	550000	1508056	1194	2912	3786	41.00	439.15	180.06	168.65	270.50
2008-09	550000	1427128	1542	2912	3786	52.95	415.58	220.06	206.93	208.65
2009-10	550000	1532075	1960	3115	4050	62.92	477.24	300.29	283.95	193.29
2010-11	550000	1537240	2086	3217	4182	64.84	494.53	320.67	315.43	179.10
2011-12	600000	1401847	2218	3341	4344	66.39	468.36	310.93	306.00	162.36
2012-13	600000	1044105	2361	3341	4344	70.67	348.84	246.51	242.20	106.64
2013-14	600000	969458	2510	3341	4344	75.13	323.90	243.33	239.83	84.07
2014-15	600000	1160220	2670	3341	4344	79.92	387.63	309.78	305.23	82.40
							6059.55	2460.46	2370.26	3689.29

While management accepted (January 2015) that the fixation of royalty on 'per TEU' basis was incorrect, Ministry stated (October 2015) that audit have not considered all

¹¹ Twenty Foot Equivalent Unit, a unit measure for containers based on their length.

¹² Revenue earned by NSICT is considered after charging only road movement charges.

the charges while computing the net revenue of NSICT. The terminal had not reported operating losses in any of the years. Also due to various global/economic reasons, the container handling charges did not grow on expected lines. JNPT further intimated during the Exit Conference that, to ensure optimum utilization of resources, it is proposing to shift the project to a revenue sharing model.

The proposal of the port to migrate to a revenue sharing model after 18 years of operation due to high royalty rate per TEU, highlights the design deficiencies.

2.4.2: Non inclusion of provision for sharing of various charges with the port.

While designing the PPP projects, in the pre-MCA period, it was noted that there was no uniformity across projects as to which revenues accruing to the operator were to be shared with the port.

We examined 14 completed PPP Projects, the license agreements (LA) for which, were signed prior to MCA and observed lack of uniformity in respect of sharing of various charges viz. Berth hire, cargo handling, other income etc. collected by PPP operator, with the port as detailed below:

- The LAs for Berths 5 and 6 at Mormugao Port Trust (MPT) (April 1999) and Multipurpose Berth 4A at Kolkata Port Trust (KoPT) (May 2002) did not include provision for sharing of revenue on berth hire charges. This resulted in total revenue of ₹382.80 crore (2005-06 to 2013-14) being kept out of sharing arrangements.
- LA for Coal Terminal at KPL (September 2006) did not include provision for sharing of other income accounted for by the PPP operator. This resulted in a total revenue of ₹19.06 crore (March 2011 to March 2013) being kept out of sharing arrangements.
- LA for multipurpose berths EQ8 and EQ9 (2001) at Vishakhapatnam Port Trust (VPT) defined gross revenue as the sum of berth hire charges and wharfage charges only and did not include other charges collected by the licensee viz. charges for stevedoring, storage, shore operations etc. This resulted in a revenue of ₹66.09 crore on stevedoring charges (January 2010 to March 2014) being kept out of sharing arrangements. (The remaining charges on storage, shore operations etc could not be assessed in audit as the data was not available with the port.)

While confirming the audit observation, Ministry stated (October 2015) that KoPT had referred the dispute for arbitration and matter was sub judice in Supreme Court. It further stated in respect of KPL that ₹10.01 crore was claimed (August 2014) from the operator. An additional auditor was also appointed in this regard and legal opinion sought on the auditor's report was awaited.

Thus, Ministry's reply substantiates that there was lack of uniformity across projects in sharing of various charges with the port in the pre-MCA period.

Recommendation 1: Ministry may put in place a mechanism wherein the best practices in ports are shared and informed while structuring PPP projects.