

Delhi Airport Express Line Takeover by Delhi Metro Railway Corporation

(By Jatinder Cheema* & Meghna Rao**)

1. BACKGROUND

The Delhi Airport Metro Express (“**DAME**”) a high speed metro link, is one of the largest Build Operate and Transfer (“**BOT**”) project, connecting airport directly to the central business district, executed on public private partnership framework (the “**Project**”). DAME is 22.7 Km long high speed metro rail, operating between the New Delhi Railway Station and Dwarka Sector 21 in the suburbs of India's capital city New Delhi. The metro line passes through the Indira Gandhi International (IGI) Airport before terminating at Dwarka Sector 21. The Project was awarded to the consortium of Reliance Infrastructure Ltd. and CAF Spain (the “**Selected Bidder**”) by Delhi Metro Rail Corporation (“**DMRC**”) for a period of 30 years (the “**Concession Period**”), to operate and manage the Project.

The Project was undertaken as part of phase II of an urban transportation development project initiated by DMRC in Delhi. The Selected Bidder offered to pay Rs 51 Crore in the first year of the Concession Period as License Fee, for operation and maintenance of the Project. In the subsequent years, the Selected Bidder was required to pay an additional 5% per annum on a compounded basis for the remaining Concession Period. Further, the Selected Bidder offered to share 1 to 5 per cent of gross revenue till the 15th anniversary of the Concession Period as a revenue share and subsequently, share 5 per cent of the revenues, for the remaining Concession Period.

The Selected Bidder created a Special Purpose Vehicle (“**SPV**”) viz., Delhi Airport Metro Express Private Limited (“**DAMEPL**”) consisting of consortium of Reliance Infrastructure having 95% stake in the SPV and Spain-based train manufacturer, Construcciones y Auxiliar de Ferrocarriles having 5% stake in the SPV, for implementation of the Project.

DAMEPL was responsible for installation of all systems including rolling stock, overhead electrification, track, signalling and telecommunication, ventilation and air-conditioning, automatic fare collection, baggage check-in and handling, depot and other facilities. The civil works, such as building of underground tunnels, viaduct and station infrastructure of the Project was undertaken by DMRC. DAME was built at a cost of Rs.57 billion, of which the DAMEPL paid Rs. 28.85 billion (US\$580m) and the remaining construction cost was borne by DMRC. The elevated section of DAME was built over eight busy roads which carry a heavy volume of traffic, including the Ring Road, National Highway 8, Ridge Road and Sardar Patel Marg.

The operations of DAME commenced its operations in February 2011, however, the metro express has been facing issues related to safety and economic viability leading to disputes between the **DAMEPL** and **DMRC**. The issues have been discussed in the following section.

2. THE CONTOURS OF THE PROJECT COMPRISE THE FOLLOWING:

Project Name	Delhi Airport Metro Express
Project type	BOT
Project Length	22.7 Km (15.7 km is underground and 7 km, from Buddha Jayanti Park and Mahipalpur, is elevated)
Concessionaire	DAMEPL
Concession Period	30 years
Lenders to the Project	Axis Bank along with the India Infrastructure finance
Cost of the Project	57 Billion
Commencement of the Project	23 February 2011
Travel Time and Speed	18 minutes from New Delhi Station to the T3 Airport, 120 km/h

3. CHRONOLOGICAL EVENTS WHICH LED TO TAKEOVER BY DMRC:

The operation of DAME was originally scheduled to commence on 31 August 2010, however, the commercial operation date (COD) of the Project was finally achieved on 23 February, 2011, after missing four previously set deadlines for the achievement of COD. The purpose of the high speed rail link was to operationalize the same before the common wealth game; however this objective was not achieved. DAMEPL had to pay a penalty of Rs. 37,50,000/- to DMRC for each day's delay as liquidated damages, as it failed to get safety clearance from the Commissioner of Metro Rail Safety (CMRS), commencing from 30 September, 2010. Subsequently, DAMEPL paid Rs.7.5 million for each day's delay as liquidated damages, commencing from 31 October, 2010 for failing to achieve the COD for the Project. Aerocity and Dhaula Kuan stations operations were commenced the on 15th August, 2011.

The operation of DAME was suspended from 7 July 2012 to 22 January 2013, due to technical problems including cracks in the girders, the iron beams that support the tracks; dislocated bearings that support the train; defective tracks and water seepage in tunnels. A joint inspection by DMRC and DAMEPL was conducted upon such inspection it was found that 540 bearings need rectification and some girders which have cracked also needs to be recast.

After the recommencement of operations of DAME, the speed was reduced to only 50 km/hr, and thus, extending journey time from the airport to New Delhi Station by over 40 minutes. Towards the end of 2013, the speed is expected to increase by 90 km/hr, subject to the clearance from the CMRS.

Subsequently, DAMEPL issued a letter to DMRC on June 27, 2012 expressing its inability to continue operations of DAME after the business hours of 30th June, 2013 and has claimed termination payment under the concession Agreement. Further, it was claimed that despite the lapse of nine months and repeated requests by DAMEPL, DMRC failed to make alternate arrangements for taking over the operations of the DAME, even after the termination of the concession agreement in October 2012. The termination clause was invoked by DAMEPL, on account of material breach and event of default by DMRC arising under the concession agreement, as DMRC had persistently failed to cure substantial defects in the civil structure designed and built by DMRC, within the period prescribed under the concession agreement. For the said event of default by DMRC under the Concession agreement, DAMEPL has claimed a termination payment equal to 130% of the adjusted equity and 100% of the debt due for the Project, but the exact amount is not disclosed. The issue regarding termination payment is under arbitration and the exact sum is yet to be determined, however the likely termination amount is claimed to be higher than Rs. 2,800 Crore investment made by DAMEPL in the Project that includes Rs 670 crore to Rs 350 crore of project-related issues, Rs 250 crore for loss of reputation and Rs 70 crore for loss of operations between July and December 2012.

Subsequent to the issuance of the said notice, DMRC commenced all necessary arrangements required for taking over the operations of the DAME. However, DMRC in its board meeting, rejected the issuance of the said notice by DAMEPL and termed it as violation of the concession agreement and the ongoing arbitration proceeding.

An operations and maintenance team of 100 officials was created under DMRC's director, operations and a core committee of seven senior officials was formed by DMRC's managing director, to handle extreme emergency situations. DMRC decided to depute officers and staff for all the strategic departments such as operations, traction, electrical and maintenance, civil, signalling and communications, security, rolling stock and finance.

An operations control manager (OCM) was appointed with a dedicated team to take over the control of the entire important operations control centre (OCC) of DAME, from where the Airport Express link operations are monitored. However, it was decided that the staff employed by the Concessionaire in station management and train operations shall continue to carry on with their responsibilities under the DMRC's supervision.

4. PRESENT STATUS OF THE PROJECT

On 1st July, 2013, DMRC took over the operation of DAME from DAMEPL, with deployment of over 100 officials to handle the operation and maintenance.

5. CONCLUSION AND ANALYSIS

Public Private Partnership (PPP's) is long- term commitment and the successful delivery depends of a PPP Project entirely on the performance of the obligation of the Authority and the Concessionaire. A sound and robust contract will fail to meet the desired objectives if it is not managed and monitored effectively. In the abovementioned Project, the exit of the Concessionaire from the Project and failure on part of DMRC to cure substantial defects in the civil structure is not desirable, as it defeats the purpose of executing the Project under a PPP framework. Further, inadequate attention to timely and appropriate action not only compromised the user interests, it also resulted in to disputes and claims in arbitration proceedings. Therefore, it is concluded that the process of performance monitoring needs to be dynamic and under constant review because project circumstances undergo a change over time due to the long duration of PPP contracts.

The Department of Economic Affairs, Government of India defines PPP as follows

“PPP means an arrangement between government or statutory entity or government owned entity on one side and a private sector entity on the other, for the provision of public assets and/or related services for public benefit, through investments being made by and/or management undertaken by the private sector entity for a specified period of time, where there is a substantial risk sharing with the private sector and the private sector receives performance linked payments that conform (or are benchmarked) to specified, pre-determined and measurable performance standards.”

Based on the above definition, PPP arrangement is for the provision of public assets and/or related services for public benefit, however the concessionaire's inability to undertake the management and operations of DAME has defeated the public purpose.

* Partner, Dhir & Dhir Associates

** Associate, Dhir & Dhir Associates