

F. No. 2/4/2021-PPP
Government of India
Ministry of Finance
Department of Economic Affairs
PPP Cell

North Block, New Delhi
Dated 13th September, 2021

Office Memorandum

Subject: Record of Discussion of the 105th PPPAC meeting to consider project proposal from Ministry of Petroleum & Natural Gas for asset monetization of two natural gas pipelines of GAIL through the InvIT.

The undersigned is directed to forward the Record of Discussion of the 105th Meeting of the PPPAC held to consider the project proposal of from Ministry of Petroleum & Natural Gas for asset monetization of two natural gas pipelines of GAIL through the InvIT, held on 27th August, 2021, for information and necessary action.

Encl: As Above


(Dr. Molishree)

Deputy Secretary to the Government of India

To,

1. Finance Secretary & Secretary, D/o Expenditure, North Block, New Delhi
2. CEO, NITI Aayog, Yojana Bhawan, New Delhi
3. Secretary, D/o Legal Affairs, Shastri Bhawan, New Delhi
4. Secretary, Department of Public Enterprises
5. Secretary, Department of Investment and Public Asset Management

Copy to:

1. CMD, GAIL
2. Sr. PPS to Secretary, DEA
3. Sr. PPS to Joint Secretary (IPF), DEA

Minutes of meeting of the 105th PPPAC Committee to consider the proposal of M/o PNG for asset monetization of two natural gas pipelines of GAIL through the InvIT

The 105th Meeting of PPPAC chaired by Secretary, DEA was held on 27th August, 2021 at 12:15 PM to consider the proposal of M/o PNG for asset monetization of two natural gas pipelines of GAIL through the InvIT. List of Participants is enclosed at **Annexure I**.

Particulars of Project Proposal for consideration of PPPAC	
Proposal	Asset Monetization of two natural gas pipelines through the InvIT
Administrative Ministry/ Department	M/o Petroleum and Natural Gas (M/o PNG)
Implementing Agency	Gas Authority of India Ltd. (GAIL)
Assets	a) Dabhol-Bengaluru pipeline (DBPL) - Maharashtra, Goa, Karnataka b) Dahej-Uran-Panvel-Dabhol pipeline (DUPL-DPPL) Gujarat, Maharashtra, UT of Dadra-Nagar-Haveli
Gross Blok of the Two Pipelines	Rs. 5,000 Crore (Approx.)
Considered by PPPAC	In Principle Approval

1. JS, DEA welcomed the participants to the 105th meeting of the PPPAC and apprised the PPPAC that the proposal for "In-Principle Approval" has been received from M/o PNG asset monetization of two natural gas pipelines of GAIL through creation of Infrastructure Investment Trust (InvIT) in accordance with the procedure prescribed by SEBI InvIT regulations for identified pipeline asset of GAIL either through transfer of asset or through leasing/concession agreements. The proposal has been appraised by the PPPAC members & appraisal note along with comments has been sent to M/o PNG.

2. JS, DEA further apprised that at present, the PPPAC considers projects which are on PPP mode, however, the current proposal is being taken up for consideration pursuant to the recommendations of the Core Group of Secretaries for Asset Monetisation (CGAM) wherein, inter-alia, it was recommended that *'All Ministries/Departments may consider adopting the process of having asset monetization proposals appraised by PPPAC before submitting to the CCEA/Cabinet for approval in the interest of time.'*
3. M/o PNG was then invited to make the presentation and M/o PNG apprised the PPPAC that they have initiated a proposal to create a InvIT by GAIL as per SEBI InvIT regulations 2014 trust. With the InvIT framework, GAIL would be in a position to monetize assets either through asset transfer or leasing/ concession agreement for which two pipeline assets with gross block about Rs. 5000 Crore for DUPL-DPPL and DBPL have been identified. M/o PNG said that actual valuation is expected to be higher than the Gross Block due to better growth potential considering evolving Indian gas market, utilization of the pipeline assets, etc.
4. M/o PNG informed that it is envisaged to monetize the existing identified pipeline assets of GAIL through InvIT mechanism to provide a new source of funding for infrastructure development. Proceeds from the InvIT transaction is to be used by GAIL entirely, for fresh investment for the transmission network expansion and other capital-intensive schemes.
5. M/o PNG further informed that since Tariff is regulated, Returns are limited @ 12% with the volume risk with pipeline developer. Further, GAIL's assets are mostly utilized for its own gas marketing volume and internal consumption. Under the present proposal, assets need to be returned back to GAIL after the completion of the economic life as there will be no Return on asset after completion of economic life. It was also informed that GAIL has appointed their Transaction Advisor (TA).
6. M/o PNG thereafter submitted the following proposals for consideration of the PPPAC: -

- a) GAIL to setup InvIT and create asset holding SPV(s) for transfer/ concession/lease of assets.
- b) Change in CPSE character of the SPVs after monetization of InvIT units
- c) Assets to be handed back to GAIL after completion of economic life
- d) Relaxation from DPE guidelines for delegation of powers to Maharatna CPSEs, for equity investment limit of Rs. 5,000 Cr. in one project with overall limit of 30% of net worth for equity investment in JV/ Subsidiary for investment in proposed SPV,
- e) Special provisions of waiver of stamp duty/GST on transfer of assets/ leasing agreements to minimize financial loss due to tax. Else, transactional cost may be allowed to be recovered in Transportation Tariff as historical cost of acquisition under PNGRB Regulations
- f) Special provisions of waiver of capital gain tax on sponsor on sale of InvIT units to protect value for existing shareholders
- g) Pay and perks of employees needs to be protected. Consolidated financials of GAIL along with its wholly owned subsidiaries to be considered for purpose of Pay, Perks, PRP etc.
- h) Provide sufficient flexibility to a Maharatna entity (GAIL) for deciding project parameters like tenure, transaction structure, terms of the concession agreement etc., to protect the interest of all the stakeholders.

7. Then, with the permission of Chair, the following were discussed: -

- a. The Chair observed that the purpose of Asset Monetization is to generate upfront resources for expanding capital outlay and further leveraging those resources for enhanced CAPEX. This primary goal should be the guiding principle for taking up Asset Monetization proposals and as such, future investment proposal should be lined up for the proceeds generated.
- b. The Chair also observed that in the present case, GAIL appears to have fiscal space to raise resources through debt as its Debt Service Coverage

Ratio is around 0.12 and its Cost of Debt is around 5% p.a. Given that successful InvITs till date have a steady return of around 11 -12 % p.a., raising resources through InvITs should not result in higher Cost of Capital to GAIL.

- c. It was also observed that asset monetization per se, does not mean permanent sale of assets and the model of Asset Monetization, viz., lease/ concession/ transfer, etc. should be decided with clarity on the right to operate and collect revenues.
- d. The Chair observed that while the Tariff is to be regulated by PNGRB, the volume and capacity utilisation is unexpected.
- e. The Chair observed that M/o PNG has also requested for special provisions of waiver of stamp duty/GST on transfer of assets/ leasing agreements etc.
- f. NITI Aayog while echoing observations of the Chair also enquired about the advantages of appointing an affiliate of GAIL as Investment Manager (IM). NITI emphasised on ensuring transparent corporate governance structure in the IM. NITI Aayog also raised the issue of possibility of conflict due to GAIL being both the Sponsor of the project and also its User. NITI Aayog also emphasized that the overall benefit to the government under the asset monetization scheme needs to be factored in.
- g. DoE while broadly agreeing with the proposal stated that erosion of the shareholders' value of GAIL should not happen due to asset monetization through InvIT. DoE suggested to have another detailed meeting of PPPAC after receipt of report of Transaction Advisor of GAIL. DoE further emphasised on needs of review of DPE guidelines w.r.t investment limits of CPSE.
- h. DPE commented that since the existing limits on the exercise of delegated powers by 'Maharatna' CPSEs have been laid down with the approval of the Cabinet, CCEA approval may be sought for the relaxations. DPE further advised to ensure that no additional cost may be incurred by GAIL while getting back the assets after completion of economic life. DPE also asked that if assets are proposed to be leased, then the question of transfer of assets may not arise. DPE also observed that the proposal to consider consolidated financials of GAIL along with its wholly owned subsidiaries to

be considered for purpose of Pay, Perks, PRP etc is not in accordance with DPE Guidelines.

- i. JS DEA observed that one of the purposes of doing monetisation is to bring private sector efficiencies in expansion of business and O&M resulting into more value for the public and private party. However, considering the extant PNGRB tariff regulations, there appears to be no incentive for such efficiency as once the capacity utilization reaches 75%, tariffs are readjusted to reflect the increased capacity utilisation. On the other hand, as the O&M shall be with GAIL, there is no scope for private efficiency. Therefore, M/o PNG has to review whether within the existing legal/regulatory framework, pipelines are amenable for asset monetisation or some changes in legal/regulatory framework is required.
 - j. JS DEA observed that proposal for asset monetization is to be seen in terms of future cash flows from the asset and not in terms of Gross Block Value. M/o PNG should estimate valuation accordingly. In fact, initial valuation of future cash flows as indicated by the M/o PNG is around Rs.7,500 crores whereas gross block value is only around Rs.5,000 crores. It was also suggested during the discussion that although it is more of a taxonomical issue, however concession model for transferring asset operation and revenue collection is more suitable than proposed lease model.
8. M/o PNG gave the following response to the issues raised by PPPAC Members:-
- a) M/o PNG informed this is the first time M/o PNG is venturing into Asset monetization through InvIT route. This is only the third InvIT proposal by a government entity after PGCIL and NHAI, therefore, there would be a learning curve.
 - b) M/o PNG also informed that GAIL can fund its investment by a mix of Debt and internal resource generation. GAIL is currently raising debt at less than 5% p.a interest rate and the overall cost of debt for GAIL is around 5.5% p.a. Further, benefits of taxation on the interest cost further reduces the Cost of Debt resources for GAIL. The low interest cost of debt for GAIL is mainly due to its ability to borrow funds from foreign markets without hedging costs. Thus, Debt Model of financing may be more cost effective.

- c) M/o PNG informed that GAIL has commitment of investment of around Rs. 46,000 Cr in various pipelines and other projects in next 4-5 years and out of which, over Rs. 10,000 Cr have already been spent. Further, there may be an additional investment of around Rs. 10,000 Cr. in upcoming and new projects.
- d) M/o PNG informed that the Tariff from the pipelines is regulated under the PNGRB Guidelines. Under the PNGRB regulations for Tariff Determination, in case the pipeline flow goes beyond 75%, then the Tariff is accordingly adjusted to reflect the increased capacity utilization. As such, in case of DBPL pipeline wherein the capacity utilization beyond 75%, scope of increasing revenue substantially is not there. However, in case of DUPL-DPPL pipeline, the capacity utilization is less than 75% and hence possibility of increased realizations due to higher capacity utilization can be anticipated. Hence, the volume risk precipitates on the developer. Further, beyond economic life of the asset, the Tariff Determination excludes the CAPEX and hence the tariff gets substantially reduced even though the Maintenance cost of the pipelines go up.
- e) M/o PNG informed that special exemptions are necessary to minimize financial loss due to tax implications. M/o PNG requested that in case such waiver is not considered, then transactional cost may be allowed to be recovered in Transportation Tariff as historical cost of acquisition under PNGRB Regulations. It was also requested to provide special provisions of waiver of capital gain tax on sponsor on sale of InvIT units to protect value for existing shareholders.
- f) M/o PNG informed that GAIL has vast knowledge of gas transportation and a GAIL affiliate will bring the required sectoral knowledge for managing the assets. Further, identification and appointment of IM would be done with the assistance of the TA and within the SEBI regulation to realize the best possible value. Further, there will be more than 50% Independent Directors in the IM as per SEBI guideline and Govt would be appointing these Independent Directors, bringing required transparency in corporate governance.
- g) M/o PNG also informed that at present GAIL accounts for majority market share in the pipeline space and hence scope for conflict would be minimal.

GAIL's gas pipelines are unique in nature as GAIL is the bulk user of its pipeline assets (back-to-back basis) and will be paying the tariff to the investors in case of asset monetization. It was informed that GAIL's contracts with existing customer's generally have "Assignment Clause", so there would be no problem in GAIL Contracts for transportation of Oil/Gas post Asset Monetization.

9. Based on the above deliberations, the PPPAC recommended the asset monetization of GAIL's two pipelines proposal with the following observations:
 - a. The purpose of Asset Monetization is to generate upfront resources for expanding capital outlay and further leveraging those resources for enhanced CAPEX. Therefore, future investment proposal should be lined up for the proceeds generated. Further, the overall benefit to the government under the asset monetization scheme needs to be factored in.
 - b. In the present case, GAIL appears to have fiscal space to raise resources through debt as its Debt Service Coverage Ratio is around 0.12 and its Cost of Debt is around 5% p.a. Given that successful InvITs till date have a steady return of around 11 -12 % p.a., raising resources through InvITs should not result in higher Cost of Capital to GAIL. However, inter-alia, regard should also be given to CAPEX requirements, projects in pipeline, tenure of debt and progressive change in rate of debt, etc. while arriving at a conscious decision.
 - c. The draft ToR for TA is limited to structuring of InvIT model. The scope of ToR shall be enhanced to include following suggestions:
 - i. The avenues available to GAIL for raising additional resources (Debt, Equity, InvIT, etc.) and appraisal of their respective costs. A comparative analysis of such costs of avenues of finance to be undertaken.
 - ii. The investments in projects required over the period of next 5-10 years and the avenues of finance along with their progressive costs.

- iii. Identification of assets based on study of capacity, location, current revenue estimates, future business/utilization potential, possibility of expansion/synergies with other networks, etc.
 - iv. Appraisal of the most appropriate asset monetization model and appropriate asset rights transfer model, viz. lease or concession, etc.
 - v. Impact in the form of erosion of market value of shares of GAIL due to such transfer of operational revenue generating assets.
 - vi. List of approvals/compliances required for transaction including approval of competent authority, no-objection from debt lenders/ investors for transfer/lease of assets, exchange related approvals/ compliances etc.
 - vii. Assessment of existing contracts, agreements, arrangements pertaining to the assets having impact on asset monetisation.
 - viii. Assessment of bringing Private Sector efficiencies in Operations and Management with regard to the extant PNGRB tariff regulations.
 - ix. In case of InvIT route, following should also be included in the ToR:
 - Inclusion of overall market study and potential uses of the pipeline beyond captive usage by GAIL;
 - Recommendation on the holding structure for the InvIT and capital structuring at various levels;
 - Structure should be finalised based on stakeholder consultation including target investors, sponsor and market expectations etc.
- d. The aforesaid study with the revised ToR for TAs to be completed and its outcomes/Report to be placed before PPPAC for further consideration at the earliest.

- e. Rather than seeking special dispensation and exemption from various authorities for various taxes (GST, Capital gains, Stamp Duty) etc., the proposal should fit into the existing taxation structures.
- f. All approvals required to be taken from the Cabinet should be envisaged to be obtained in one go to save time.
- g. Since the present proposal is at a preliminary stage, another detailed meeting of PPPAC may be held after receipt of report of Transaction Advisor of GAIL.

The meeting ended with a vote of thanks to the chair.

Annexure I

List of participants in the 105th PPPAC meeting held on 27.08.2021 at 12:15 PM

1. **Department of Economic Affairs, Ministry of Finance**
 1. Shri Ajay Seth, Secretary, Department of Economic Affairs (In Chair)
 2. Shri Baldeo Purushartha, Joint Secretary (IPF)
 3. Dr. Molishree, Deputy Secretary, (PPP)
 4. Shri Kartik Agrawal, Deputy Director, (PPP)

2. **Department of Expenditure**
 1. Sh. Rajiv Ranjan, Additional Secretary, Department of Expenditure
 2. Sh. Ashu Mathur, Adviser (Cost), Department of Expenditure

3. **NITI Aayog**
 1. Sh. Partha Sarthi Reddy, Adviser (PPP)
 2. Ms. Alpana Jain, Sr. Specialist
 3. Ms. Arpana Bhatia, Consultant

4. **Department of Public Enterprises**
 1. Shri Rajesh Kumar Chaudhry, Additional Secretary

5. **Department of Investment and Public Asset Management**
 1. Ms. Parama Sen, Joint Secretary

6. **Department of Legal Affairs**
 1. Dr. R.J.R. Kasibhatla, Deputy Legal Advisor

7. **Ministry of Petroleum & Natural Gas**
 1. Shri Tarun Kapoor, Secretary, Ministry of Petroleum & Natural Gas

8. **GAIL**
 1. Shri Manoj Jain, CMD, GAIL
 2. Shri M V Iyer, Director BD, GAIL
 3. Shri Ashu Shinghal, ED (CSPA), GAIL
 4. Shri Amit Jhalani, DGM (Finance), GAIL