CASE STUDY 18 FEBRUARY 2014

Public Private Partnership: The Nhava Sheva International Container Terminal, India

Background

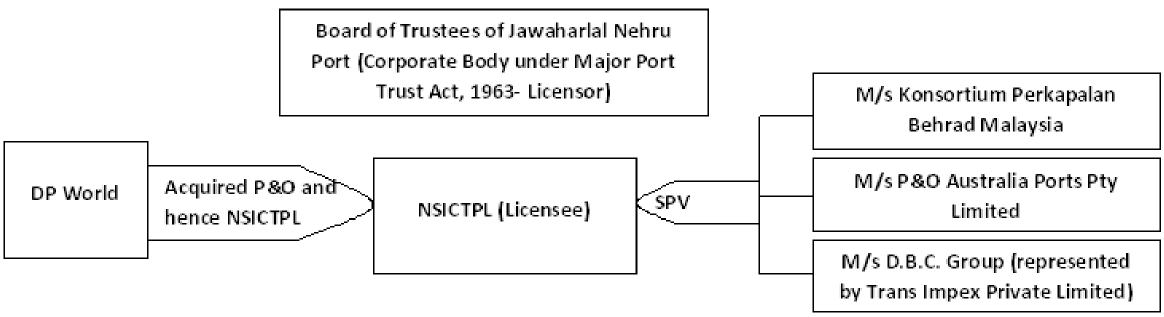
The Nhava Sheva International Container Terminal (NSICT) is India's first private container terminal and one of the most modern container terminals in India. It is located within the Jawaharlal Nehru Port, Mumbai. In early 1990s when economic reforms were brought in, core sectors such as ports were also reformed to have private participation. In order to meet the growing demand for commercial container traffic, the Jawaharlal Nehru Port (JNP) took initiative to introduce private participation in ports for the first time in India. In 1994, the Government of India (GoI) decided to invite private participation in building new container terminal within JNP, while holding the operation and ownership of existing terminals of JNP. As advised by the World Bank, Ministry of Surface Transport and , Department of Ports and GoI through JNP Trust issued in 1995 a global tender for a new container terminal on 'Build Operate and Transfer' (BOT) basis for thirty years. The tender witnessed an overwhelming response globally and around 30 Indian and foreign firms applied for the bid.

Project Description

The bid for creating a new container terminal under BOT was awarded to a joint venture, having M/s P&O Australia Ports Pty Limited, M/s Konsortium Perkapalan Berhad and M/s D.B.C Group of companies (represented by Trans Impex Private Limited) as the parties to the agreement. A Special Purpose Vehicle (SPV) was incorporated as Nhava Sheva International Container Terminal Private Limited (NSICTPL) in 1997 which was based on the same joint venture. In 2006, having M/s P&O Australia Ports Pty Limited was taken over by Dubai Ports World Limited (DP World) one of the world's largest container terminal operators and henceforth NSICTPL became part of the DP World terminal network. According to the concession agreement signed, it was agreed that:

1. The container terminal was to be created on BOT basis for a period of 30 years, expiring in 2027.
2. NSICTPL was responsible for developing, managing, operating and maintain the facilities on common user basis. The simple royalty was to be paid to the JNP Trust. A minimum guarantee in form of traffic rate was fixed and revenue sharing as per the same was to be paid.
3. The ownership of the land, reclaimed sea and water in the licensed premises remained with JNP Trust.
4. On the expiration of the stipulated license period, all the civil engineering structures, equipment, machinery, ancillaries, etc. would be handed over to JNP Trust *free of cost*.

Currently, NSICTPL is fully operational and handles close to 20% of India's container traffic. The terminal has convenient access to neighbouring Mumbai, and to the hinterland of Maharashtra, Madhya Pradesh, Gujarat, Karnataka and large part of North India.



Financial and Risk Allocation of the Project with Project VfM Analysis

The project was developed at a cost of Rs. 733 crores for over a period of two years. The Debt Equity Ratio for the project was 1:1. ICICI led a consortium of lenders and lent around Rs 190 crores (26% of project cost) to the SPV under a guarantee provided by P&O Ports, Australia. The remaining debt of Rs 117 crores was raised from other financial institutions. Of the total debt, 55% was US$ denominated debt while the balance was Rupee denominated debt.

The risk in this project has been taken up by the private operator to the only exception of delays in land acquisition that has been taken up by the Government i.e. in this case The Jawaharlal Nehru Port Trust. Therefore all pre-operative, construction, operation phase and handover risk vests with the private operator.

In particular, this project is a classic case of successful PPP process implementation barring the issue related to tariff and royalty on account of contractual gaps in the concession agreement. Since its inception in 1997, the container traffic growth has been positive, the average turnaround time dropped from 4.5 days in its first year of operation to about 2 days in the second year itself. The pre-berthing delays dropped from close to 1.5 days to 0.5 days over same period. The success of NSICT can be attributed to its superior productivity parameters as well as the state-of-the-art equipment and latest technology. In fact by offering better customer services and faster turnaround, NSICT started diverting traffic away from the JNPCT, which prompted the JNPCT authorities to acknowledge the importance of efficient port operations and capacity augmentation through better handling equipments to compete with NSICT. Thus the success of NSICT through the PPP route, created a 'demonstration effect' on JNPCT to modify their policy measures and strategy so as to compete with NSICT.

Learnings and Observations

1. **Bid evaluation criteria need to be simple but robust:** The bid evaluation criterion of highest NPV of Royalty payment was simple but insufficient. The lack of a methodology to assess the royalty pay out to the licensor and the failure to foresee problems arising from the interaction of the royalty with the tariff level created a number of issues in the subsequent operations phase.
2. **Addressing project performance & contractual issues in the agreement explicitly:** This issue is related to specific performance norms or delivery standards that need to be specified to safeguard users' interests. In the NSICT agreement, the only performance related standard mentioned was crane productivity (i.e. moves per hour), which was of limited interest to the users. Moreover, there was no mention of penalties in case of shortfalls in performance.
3. **Termination commitments to cover debt due**: It is a standard practice to protect lenders' interest and such a provision is quite common in concession agreements. However, it places greater pressure on the government to monitor the borrowings and repayments of the SPV. This is even more critical in areas where independent regulators have not been instituted to monitor service and financial performance. For example in major ports, the Tariff Authority of Major Ports (TAMP) scrutinises the capital expenditure of port terminals and allows or disallows certain expenditure to be included under the heading of 'allowable expenditure' for the purpose of tariff setting. In summary, while the commitment to cover 'debt due' is essential, the government sponsors are also required to build capacity for effective contract supervision and regulation to ensure lender's interests are protected

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