

Pl see the highlighted portions carefully.

Relevant portions of HMRDC agreement:

A. **South Western Railway** (hereinafter referred to as “**SWR**”, which expression shall include all its successors and permitted assigns), Ministry of Railways (MoR), an integral part of the Government of India, is the Ministry in charge of all activities including construction, operation and maintenance of railway lines in India.

B. **HMRDC** is a special purpose vehicle set up to implement a broad gauge railway link between Hassan station and Kankanadi station (Mangalore).

C. **HMRDC has entered into a Concession Agreement on 18th March 2004 with MOR for a period of 32 years for the development, financing, design, construction, Operations and Maintenance of the broad gauge rail link between Hassan and Mangalore;**

D. In order to fulfill its Operations and Maintenance obligations under the Concession Agreement, HMRDC intends to appoint an operations and maintenance agency for carrying out the Operations and Maintenance of the broad gauge line;

E. HMRDC has invited and SWR has accepted the offer to be the Operator to undertake the Operations and Maintenance of the broad gauge rail line between Hassan station and Kankanadi station (Mangalore).

1.2 Scope of Agreement

The scope of the agreement shall include

1.2.1 By SWR:

a. **Performance of Operations and Maintenance of the Project Railway and in particular shall cover Hassan Station** (identified by the Indian Railways as chainage point Kilometer 0) **to Kankanadi Station** (identified by the Indian Railways as chainage point Kilometer 183.19), a total distance of 183 kilometers. This shall comprise of the following sections:

- i. Hassan to Sakleshpur measuring approximately 42 kilometers;
- ii. Sakleshpur to Subramanya Road measuring approximately 55 kilometers;
- iii. Subramanya Road to Kabaka Puttur measuring approximately 42 kilometers;
- iv. Kabaka Puttur to Kankanadi measuring approximately 44 kilometers

b. Ensuring prompt evacuation and clearance of the traffic on the Project Railway by making available sufficient number of wagons and locomotives.

c. Collection of revenues from the movement of non-container freight traffic, haulage charges and all other revenues in respect of the container traffic, apportioning and making payment of net revenues to HMRDC after deducting the O&M cost.

d. Management of accidents, interruptions or any other events affecting the movement of traffic on the Project Railway.

1.2.2 By HMRDC:

a. Payment of O&M costs in accordance with Article 3.0 to SWR.

b. In accordance with its future expansion plans, SWR shall be entitled to provide rail connections along the length of the Project Railway to build a new railway line without adversely affecting the traffic movement and functioning of Project Railway. Such additions shall be outside the purview of this Agreement.

c. **HMRDC shall have the right to develop at their cost Additional Facilities in its business interest, whether in terms of additional stations and freight handling facilities, crossing stations, or any other facility for this purpose.** This Agreement shall cover the Operations & Maintenance of such Additional Facilities as well.

2.0 OPERATIONS AND MAINTENANCE (O&M)

2.1 Responsibilities of SWR

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2.1.2 The Operations and Maintenance of the broad gauge rail link between Hassan station and Kankanadi station (Mangalore) shall be the responsibility of SWR.

2.1.3 SWR shall take all necessary action, to ensure that it is in a position and capacity to take up O&M immediately after the BG line is constructed and certified fit by the CE/SWR.

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5.2 Train Schedule and Operation on the Project Railway

5.2.1 Indents placed at any station or loading points on the Project Railway shall be accepted and expeditiously dealt with in accordance with the extant rules, procedure of MoR, and relevant provisions of this Agreement.

5.2.2 Subject to the requirements of normal operation and discipline of traffic movement including observance of operation restrictions, quota, ceiling limits etc. imposed by Railways

from time to time, SWR shall move the traffic originating/ terminating either from/ at New Mangalore Port/ Hassan on priority after meeting the passenger traffic requirements.

5.2.3 Notwithstanding any terms and conditions regarding train operations agreed upon, in case of National Emergency, the exigencies of national requirement shall take precedence over everything else without payment of any compensation to HMRDC.

7.1 Obligations of SWR

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j. To make all efforts to ensure that O&M is performed to ensure that the O&M and associated safety standards laid down by Indian Railways are complied with and fitness of track for 100 Kilometers per hour speed is maintained, throughout the tenure of this Agreement.

k. To ensure the movement of traffic on the Project Railway without undue hindrance or delay, which may have a Material Adverse Effect on the interests of HMRDC.

7.2 Rights of SWR under this Agreement

As the Operator, SWR shall be entitled to the following:

a. The utilisation of the Project Assets of HMRDC for the O & M of the Project Railway.

b. The right to collect revenues from the customers for the movement of non-container freight traffic and haulage charges for container traffic on the Project Railway in accordance with Article 6.0.

c. SWR shall be entitled to run on the Project Railway, the equivalent of the passenger services that already was operational on the MG track in the Project Area without payment of any access charges. Provided, however that, any new passenger service on the Project Railway shall be commenced only with the prior written consent of HMRDC.

d. Right to collect revenues for passenger services and provide facilities incidental thereto at its cost.

e. Without in any way adversely affecting the movement of traffic on the Project Railway, or otherwise adversely affecting the functioning of the Project Railway, the right to connect to the

Project Railway, at any point along its length, other rail lines which are constructed in accordance with the normal expansion plans of SWR.

8.2.1 Payments to HMRDC - SWR's Event of Default

a. SWR shall be liable to pay all outstanding amounts due to HMRDC within seven days from the date of receipt of the written intimation from HMRDC.

b. SWR shall not be entitled to collect the proportionate fixed cost for the entire period of default with reference to Article 8.1.1, which shall include 7 days of non-operation with reference to Article 8.1.1.

c. In the event of SWR's Event of Default on account of non-payment, SWR shall be liable to pay HMRDC, an interest equal to the SBI PLR prevailing on the date on which the Notice of Default of was issued for the period from the date when the payment was due to the date of payment.

8.2.2 Payments to SWR - HMRDC's Event of Default

a. HMRDC shall be liable to pay all outstanding amounts due to SWR within seven days from the date of receipt of the written intimation from SWR.

b. In the event of HMRDC's Event of Default, HMRDC shall be liable to pay SWR, an interest equal to the SBI PLR prevailing on the date on which the Notice of Default was issued for the period from the date when the payment was due to the date of payment. The interest shall be payable on the amounts under Article 8.2.2(a) till such time the Default has been cured.

8.3 Early Termination

In the event of early termination, the procedure for termination set forth in the Concession Agreement shall be followed along with the Article 8.2.1 and 8.2.2 being the default payments payable by the Defaulting Party to the Non-Defaulting Party.