

**Minutes of the 38<sup>th</sup> Board Meeting of Haryana Mass Rapid Transport Corporation Limited (HMRTC) held on 19.09.2019 at 11:00 AM in CS's Committee Room under the Chairpersonship of Smt. Keshni Anand Arora, IAS, Chief Secretary to Government of Haryana-cum-Chairperson HMRTC.**

**Present:-**

- |    |                             |                   |
|----|-----------------------------|-------------------|
| 1. | Sh. Alok Nigam, IAS,        | Director          |
| 2. | Sh. Devender Singh, IAS     | Director          |
| 3. | Sh. T.V.S.N Prasad, IAS     | Director          |
| 4. | Sh. Anand Mohan Sharan, IAS | Director          |
| 5. | Sh. V. Umashakar, IAS       | Director          |
| 6. | Dr. D. Suresh, IAS          | Managing Director |
| 7. | Sh. K. M. Pandurang, IAS    | Director          |

Leave of absence was granted to Sh. T.C.Gupta, IAS, ACS Transport, Sh. Apoorv Kumar Singh, IAS PSTCP, Haryana, Sh. Narhari Singh Bangar, IAS, MD HSIIDC, Directors of HMRTC; Sh. Ravinder Kumar Garg, and Sh. Manoj Singhal Independent Directors HMRTC.

**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.**

In addition to the status given in agenda, the following details were also submitted before the Board during discussions:

1. Board was informed that in its 36<sup>th</sup> meeting held on 05.09.2019, the licence agreement for operation & maintenance to be executed with DMRC was approved and MD HMRTC-cum-CA HSVP was authorized to execute the same. Accordingly, the licence agreement was executed and signed amongst HSVP, HMRTC and DMRC on 16.09.2019.
2. In its 36<sup>th</sup> meeting held on 05.09.2019, Board was further apprised of the notice of hearing dated 21.08.2019 issued by Hon'ble Justice D.K. Jain, Former Judge, Supreme Court of India. Hearing was held on 02.09.2019 and the written submissions were submitted before the Forum on 03.09.2019. However, as no orders were passed by the Hon'ble Justice (Retd.) D.K. Jain, till 05.09.2019 and as per the termination notice dated 07.06.2019 of RMGL/RMGSL, the operation of Metro link was to be stopped from mid-night of 08.09.2019, CWPs were filed in the Hon'ble Punjab and Haryana High Court, Chandigarh. CWPs were listed for hearing on 06.09.2019 and on the same day, the order dated 06.09.2019 of Hon'ble Justice (Retd.) D.K. Jain was also received. Vide order dated 06.09.2019, Hon'ble Justice (Retd.) D.K. Jain permitted RMGL/RMGSL "to handover the possession and control of Metro link from Delhi Metro Sikanderpur Station on MG Road to NH-8 to HSVP,

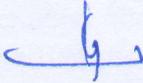
*pursuant to the termination of the Concession Contract dated December 9, 2009, on or before, September 9, 2019...". Board was also informed that HMRTC/HSVP needs to challenge the orders of Hon'ble Justice (Retd.) D.K. Jain dated 06.06.2019 at the appropriate forum, before the same attain finality as the date of handover of possession and control Metro link i.e. 09.09.2019, mentioned in the said orders, is flowing from the termination notices of RMGL/RMGSL, whereas HSVP/HMRTC have also issued their termination notices on 26.08.2019 and the 90 days period of the same expired on 24.11.2019.*

3. Board was further informed that as per Clause 24.3 of Concession Contract of RMGL, *"in the event of the Termination Notice being issued by HUDA, the Lenders may exercise the rights of step-in or substitution as provided in the Substitution Concession Contract to be entered into among the Concessionaire, HUDA and Lenders in the form set forth in Schedule "G". Provided, however, that in the event of such step-in or substitution, HUDA shall allow an additional Cure Period of 90 (ninety) days prior to Termination to enable the substituting entity to cure any breach or default subsisting on the day of such step-in or substitution. On the exercise of the rights substitution in accordance with the Substitution Concession Contract and with this Sub-Article 24.3, the entity substituting the Concessionaire shall thereafter be deemed to be the Concessionaire under this Concession Contract and shall enjoy all rights and be responsible for all obligations under this Concession Contract as if it were the Concessionaire."* Further, as per Clause-B of Schedule "G", *"the Senior Lenders shall have the right to substitute the Concessionaire by a Selectee for the residual period of the Concession on the terms, conditions and covenants mentioned herein below..."* Similar provisions exist in Article 32.3 of the Concession Agreement executed with RMGSL. Thus, there is a need to issue a notice to the Senior Lenders intimating that the termination notices have been issued by both the parties i.e. RMGL/RMGSL and HSVP/HMRTC.
4. Board was further informed that as per resolution passed in the 37<sup>th</sup> meeting held on 10.09.2019, the Additional Chief Secretary to Govt. Haryana, Finance Department finalised the terms of negotiations on each of the issues of RMGL/RMGSL as reproduced in the order of Hon'ble Punjab & Haryana High Court dated 09.09.2019. A copy of the terms of negotiations (**Annexure-A**) was placed in the Board meeting for information and post facto approval.
5. Board was further informed that as per resolution passed in the 37<sup>th</sup> meeting, a meeting of the Committee under the Chairpersonship of Additional Principal Secretary to Chief Minister, Haryana-cum-CEO, GMDA was held on 16.09.2019 with the representatives of RMGL/RMGSL, in compliance of the order of Hon'ble Punjab &

Haryana High Court dated 09.09.2019, for negotiations on the issues raised by RMGL/RMGSL before the Hon'ble court. A copy of the gist of discussions (**Annexure-B**) was placed in the Board meeting for information.

6. Board was briefed about the court proceedings dated 17.09.2019 and 18.09.2019 and the contents of the communication proposed to be sent to RMGL/RMGSL placed as Annexure-II.
7. After detailed deliberations, the Board passed the following resolutions
  - i. "Board noted the contents of para 1 above.
  - ii. **RESOLVED THAT** the order of Hon'ble Justice (Retd.) D.K. Jain dated 06.09.2019 may be contested at the appropriate forum, before the same attain finality.
  - iii. **RESOLVED FURTHER THAT** the notice to the Senior Lenders intimating that the termination notices have been issued by both the parties i.e. RMGL/RMGSL and HSVP/HMRTC may be sent immediately.
  - iv. **RESOLVED FURTHER THAT** the terms of negotiations with RMGL/RMGSL as finalised by Additional Chief Secretary to Govt. Haryana, Finance Department (**Annexure-A**) are hereby approved.
  - v. **RESOLVED FURTHER THAT** the the gist of discussions of the committee with representatives of RMGL/RMGSL (**Annexure-B**) be taken on record and noted the same.
  - vi. **RESOLVED FURTHER THAT** the draft of the communication placed before the Board as **Annexure-II** is hereby approved with minor modification as suggested by ACS Finance.
  - vii. **RESOLVED FURTHER THAT** MD, HMRTC-cum-CA, HSVP be and is hereby authorized to send draft of the communication to RMGL/RMGSL in the form of email and place 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."

  
(Managing Director)  
HMRTC

  
(Chairperson)  
HMRTC

**TERMS AND CONDITIONS OF RMGL/RMGSL FOR NEGOTIATIONS AND DISCUSSIONS:**

1. Time bound handover of the Project to HSVP;
2. Commitment to take handover the Project by HSVP;
3. Commitment to pay at least 80% of debt due as termination payment to RMGL/RMGSL by HSVP;
4. Handover to start immediately;
5. RMGL/RMGSL to act as agent of HSVP for further work post 09.09.2019;
6. Cost and benefit to be on HSVP's account;
7. Indemnification of RMGL/RMGSL from any third party claims and from HSVP's actions;
8. Rights and benefits of parties get frozen on the date termination of Concession Agreement becomes effective, i.e. 09.09.2019; and
9. Issuance of vesting certificate by HSVP.

**TERMS & CONDITIONS OF NEGOTIATIONS OF HSVP/HMRTC:**

- 1, 2 & 4:** HSVP/HMRTC is ready to take over the Operation & Maintenance of metro links from Sikanderpur to NH-8 & from Sikanderpur to Sector-56, Gurugram, without prejudice to HSVP's/HMRTC's rights under the Concession Contracts as also as per the applicable laws.
- 3:** HSVP/HMRTC is committed to the terms and conditions of Concession Contracts without prejudice to any of their rights and entitlements under the respective Concession Contracts. The commitment to pay 80% debt squarely depends upon the determination of the actual and legal debt due as deployed on the Metro Link by way of audit which has direct bearing on the Project cost. This can be ascertained after investigations being carried out by various government agencies and by forensic audit more particularly in view of allegations of over invoicing of the project cost.
- 5, 6 & 7:** RMGL/RMGSL may convey the terms and conditions to act as agent/licensee of HSVP/HMRTC. HSVP/HMRTC is ready to indemnify RMGL/RMGSL from HSVP's actions but not against the third party claims.
- 8:** The matter is sub-judice before the Hon'ble High Court and as such this aspect shall be decided by the appropriate forum including the Hon'ble High Court and shall be binding upon both the parties as per the provisions of applicable law. Thus, HSVP/HMRTC denies that Rights and benefits of parties have frozen on 9.9.19.
- 9:** This is dependent on the settlement of aforesaid issues and once the same are crystallized, the vesting certificate shall be issued.

**Gist of discussion held on 16.09.2019 in compliance of the orders of Hon'ble Punjab & Haryana High Court dated 09.09.2019 with the representatives of RMGL/RMGSL.**

Sh. V. Umashankar, Additional Principal Secretary to Chief Minister Haryana-cum-Chief Executive Officer, Gurugram Metropolitan Development Authority welcomed the participants and explained the context in which present meeting is being held.

It was discussed that HSVP/HMRTC is ready to discuss all the issues/ points raised by RMGL/RMGSL which are listed in the above cited order of the Hon'ble Court. However, the order of discussion of points should be to address the most crucial issues of public importance, i.e. continuation of operation & maintenance of Metro systems developed by RMGL/RMGSL.

It was pointed out that from the orders of Justice D.K. Jain dated 06.09.2019 and the orders of Hon'ble Punjab & Haryana High Court dated 09.09.2019, it is clearly evident that the question of validity of termination notices issued by RMGL/RMGSL and HSVP/HMRTC, and consequences thereof shall be decided by the appropriate forums and that may take its own course. Thus, the issue of operation & maintenance is to be discussed first. However, the representatives of RMGL/RMGSL were of the view that the point wise discussion on the matters mentioned in the orders of Hon'ble High Court dated 09.09.2019 needs to be discussed.

After elaborate discussions, representatives of RMGL/RMGSL agreed to discuss on the point of operation & maintenance first. They were requested to explain the terms & conditions to act as agent/license of HSVP/HMRTC. They suggested that they will operate the metro system in 'principal - agent' relationship. HSVP/HMRTC suggested that they may operate the metro system under License Agreement. After detailed discussions HSVP/HMRTC agreed to discuss on the terms & conditions of 'principal - agent' mechanism which has following two important aspects:

- a) Financials: HSVP/HMRTC agreed to pay the entire operation and maintenance cost, payment of deficit amount, if any, after paying the operational cost from the revenue receipts. Further, in case there is any surplus, the same shall be parked in the Escrow account for utilisation of servicing the debt at appropriate time.
- b) Liabilities: RMGL/RMGSL was of view that under the 'principal-agent relationship', all the liabilities will be of HSVP/HMRTC as they will act only as agent of HSVP/HMRTC. RMGL and RMGSL will be responsible for all liabilities arising on account of their gross negligence and fraud only. The committee was of the view

that the liabilities need to be clearly defined. HSVP/HMRTC shall be liable to all the liabilities arising out of their actions and similarly RMGL/RMGSL should be liable for all the liabilities flowing from their action. However, they didn't agree to the same on the pretext that they shall act as an agent of HMRTC and work only as per the directions of HSVP/HMRTC. It was explained that they shall be in direct control & command of all the employees, contracts etc. during the transition period and thus they should be liable for all their actions/responsibilities. They again didn't agree to the same and called of the meeting.

**List of the Participants:**

**From GoH/HSVP/HMRTC**

Sh. V. Umashankar, IAS, APSCM-cum-CEO,  
GMDA.

Dr. D. Suresh, IAS, CA, HSVP-cum-MD,  
HMRTC.

Sh. K.M. Pandurang, IAS, DGTCP

Smt. G. Komal Kishore, Secretary Finance,  
HBPE.

Sh. Nadim Akhtar, Adv(P), HMRTC

Smt. Kiran Lekha Walia, Financial Advisor,  
Finance Department.

Sh. Rajesh Goel, Advocate

Sh. Jatin Kumar, Advocate

Smt. Poonam Mittal, Advocate

**From RMGL/RMGSL**

Sh. Dilip Bhatia, CEO, ITNL

Sh. Rajiv Banga, MD, IRL

Sh. Ramanuj Kumar, Advocate

Smt. Meghna Singh, Group General  
counsel, IL&FS

Sh. Rajnish Khurana, CFO, Rapid Metro