NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA : NEW DELHI.

COUNCIL'S MEETING NO. 07/2012-13 DATED 27.09.2012 AT 4-00 P.M.

Arrangement of business

ITEM NO. 01 (C-19)

Confirmation and signing of the minutes of the Council's Meeting No. 06/2012-13 held on 28.08.2012. **(See pages 3 - 15).**

COUNCIL'S DECISION

Minutes confirmed.

NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA : NEW DELHI

MINUTES OF THE COUNCIL'S MEETING NO. 06/2012-13 HELD ON 28.08.2012, AT 4-00 P.M. IN THE COUNCIL ROOM, PALIKA KENDRA, NEW DELHI.

MEETING NO.	**:**	**06/2012-13**
DATE	**:**	**28.08.2012**
TIME	**:**	**4-00 P.M.**
PLACE	**:**	**PALIKA KENDRA, NEW DELHI.**

PRESENT :

1. Ms. Archna Arora - Presiding Officer / Chairperson
2. Smt. Tajdar Babar - Vice Chairperson
3. Sh. Karan Singh Tanwar- Member
4. Sh. Ashok Ahuja - Member
5. Sh. D. Diptivilasa - Member
6. Sh. C.K. Khaitan - Member
7. Sh. Dharampal - Member
8. Sh. Santosh D. Vaidya - Member
9. Sh. D.S. Pandit - Secretary

In pursuance of Notification No. S.O. 1737(E) dated 3rd August, 2012, issued by the M/o Home Affairs, Govt. of India, Sh. D. Diptivilasa, Addl. Secretary, M/o Urban Development, Sh. C.K. Khaitan, Joint Secretary, M/o Urban Development, Govt. of India and Sh. Santosh D. Vaidya, Special Secretary, Govt. of NCT of Delhi took oath of office, as Members of the Council, which was duly administered by Ms. Archna Arora, Presiding Officer / Chairperson.

ITEM NO.	SUBJECT	DECISION

01 (C-15)	Confirmation and signing of the minutes of the Council's Meeting No. 05/2012-13 held on 25.07.2012.	Minutes confirmed and signed.
02 (A-22)	Adoption of CPWD Works Manual 2012.	Resolved by the Council to accord approval of the following:- a) Adoption of CPWD Works Manual 2012 with all its amendments / modifications issued from time to time in NDMC w.e.f. the date of its applicability in CPWD except the financial and administrative powers to be exercised under NDMC Act 1994, in supersession of Council Reso. No. 24(A-27) dt. 22.05.2009. b) Extension of time and for variation in quantities due to additional quantities, substituted/extra items in various contracts exceeding one crore, may be approved by the Chairperson after concurrence of Finance Department, provided that the total expenditure due to such approvals does not exceed 10% of the administrative approval and the financial sanction given by the Council. c) All the contracts where expenditure exceed 10% of the administrative approval and financial sanction, shall be brought to the Council for revised administrative approval and financial sanction, giving justifications for such variation. It was also resolved that further action may be taken by the Department in anticipation of confirmation of the Minutes by the Council.
03 (A-23)	Improvement to Palika Avas	Resolved by the Council that the work of

	Housing Complex, Sarojini Nagar. SH:-Improvement of Palika Avas Housing Complex, Sarojini Nagar with grit wash-plaster using marble chips of different colours.	"Improvement of Palika Avas Housing Complex, Sarojini Nagar. SH: Improvement to Palika Avas Housing Complex, Sarojini Nagar with grit wash plaster using marble chips of different colours." be awarded to the lowest tenderer Sh. Vijay Tyagi at their tendered amount of `.1,25,01,206/- which is 16.63% below the estimated cost of `.1,49,94,344/- and 16.50% below the justified cost . It was also resolved by the Council that further action in the matter be taken by the department in anticipation of confirmation of the Minutes by the Council.
04(H-03)	Appointment of Sh. D.S. Pandit, IAS (AGMU: 97) as Secretary, New Delhi Municipal Council.	Resolved by the Council to accord approval to the appointment of Sh. D.S. Pandit, IAS (AGMU: 97) as Secretary, NDMC as per provisions of Section 33(1) & (2) of the NDMC Act, 1994 and payment of salary and allowances to him as per terms and conditions of deputation, with effect from the date of his joining in NDMC.
05 (O-03)	Audit Comments on Financial Statements for the year ended March, 2011.	Information noted by the Council and it was advised to carry out the necessary rectification in the Accounts for the subsequent years and an Action Taken Report be submitted to the Council on various recommendations made by the Audit Department.
06 (U-03)	Annual Estimate for the work Security and Traffic Services/Arrangements at NDMC Premises under Group Contract 'A', 'B', 'C', 'D', 'E', 'F', 'G' 'H' & 'J' and other related works of Security Department.	Resolved by the Council to accord administrative approval and expenditure sanction to the estimate amounting to `.17,30,77,801/- for the work Security and Traffic Services/ Arrangements at NDMC Buildings under Group Contract A to J and other items for the year 2012-13. Similarly, considering the sensitivity of service rendered, it may also not be possible at times to withdrawn/terminate it abruptly and at the same time we may also need to deploy staff on emergency basis In all such cases the department will take timely action and seek approval of Chairperson after

		concurrence of Finance.
07 (U-04)	Security and Traffic Services/Arrangements at Palika Bazar and Charak Palika Hospital under Group Contract 'B'.	Council expressed its displeasure over delay in putting up the case before the Council as the term of contract had expired on 20.11.2011. However, after due deliberations of the facts and circumstances of the case, the Council resolved to accord approval for extending the term of existing contract with the existing agency for a further period of one year w.e.f. 21.11.2011 at the existing rates, terms and conditions, subject to the condition that the contractor be asked to absorb the increase, if any, in the minimum wages that becomes payable to him during the remaining period of extension of contract. The Council further directed the department to go for fresh tender immediately and finalise the process well before the end of this contract, i.e. 20.11.2012. The Council also observed that all departments should note that such delays henceforth would not be accepted. It was also resolved by the Council that further action in the matter be taken by the department in anticipation of confirmation of the minutes by the Council.
08 (U-05)	Revision of pre-qualifying conditions in NIT for Security Services.	Information noted. Council further advised that performance parameters should be laid down and henceforth, be incorporated in the tender document.
09 (B-10)	Purchase of LT XLPE Cable of size: 400 sq.mm/3.5 C duly ISI marked.	Resolved by the Council that the approval is accorded for the purchase of 25.5 Km LT XLPE Cable of size: 400 sq.mm/3.5 C duly ISI marked from the eligible lowest tendering firm, M/s Grandeur (India) Pvt. Ltd with their Ex-works rates `.7,24,559.58 per km+ ED @ 12.36% + CST @ 2% against form 'C'+

		Freight & Insurance `.2,800**/-** + Local Cartage & Handling `.200/- thus making computed cost to `.8,33,397.45 per Km length of cable and total computed amount to `.2,12,51,635/- on the terms, conditions and specification of NIT. It was also resolved by the Council that further action in the matter be taken by the department in anticipation of confirmation of the Minutes by the Council.
10 (C-16)	Action Taken Report on the status of decisions taken by the Council in every quarter.	Information noted.
11 (C-17)	Contracts/Schemes involving an expenditure of Rs.1 Lac but not exceeding Rs.100 lacs.	Information noted.
12 (C-18)	Action Taken Report on the status of ongoing schemes/works approved by the Council.	Information noted.
	OTHER ISSUES	
	Question raised by Sh. Karan Singh Tanwar, MLA & Member, regarding Chief Engineer (BM) and various mini markets under the NDMC.	Reply placed on table as Annexure I.
	Question raised by Sh. Karan Singh Tanwar, MLA & Member, regarding various JJ Clusters in NDMC area.	Reply placed on table as Annexure II.

ANNEXURES 9 pages

Annexure ends

ITEM NO. 02 (M-03)

1. **Name of the subject/project: Mid day meal scheme.**

2. **Name of the department/departments concerned: Education Department.**

3. **Brief history of the subject/project:**

National Programme of Nutritional support to Primary Education commonly known as the Mid Day Meal scheme was launched as a centrally sponsored Scheme on 15th Aug.1995. The objective of the scheme was to boost universalization of Primary Education by increasing enrolment, attendance, retention and learning level of the children especially those belonging to the lower section of the society and to improve Nutritional status of the children.

NDMC implemented the scheme in August 2003 and 60 schools out of 82 schools were covered in the year 2003-04. The scheme was fully implemented in the month of September 2004 in all the NDMC, NDMC Aided & Navyug Schools run by the Navyug School Educational Society, a fully funded Society of the NDMC. Since then NDMC is providing cooked mid day meal in all the Schools up to Class V through NGOs/Caterers. NDMC extended the benefit of mid day meal scheme up to class XII in the year 2007-08. Since 2010-11 two suppliers Iskcon Food Relief Foundation & M/s Manjeet Caterer are supplying mid day meal up to the closing of schools i.e. before summer vacation in all the NDMC, NDMC Aided & Navyug Schools. The revised rate /Nutritive value/weight of the cooked meal mentioned against the each category is given below:

Category of the students	**Rate per day per child**	**Requisite Nutritive value**	**Approx. Weight of cooked meal**
Nursery	(Rs. 3.11-)	450 calories 10 Gms. Protein	250 Gms. to 300 Gms.
Primary	Rs.3.11- with 100 gms. of free grain subsidy i.e. wheat/rice	450 calories 20 gms. protein	300 Gms.
Middle	Rs.4.65/- with 150 gms. of free grain subsidy i.e. wheat/rice	700 calories 30 gms. protein	350 Gms.
Sec. & Sr. Sec.	5.57/-	700 calories 20 gms. protein	350 Gms.

Table (A) Estimated Expenditure:-

Sr. No	Class	Tentative Enrollment (Approx)	Rats / meal Per Child Rs	No. of Days	Total (in Rs)
1	Primary	14533	3.11	200	9039526
2	Upper Primary	6449	4.65	200	5997570
3	Nursery	2087	3.11	200	1940910
4	Sec Sr. Secondary	4910	5.57	200	5469740
	Total				**22447746**

3.1 Table (B) Estimated expenditure on the basis of the average attendance (i.e.85%).

Sr. No	Scheme	Classes	Total Estimate	85% of Total Estimate
1	Plan	Primary	9039526	7683597
2	Plan	Upper Primary	5997570	5097934 .
3	Non Plan	Nursery	1940910	1649773
4	Non Plan	Secondary & Sr. Secondary	5469740	4649279
	Total		**22447746**	**19080584.1**

4. Detailed Proposal on the Subject/project

The work of the Mid Day Meal supplier may be assigned on existing terms & conditions for the year 2012-13 with a stipulation that the contract would be initially for a period of one year i.e. 2012-2013 and can be extended for the year 2013-14 if the performance is found satisfactory. The items of food to be supplied are as under: -

Wheat based items:

Atta & Besan Puri with Alloo curry/or mixed vegetables
Atta Poori with chhole (mashed vegetables added to the gravy)
Suji Halwa with chhole

Rice based items:

Rice Chhole with mashed vegetables added to the gravy
Rice with sambhar/Daal (with vegetables added to the gravy)
Rice with Kadhi (with vegetables added to the gravy)

4.1 Health and Hygiene

4.11 The service provider NGOs/Caterer/others who will be assigned the job of supplying mid day meal in NDMC schools shall supply the meal in the sealed container and unseal the container in the presence of the Head of the school/Members of the school committee before the distribution of the cooked meal in tiffin box/disposal plates of good quality.

4.12 MOH will monitor the quality and hygiene of food supplied to the school children by deputing Doctors/Dietician.

4.13 Committee comprising of Head of the Institution/HM, a domestic science teacher/science background teacher and a PTA member/residential welfare member of the area will supervise the scheme and head of the school will ensure that the food supplied by the supplier is in accordance to the prescribed norms as mentioned in para 4.1. The cooked food will be tasted by the members of the committee and the concerned class teachers before the distribution among the children.

4.2 Monitoring & Checking

4.21 Parents preferably Mothers are made a formal member of the existing school level monitoring committee. Modified committee meets at least four times a year to review/assess implementation of the programme.

4.22 The committee members shall visit the kitchens of the suppliers. The programme of visit shall be decided by the Head of school. Observations made during visits shall be informed to the supplier as early as possible. In case of any adverse observations, HQs shall be informed immediately. Every school shall have a complaint/suggestion register.

4.23 In order to minimize any irregularity and for proper monitoring and accountability all the schools under the jurisdiction of NDMC were divided into 8 zones and Nodal officers were appointed to monitor the scheme in each zone.

4.24 PTA shall be requested to make sure at least one parent by rotation should be present to check and taste the meal. A register shall be maintained by the Head of the school on which the entries of (i) Name of the parents (ii) Name of the students (iii) Class of the students (iv). Address & (v) Remarks for each date with signature of the parents shall be maintained.

4.25 To have an idea of impact of mid day meal on the Health of the children a regular Health checkup through the Doctors have already been started.

4.26 The supply of cooked meal will contain 8-12 gms of protein and 300 calories as prescribed in table of para-3 for each category. or as specified by the Ministry of HRD /GNCTD from time to time. The Council has right to get the sample tested from kitchen of suppliers /school from Shri Ram Institute for Industrial Research or any recognized Lab. at its own cost. In case deviation is found more than 5% in the preparations /specification and the supply is otherwise fit for consumption the bill of such supply claimed by the supplier shall be deducted proportionately. In case the variation is found in five or more than five samples , the council has right to discontinue the supply without any further reference and action, as deemed fit, will be initiated against the supplier.

5. Financial implications of the proposed project/subject:

Rs 191 Lacs only (One Hundred Ninty One Lacs Only)

It is also pertinent to mention here that the GNCT of Delhi has been sanctioning grant for Mid-day Meal for all the NDMC, NDMC Aided schools for Primary & Upper-Primary classes i.e. class I^{st} to $VIII^{th}$ including Navyug schools. The Navyug Schools have been sending us the consumption report for grains allotted by GNCT of Delhi free of cost.

The existing total budget provision under Mid Day Meal Scheme for all schools of NDMC and NSES is of Rs. 235 Lacs under Plan & Non Plan in the Head of account 2604015 & 2308027 in plan and non plan respectively for the year 2012-2013. However, estimated expenditure is of Rs. 19080584. lacs. For implementing the Scheme from class I to class VIII,(Plan Rs-12781531- and Non plan Rs 6299052) expenditure will be charged under the Plan Head and for Nursery, IX to XII classes will be borne by NDMC under the Non Plan head.

6.Implementation schedule with timelines for each stage including internal processing.

Mid Day Meal Scheme is an ongoing scheme and the meal is provided to the students on all the school working days. The said proposal is for the Year 2012-13 beginning 1st July 2012 to academic session.

7.Comments of the Finance Department on the proposal.

The Finance department has seen and concurred vide Dairy No 1835/Finance R-3/09/12

8. Comments of the Department on the comments of Finance Department.

As advised by the Finance, the case has been shown to the law department.

9. Legal implication of the subject/project

Fulfill.

10. Comments of the Law Department on the Subject/ Project.

Draft of the agreement and draft agendum, which is to be executed between NDMC and M/s. Manjeet Caterers and Iskcon Food Relief Foundation, has been examined from legal point of view, and the same is in order.

11. Comments of Department on the comments of Law Department.

It is certified that the facts and figures, terms and condition mentioned in the agendum are correct as per approval of the competent authority.

12. Details of previous Council Resolutions, existing law of Parliament and Assembly on the subject:

(i) Resolutions No. 16(M-1) dated 02-07-04 (ii)Resolutions 12(M-2) dated 27-04-05

(iii) Resolutions 13(M-3) dated 19-05-06

(iv) Resolutions 10(M-1) dated 18-07-07

v) Resolutions No. 06(M-3) dated 16-07-08

vi) Resolution No. 06(M-01) dated 15-04-2009

vii) Resolution No. 05(M-01) dated 21-07-2010

viii) resolution No-14 (M-02) 20-04-2011

13. Certificate that all CVC Guidelines on the subject have been followed.

Followed

14. Recommendations

a) To accord administrative approval and expenditure sanction for an amount of Rs.191 lacs as provided in para – 3.1 above.

b) To accord approval for extension of contract with existing suppliers of Mid day meal i.e. Iskcon Food Relief Foundation and M/s. Manjeet Caterers ,(Selected in Tender process w.e.f. 2011) on existing terms and conditions for the session 2012-2013.(Academic Session)

c) Initially, the work will be given for supply of Mid Day meal for a period of one year only i.e. 2012-13. If, performance of the suppliers is found satisfactory, the work for Mid Day Meal supply will be extended for one more year, 2013-14 on annual basis after obtaining the approval of Competent Authority.

COUNCIL'S DECISION

Resolved by the Council :

a) To accord administrative approval and expenditure sanction for an amount of Rs.191 lacs as provided in para – 3.1 of agenda.

b) To accord approval for extension of contract with existing suppliers of Mid day meal i.e. Iskcon Food Relief Foundation and M/s. Manjeet Caterers, (Selected in Tender process w.e.f. 2011) on existing terms and conditions for the academic session 2012-2013 after Director Education personally claimed to have been satisfied with the performance of the two suppliers.

c) The extension of work is for supply of Mid Day meals for a period of one year only i.e. 2012-13 to students of NDMC schools as per the information contained in the Agenda. If, performance of the suppliers is found satisfactory, the work for Mid Day Meal supply will be extended for one more year, 2013-14, on annual basis, after obtaining the approval of Competent Authority.

d) That further action may be taken by the Department in anticipation of confirmation of the Minutes by the Council.

ITEM NO. 03 (B-11)

1. Name of Work: Addition / Alteration of electrical installations in various Municipal Buildings.

Sub Head: Supply, Installation, Testing & Commissioning of CCTV Cameras in various Municipal Buildings & Electric Sub-stations in NDMC area).

2. Department: **Electricity Department.**

3. Brief History of Proposal:

There are various Municipal / commercial buildings which are densely populated and have an easy access for general public. Due to dense population and frequent movement of visitors, it is likely that any untoward incident may occur. Moreover for security reasons it is necessary to have CCTV surveillance system installed in the commercial buildings of NDMC. For security reason it was felt necessary to have CCTV surveillance system installed in the commercial buildings of NDMC. An estimate amounting to Rs. 2,74,37,200/- was sanctioned by the Council vide Resolution No. 05(B-01) dated 21.04.2010, for providing CCTV surveillance system in 8 Municipal buildings of NDMC. Tenders were invited and the case was processed for approval from the Council. But, being single tender the case for award of work was dropped by the Council vide Resolution No. 10(B-36) dated 14.01.2011.

Chairperson NDMC, in a Zonal Officer's meeting held on 23.04.2012, further desired that latest CCTV Cameras should be installed in all Municipal buildings including Electric sub-stations. Accordingly, the estimate has been revised to Rs 4,98,63,373/- by including 8 commercial buildings (since CCTV in PSOI is installed) and 20 Electric sub-stations in first phase.

4. Detailed proposal on the subject: A sub-committee was constituted for the identification of sub-stations where CCTV Cameras are required to be installed. On the basis of the quantum of work evaluated by the sub-committee and finalization of the makes & specifications of various items in the revised schedule of work, framed in consultation with OEMs / Leading system integrators, an estimate amounting to Rs 4,98,63,373/- has been revised on the basis of current market rates & CPWD SR 2012.

The following Municipal buildings & Electric sub-stations have been identified where CCTV Cameras are required to be installed:

1. Palika Bhawan Commercial Complex.
2. Yashwant Place Commercial Complex.

3. Chanakya Bhawan.
4. Chander Lok Building.
5. Mohan Singh Place.
6. Shaheed Bhagat Singh Place.
7. Palika Place.
8. Lok Nayak Bhawan.
9. 66 KV Sub-stations at Vidyut Bhawan, School Lane, State Guest House.
10. 33 KV Sub-stations at Vidyut Bhawan, Race Course, AIIMS, Dalhausie Road, Kidwai Nagar, Nehru Park, Baird Lane, Electric Lane, Tilak Marg, Connaught Place, Raisina Road, Netaji Nagar.
11. 11 KV Sub-stations at Aurbindo Marg, Gole Market, Moti Bagh (W), I-Block (Sarojini Nagar), Bharti Nagar.

The revised estimate includes supply, installation, testing and commissioning of 16 Nos weather proof outdoor IP PTZ 35 X zoom cameras, 118 Nos outdoor IP network cameras, 4 Nos indoor IP dome cameras, 10 Nos digital keyboard for control of PTZ cameras, 28 Nos RAID-5 storage, LCD monitors, UPS etc.

The expenditure for the above work shall be chargeable to the head of account H-2-8/Addition / Alteration of electrical installations in existing Mpl Buildings Scheme No 23, Field Code 213 allocated for C-III(E) Division, budget provision Rs. 2,74,37,200/- for the year 2012-13 to be enhanced in RE. The budget provision is as per re-appropriation of funds allocated by Finance vide No. F.120/2012-13/165/SA-I/Fin.(B) dated 07.05.12. The revised estimate has also been examined by Planning Division and concurred in by Finance.

5. Financial implications: Rs 4,98,63,373/- (Rupees Four Crores Ninety Eight Lacs Sixty Three thousand three hundred seventy three only) for SITC of CCTV Cameras and Rs.1270361/- (Twelve lacs seventy thousand three hundred sixty one only) for manpower involved in one year through outsource for monitoring CCTV surveillance systems making total expenditure of **Rs.5,11,33,734/- (Five crores eleven lacs thirty three thousands seven hundred thirty four only)**

6. Implementation Schedule with timeline for each stage including processing:

Total time required for:

(i) Opening of tenders–3 Months.

(ii) Award of work from the Council–6 Months.

(iii) Completion of work–18 Months.

7. Comments of the Finance Department:: Finance vide diary no. 1810/Finance/R-Elect dated 03.09.2012 observed as under:-

It has been mentioned by the Department at page 28/N that the own manpower deployed by the Department will cost Rs.95,77,60/- and manpower deployment through outsourcing will cost Rs.12,70,361/- which gives an impression that the Department wants to employ the regular employees, which is not clear. It is advised that the Department should preferably go for outsourcing of manpowers as being done in other case and revise the estimate accordingly.

8. Comments of the Department on comments of Finance:

As advised by Finance Department the estimate has been revised considering the outsourcing of manpower. The amount of the revised estimate comes to Rs.5,11,33,734/-i.e Rs.4,98,63,373/- for SITC of cameras and Rs.12,70,361/- for manpower for one year.

9. Final view of Finance Department: Finance vide diary no. 1896/fin/R-elect dated 17.9.12 concurred in the revised estimate amounting to Rs.4,98,63,373/- for SITC of CCTV cameras. Further, Finance also concurred Rs.1270361/- for outsourcing manpower involved for monitoring CCTV surveillance system for one year making total estimated expenditure as Rs.5,11,33,734/-.

10. Clarification of Department: NIL

11. Legal Implication of the subject: No legal implication is involved.

12. Details of Previous Council Resolution, existing law of Parliament & Assembly on the subject:

1. Estimate amounting to Rs. 2,74,37,200/- sanctioned by the Council vide Resolution No. 05(B-01) dated 21.04.2010, copy of resolution placed at **Annexure-A**.
2. Council vide Resolution No. 10(B-36) dated 14.01.2011 dropped the case for award of work, being single tender, copy of resolution placed at **Annexure-B**.

13. **Comments of Law Department:** Has no legal issue.

14. **Comments of the Department on the comments of Law Department:** NIL

15. **Final view of Law Department:** Has no legal issue.

16. **Certification by the Department:** It is certified that while processing the case, all CVC guidelines & codal formalities have been followed.

17. **Recommendations of the Department:** The case may be placed before Council for Administrative Approval & Expenditure Sanction to the revised estimate amounting to Rs 4,98,63,373/- for the work of Supply, Installation, Testing & Commissioning of CCTV Cameras in various Municipal Buildings & Electric Sub-stations in NDMC area. Further, Finance also concurred Rs.12,70,361/- for manpower involved in one year through outsourcing for monitoring CCTV surveillance systems thus making total expenditure of Rs.5,11,33,734/-. The work is of urgent nature & therefore approval may also be accorded to take further action in anticipation to the confirmation of minutes of the Council meeting.

18. **Draft Resolution:** Resolved by the Council that Administrative Approval and Expenditure sanction is accorded for the revised estimate amounting Rs.4,98,63,373/- for the work Supply, Installation, Testing & Commissioning of CCTV Cameras in various Municipal Buildings & Electric Sub-stations in NDMC area. Further, Finance also concurred Rs.12,70,361/- for manpower involved in one year through outsourcing for monitoring CCTV surveillance systems thus making total expenditure of Rs.5,11,33,734/-. Approval is also accorded to take further action in anticipation to the confirmation of minutes of the Council meeting.

COUNCIL'S DECISION

Resolved by the Council :

a) To accord administrative approval and expenditure sanction to the revised estimate amounting Rs.5,11,33734/- for the work of Supply, Installation, Testing & Commissioning of CCTV Cameras in various Municipal Buildings & Electric Sub-stations along with manpower required for monitoring through outsourcing, for one year, in NDMC area.

b) To advise the Department to ensure that steps are taken to set up control rooms for monitoring of suspicious activities in these areas by exercising an option that is least expensive and most efficacious.

c) That further action may be taken by the Department in anticipation of confirmation of the Minutes by the Council.

ITEM NO. 04 (B-12)

1. **Name of the Subject:** **Providing Mechanized Facility Management Services at NDCC Phase-II**

2. **Name of Department:** **Electricity Department**

3. **Brief History of the subject:**

NDCC Phase-II Block-C Building is a prestigious building of NDMC. In a meeting held in the chamber of Financial Advisor, NDMC, it was decided that NDCC Phase-II building needs to be maintained at par with international standards of building maintenance. It was also decided that the building would be outsourced to single agency for various services required for its maintenance.

4. **Detailed proposal on the subject:**

An estimate amounting to `2,75,84,780/- based on current prevailing labour rates as per the Govt. notification and rate of the current annual maintenance contract was prepared for the following services in Block 'C' of NDCC Phase-II:

1. Providing services of 'Mechanized & Automated House Keeping Job' (Including rent for tools & equipment, repair, maintenance & insurance, housekeeping chemicals and consumables & manpower) as per maintenance schedule.

2. Running, maintenance and operation of 'DG Sets' as per the scope of work and maintenance schedule specified.

3. Running maintenance and operation of 'HVAC system' as per the scope of work and maintenance schedule specified.

4. Operation of 'Lifts' as per the scope of work of specified.

5. Running maintenance and operation of 'Electrical system' as per the scope of work and maintenance schedule specified.

Council vide resolution No. 02(B-17) dated 28/03/2012 accorded administrative approval and expenditure sanction of `2,75,84,780/- to the estimate (Annexure-I).

CEE-II accorded technical sanction to the estimate and tenders with estimated cost of work amounting to `2,37,19,780/- were called through e-tendering. The tender alongwith technical bid containing eligibility criteria and financial bid was uploaded on website and published in leading newspapers.

Pre-bid conference was held in the office of CEE-II in presence of NDMC officials and representative of firms on 15/05/12 and no technical deviations were pointed out by the representatives of the attending firms.

Eligibility bids were opened on due date i.e. 22/05/2012 and offers from the following three firms were received. These firms also furnished earnest money.

1. M/s. AVON Facility Management Services Pvt. Ltd.
2. M/s. BVG India Ltd.
3. M/s. Swastik Electrotech Private Ltd.

After scrutiny of the downloaded documents, M/s. BVG India Ltd. and M/s. Swastik Electrotech Pvt. Ltd. were found eligible for opening of their financial bid and the same was approved by CEE-II.

The financial bids of the two eligible firms were downloaded and opened on 08/06/2012. Comparative statement of quoted rates was also downloaded. M/s. BVG India Ltd. emerged the lowest bidder with tendered amount of `3,23,73,689.04/-, 13.23% above the justified amount of `2,85,93,405/-.

S.No.	**Name of firms**	**Quoted Rate (`)**	**Justified Rate (`)**
1.	M/s. BVG India Ltd.	3,23,73,689.04 **L-1**	2,85,93,405.00
2.	M/s. Swastik Electrotech Pvt. Ltd.	3,45,06,625.19	-

After due examination of Planning and concurrence of finance department vide Dy.No.1671/Finance/R-Elect. dated 30/0712 and approval of Chairperson dated 06/08/12 negotiation were held with the L-1 firm by a team under the Chairmanship of CEE-II and comprising of CE(C-II) and Director (Finance) as members.

During negotiation firm offered a rebate of 08% on their quoted rates which was confirmed by M/s. BVG India Ltd. vide their letter No.BVG/Del/12-13/NDMC/225 dated 16/08/2012. The negotiated amount after considering rebate offered by the firm works out as under:

Tendered amount	:		` 3,23,73,689/-
Less: Rebate @ 8%	:	(-)	` 25,89,895/-
Negotiated amount	:		` 2,97,83,794/-

The negotiated amount of M/s. BVG India Ltd., amounting to `2,97,83,794/- is 04.16% (approx) above the justified amount of `2,85,93,405/- duly checked by Planning was found reasonable & justified. Finance accorded "No Objection" to the proposal of the department vide Dy.No.1861/Finance/R-Elect dated 06/09/12 to process the case for seeking approval of Competent authority for award of work to L-1 firm M/s. BVG India Ltd. at their negotiated amount of `2,97,83,794/-.

5. Financial Implications: `2,97,83,794/-

6. Implementation Schedule: 12 months.

7. Comments of Finance Department:

1) There is huge variation between the justified cost and estimated cost worked out by the department. The justified cost has been worked out 20.54% above the estimated cost. The reasons for the same needs to be brought on record.

2) It is observed that the same firm i.e. M/s. BVG India Ltd. who was awarded tender last year, has emerged the L-1 firm. Last year, rates quoted by the said firm were `2,24,51,985/- whereas the rates offered now are `3,23,73,680/-. As such, the rates offered this time are 44.19% above the last year's rates. The reasons for the same needs to be brought on record. The L-1 firm has quoted abnormally high rates compare to justification prepared by the Department in respect of item No.2&3. The department may compare the quoted rates of the firm with similar awarded rates of other government agency in this regard.

3) As per provision of para 20.4.3.2 of CPWD Manual, variation upto 5% over the justified rates may be ignored, variation upto 10% may be allowed for peculiar situation and in special circumstances with recorded reasons. However, the tenders beyond this limit should not be accepted. Whereas, in this case the tender are 13.23% above the justified cost and department has proposed to conduct the negotiation with the firm. The reasons may be clarified.

4) Furthermore, as per CVC's various guidelines, there should not be any negotiation with the L-1, except in certain exceptional circumstances after recording valid, logical reasons for doing so. The department may bring on record the exceptional circumstances with detail justification and desired result intended to achieve by conducting the negotiations with the firm especially in respect of item No.2&3 which are quoted abnormally high by L-1.

Further, finance advise the department to process the case to competent authority for consideration after clarifying the above observations of Finance Department in detail alongwith their clear recommendations.

8. <u>Comments of the Department on the comments of Finance Department:</u>

With reference to observations of Finance replies are as under:-

1. The variation of 20.54% between the justified cost and estimated cost worked out by the department is due to the following reasons:-

   The subject cited work is mainly a labour oriented Job where in approx 90% Labour is involved and only 10% material component. There has been an increase in the labour wages of approx 9.12% between the time of framing of estimate and preparing justification of rates after opening of the tender. The details are given below:

	Rates as on 31/10/2011	**Rates as on 12/06/2012**	**% Increase in Rates**
Skilled labour	301.00	328.00	8.97%
Unskilled labour	247.00	270.00	9.31%
	Average =	$\frac{8.97 + 9.31}{2}$ =	9.12%

At the time of framing the estimate, 15% contractor overhead & profit was not considered which has been considered in the justification of rates statement after opening of the tender.

Considering enhancement of labour wages & adding contractor overheads & profit the overall increase is about 24.12% on the sanctioned estimate whereas the justified cost is 20.54% above of the estimated cost put to tender. As such the difference between estimated cost and justification cost are reasonable and justified.

2. As already clarified in Para-I above, the subject work is mainly a labour oriented job. The labour rates are dynamic and linked to labour Index and inflation. The increase in labour rates of skilled and unskilled workers between the period 14/06/10 i.e. date of submission of the bids by tenderer in last contract & 22/05/12 i.e. the date of submission of the financial bid in the present tender is 32.62% as detailed given below:

	Labour Rates at the time of submission of last bid on 14/06/10	**Labour Rates at the time of submission of bids in this tender on 22/05/12**	**Enhancement**
Skilled labour	248.00	328.00	32.25%
Unskilled labour	203.00	270.00	33.00%
		Average =	32.62%

By considering enhancement of 32.62% in the existing awarded contract of M/s. BVG India Ltd., the cost comes out to `2,97,75,703.00 (2,24,51,895 + 32.62%), where as the justification prepared on 12/06/2012 is `2,85,93,405.00 which is still 3.97% below the last tendered rates equalized & brought upto the current level after indexing as detailed above as such justification is reasonable and justified.

As regards the rates quoted by the firm for Item No. 2 & 3 being abnormally high, than the justified rates it is clarified that negotiation have been proposed to bring down the quoted rates to the justified level.

3&4. The reasons for recommending for negotiations are as under:-

Provision of CPWD manual toward negotiation are understood very clearly wherein variation upto 5% over the justified rate is allowed to be ignored and variations upto

10% are allowed for peculiar situations and in special circumstances with recorded reasons. This tender case is 13.23% above the justified cost and department is of the firm opinion that in case the tender is recalled there is every likelihood of the present firm not consenting to extend the tender further because of steep hike in the labour rates as detailed in Para-2 above besides the fact that finalization of new tender would also entail considerable time, thus jeopardizing the continuity of facility management services of NDCC Phase-II which is now occupied by MHA. Department is also of the opinion that the L1 firm can be persuaded to bring the quoted rate within the limit specified in the manual. However if the firm does not reduce their quoted rates within the limit specified in the manual, there would be no alternative except to reject and recall the tender.

Besides above the existing contract awarded to M/s. BVG India Ltd. has been extended for a period of eight months with the approval of the competent authority
duly concurred by the finance department as the existing contract was valid up to 31/12/11.

i. In the 1st proposal of extension of three month up to 31/03/12 the firm had given their consent vide their letter dated 10/10/2011for extension of time of the existing contract subject to following:-

The firm mentioned that the current minimum wages with requisite statutory and future revision in minimum wages by Delhi Government from time to time.

Since January 2011, the minimum wages has been revised four times from Rs.203/- to Rs.256/-, Rs.225/- to Rs.283/- and Rs.248/- to Rs.312/- respectively for Unskilled, Semi-Skilled and skilled employees, thus there is an increase by 26.10% and proportionally there is also visible increase in regards to cleaning chemicals, consumables and machine consumables etc.

ii In the 2nd proposal of extension of three month up to 30/06/12 the firm has given their consent vide their letter dated 14/03/2012 for extension of time of the existing contract subject to following:

The firms mention that the current minimum wages with requisite statutory and future revision in minimum wages by Delhi Government from time to time.

Since January 2011, the minimum wages has been revised four times from Rs.203/- to Rs.256/-, Rs.225/- to Rs.283/- and Rs.248/- to Rs.312/- respectively for Unskilled, Semi-Skilled and skilled employees, thus there is an increase by 26.10% and proportionally there is also visible increase in regards to cleaning chemicals, consumables and machine consumables etc.

iii In the 3rd proposal of extension of two month up to 31/08/2012 the firm has given their consent vide their letter dated 10/06/2012 for extension of time of the existing contract subject to that:

"However we request you to hasten the process of tender formalities at the earliest as the minimum wages got revised yet again resulting further losses."

9. Final view of Finance Department:

"In view of the negotiated rates being 4.16% above the justified cost as worked out by the department and checked by the Planning Division. Also, since rates are now stated to be reasonable and justified for award of work, we have no objection to the proposal of the department to process the case for seeking approval of competent authority for award of work to L-1 firm M/s. BVG India Ltd. at their negotiated amount of `2,97,83,794/- for the work of providing Mechanized Facility Management Services at NDCC Phase-II".

10. Legal Implication of the subject: Nil

11. Details of previous Council Resolution, existing law of parliament and assembly on the subject:

Council vide Resolution No.02(B-17) dated 28/03/2012 accorded administrative approval and expenditure sanction of `2,75,84,780/- to the estimate for the work of Providing Mechanized Facility Management Services at NDCC Phase-II **(Annexure-I) (See pages 30 - 31).**

12. Comments of the department on the comments of Law Deptt: Nil

13. Final view of Law Department (wherever necessary): No legal issue.

14 Certified that all CVC's guidelines have been followed while processing the case:

It is certified that all CVC's guidelines have been followed while processing the case.

15. Recommendations:

The case may be placed before the Council for approval to award the work of Providing Mechanized Facility Management Services at NDCC Phase-II to M/s. BVG India Ltd. at their negotiated amount of `2,97,83,794/- (`Two crore ninety seven lacs eighty three thousand seven hundred ninety four only). Since the work is of urgent nature, approval of Council is also solicited to place work order on the firm in anticipation to confirmation of the minutes of Council Meeting.

16. Draft Resolution:

Resolved by the Council that approval is accorded to award the work of Providing Mechanized Facility Management Services at NDCC Phase-II to M/s. BVG India Ltd. at their negotiated amount of `2,97,83,794/- (`Two crore ninety seven lacs eighty three thousand seven hundred ninety four only). Approval is also accorded to place the work order in anticipation to the confirmation of minute of the Council Meeting.

COUNCIL'S DECISION

Resolved by the Council:

a) That approval is accorded to award the work of Providing Mechanized Facility Management Services at NDCC Phase-II to M/s. BVG India Ltd. at their negotiated amount of `2,97,83,794/-.
b) That further action may be taken by the Department in anticipation of confirmation of the Minutes by the Council.

ANNEUXRE -I

ITEM NO. 02 (B-17)/28.03.2012

1. **Name of the Subject: Providing Mechanized Facility Management Services at NDCC Phase-II**

2. **Name of Department:** Electricity Department

3. **Brief History of the Subject:**

The NDCC Phase-II building is allotted to Ministry of Home Affairs (M.H.A.), National Investigating Agency (N.I.A.), Advisor to Prime Minister of India etc. For maintenance of the services this building is outsourced to a single agency for smooth operation & maintenance of all the existing services

4. **Detailed proposal on the Subject:**

An estimate amounting to Rs.2,75,84,780/- based on current prevailing labour rate as per the Govt. Rules current trend of salary of Supervisors & Maintenance Head and rate of the current annual maintenance contract has been prepared for the following services in Block 'C' of NDCC Phase-II:

1. Providing services of 'Mechanized & Automated House Keeping Job' (Including rent for tools & equipment, repair, maintenance & insurance, housekeeping chemicals and consumables & manpower) as per maintenance schedule.
2. Running, maintenance and operation of 'DG Sets' as per the scope of work and maintenance schedule specified.
3. Running maintenance and operation of 'HVAC system' as per the scope of work and maintenance schedule specified.
4. Operation of 'Lifts' as per the scope of work of specified.
5. Running maintenance and operation of 'Electrical system' as per the scope of work and maintenance schedule specified.

The estimate is consisting of two parts i.e. Part-A comprising the schedule of work, to be done by Facility Management Agency & Part-B contains the Material cost which will be required for day to day maintenance of service in a year.

Finance has concurred the detailed estimate amounting to Rs.2,75,84,780/-, vide Dy.No.125/Finance/R-Elect. dated 03/02/12 with the remark that sufficient budget provision in relevant budget head may be ensured before incurring the liability. In this regard budget provision of Rs.3.0 crores has been made in the budget book, BB-2012-13 at 02/230/52/215/P-160.

5. **Financial Implication:** Rs.2,75,84,780/-

6. **Implementation Schedule:** 12 months.

7. **Comments of Finance Department**:

Finance Deptt. has concurred the case with the remarks that sufficient budget provision in relevant budget head may be ensured before incurring the liability.

8. **Comments of the Department on the comments of Finance Department**:
Budget provision of Rs 3.0 Crores has been made in the budget book, BB-2012-13 at 02/230/52/215/P-160.

9. **Final views of the Finance Department:** As above at Sr. No.7

10. **Legal Implication of the subject:** NIL

11. **Details of previous Council Resolution, Existing Law of Parliament and Assembly on the subject**:

Item No. 14 (B-19) Council meeting No. 07/2009-10 on dated 30/09/09 **(Annexure – I, See pages 11 – 12).**

12. **Comments of the Department on the comments of Law Department:** Nil

13. **Final view of Law Department (wherever necessary)** – Nil

14. **Certificate that all CVC guidelines have been followed, while processing the case**:

Certified that CVC guidelines have been followed while processing the case.

15. **Recommendation**:

Detailed estimate amounting to Rs. Rs.2,75,84,780/- may be placed before the Council for according administrative approval and expenditure sanction.

16. Draft Resolution:

Resolved by the Council to accord administrative approval and expenditure sanction to the detailed estimate, amounting to Rs,2,75,84,780/- for the work of Providing Mechanized Facility Management services at NDCC Phase-II. Approval is also accorded to invite tender in anticipation to the confirmation of minutes of the Council Meeting.

COUNCIL'S DECISION

Resolved by the Council to accord administrative approval and expenditure sanction to the detailed estimate, amounting to Rs,2,75,84,780/- for the work of Providing Mechanized Facility Management services at NDCC Phase-II.

It was also resolved by the Council that further action may be taken by the Department in anticipation of confirmation of the minutes by the Council.

ITEM NO. 05 (A-24)

1. **Sub: Improvement to Staff Quarters at Rohini.**
   SH: Improvement to 256 NDMC Staff Quarters, Sector-XI, Rohini.

2. **Name of Deptt./Deptt. Concerned**
   Civil Engineering Department, NDMC.

3. **Brief History of the subject/project:**

There are 256 flats (type-III 220 & type-II 36 Flats) at NDMC Housing complex Rohini, Sector-XI, Extension. These flats were constructed in the year 1999-2000. The present condition of the existing mosaic and plain cement concrete flooring in these flats was not good and requires improvement as per latest norms.

The RWA of the Housing complex has requested number of times about this and to improve this complex. References were received from the RWA time to time.

The Project report of this work had also been prepared based on ground situation accordingly the preliminary estimate was prepared as per approved project report by the Technical sub-committee and PE sanctioned by Council vide Item No. 06(A-01) dated 26.04.2012 **(Annexure-I See pages 36 - 39)**. After completing all codal formalities tenders were invited to cater the items to be taken up for execution.

4. **Detailed proposal on the subject/project:**

A Preliminary Estimate amounting to ₹ 3,35,80,000/- based on approved project report by the Technical sub-committee in respect of "Improvement to Staff Quarters at Rohini SH: Imp to 256 NDMC Staff Quarters, Sector-XI, Rohini" was sanctioned considering the following major items:

(i) Providing and laying vitrified floor tiles in type-III flats and ceramic floor tiles in type-II flats.

(ii) Providing and fixing flush door shutters with 1mm lamination sheet on both sides in WC and bath room.

(iii) Ceramic wall tiles in the passage along with WC and bathroom.

(iv) Other co-related items.

After completion of codal formalities, the item rates tenders for the said work were invited through e-procurement system and the same were opened on 30.07.2012 after giving wide publicity through leading newspapers and Delhi Govt. e-procurement system.

In response to call of tender, ten bids were received out of which six bidders fulfilled the technical criteria as per NIT condition and their financial bids were opened. Tenders of following four bidders were not opened as per following reasons:

(a) Shri Charanjit Bhasin : Earnest money was not deposited.

(b) M/s Krishn Murari Sharma & Sons : Scanned copy of work experience and required certificate of financial turn over were not submitted

(c) The Krishna Constn. Co. : Scanned copy of work experience, bidding capacity along with undertaking were not submitted.

(d) M/s Bhasin Constn. Co. : Not uploaded the tender documents.

The details of tenders opened are as under:-

S. No.	Name of Agency	Tendered Amount in ₹	% w.r.t. Estimated cost of ₹ 2,79,38,444/- above/below	Remarks
1.	M/s Mathra Dass Ahuja & Sons	1,90,12,791/-	31.95% below	L-1
2.	Sh. Bipin Kumar	1,99,60,948/-	28.55% below	L-2
3.	M/s RCC Developer Ltd.	2,10,72,240/-	24.58% below	L-3
4.	M/s R.K. Jain & Sons	2,14,04,172/-	23.39% below	L-4
5.	M/s Satish Chand Rajesh Kumar (P) Ltd.	2,30,41,347/-	17.53% below	L-5
6.	M/s Puja Construction Co.	2,31,05,722/-	17.30% below	L-6

Justification statement of rates based on prevailing market rates was prepared by Division and checked by Planning Division as 7.22% below the Estimated Cost of ₹2,79,38,444/-. The tendered amount of lowest tenderer is ₹ 1,90,12,791/- which is 31.95% below the Estimated Cost. The tendered amount of lowest tenderer is 26.65% below the Justified Cost.

5. Financial implications of the proposed project/subject:

A/A & E/S amounting to ₹ 3,35,80,000/-, the scheme exist in the budget book of 2012-13 at Page-298 under COA-4124000/FC-06 with NIL budget provision. As the time period of this work is 17 Months hence an amount of ₹ 70 lacs has been sought in the RE-2012-13 and remaining amount will be sought in BE-2013-14.

6. Implementation schedule with timeliness for reach stage including internal processing

17 months from the date of award of work.

18

7. Comments of the Finance Department on the subject:-

A/A & E/S for the work was accorded by Council amounting to ₹ 3,35,80,000/- and estimated cost put to tender is ₹ 2,79,38,444/-. Against the tender amount of ₹ 1,90,12,791/- the justified cost has been worked out as ₹ 2,58,50,606/-. Tender rates are 31.95% below the Estimated Cost and 26.65% below the justified cost. The department needs to bring on record while submitting the case before the Council, the reasons for such large variation between A/A & E/S, Estimated cost, tender cost and justified cost. The department also needs to ensure that quality of work during execution would be maintained as per the specification & provisions of the approved NIT and there would not be any unnecessary/major deviation during execution of the work.

Since the offer of L-1 being recommended by CE(C) for acceptance, as the rates of L-1 firm are well below the justified rates, FD has no objection to the proposal of the deptt. to accept the tender of L-1 firm, i.e. M/s Mathra Dass Ahuja & Sons, at the tendered amount of ₹ 1,90,12,791/- which is 31.95% below the EC of ₹ 2,79,38,444/- against the justification of 7.22% below EC and 26.65% below the Justified cost as checked by Planning.

8. Comments of department on Comments of Finance Department

The Preliminary Estimate was framed based on DSR-2007+51% Cost Index + market rate+3% contingencies whereas the Detailed Estimate was framed based on DSR-2012+market rate+3% contingencies. Due to the reasons of revision in DSR, rates of some items like vitrified/ceramic tiles, WC etc. are lower in DSR 2012 as compared to rates of DSR 2007 with cost index (51%). Hence, there is a difference between amount of PE and DE. The tendered amount is quoted by the L-1 agency and the Justification has been prepared based on the prevailing current market rates by division and checked by Planning. It is ensured that Quality of work during execution would be maintained as per specifications and provisions of the approved NIT. It is further ensured that inescapable deviations only will be considered if required, within the permissible limit.

9. Final views of Finance Department:-

Finance Department has concurred the proposal vide diary No.1921/Finance/R-Civil dated 19.09.2012.

10. Legal implication of subject/project:-

Nil

11. Details of the previous Council's Resolution existing laws of Parliament And Assembly on this subject:-

Administrative Approval and Expenditure Sanction accorded by Council vide Resolution No. 06(A.01) dated 26.04.2012 for `3,35,80,000/-.

12. Comments of the law department on the subject/project:

It has no legal issue please.

13. Comments of the department on the comments of Law Departments

Nil

14. Final view of Law Department (wherever necessary)

It has no legal issue please.

15. Certification by the department that all central vigilance commission (CVC) guidelines have been followed while processing the case.

It is certified that all CVC guidelines have been followed.

16. Recommendations:-

The case is placed before the Council for acceptance of the lowest offer of M/s Mathra Dass Ahuja & Sons with a tendered amount of ₹ 1,90,12,791/- (Rupees One Crore Ninety Lakhs Twelve Thousand Seven Hundred Ninety One Only) for the work "Imp to Staff Quarters at Rohini SH: Imp to 256 NDMC Staff Quarters, Sector-XI, Rohini" which is 31.95% below the Estimated Cost of ₹ 2,79,38,444/-. The tendered amount by the lowest tenderer is 26.65% below the Justified Cost. Further, permission may also be granted to take further action in anticipation of confirmation of minutes of the Council.

17. Draft Resolution:

Resolved by the council that the work of "Imp to Staff Quarters at Rohini SH: Imp to 256 NDMC Staff Quarters, Sector-XI, Rohini" is awarded to the lowest tenderer M/s Mathra Dass Ahuja & Sons which is 31.95% below the Estimated Cost of ₹ 2,79,38,444/- with a tendered amount of ₹ 1,90,12,791/- (Rupees One Crore Ninety Lakhs Twelve Thousand Seven Hundred Ninety One Only) and 26.65% below the Justified Cost. Permission is also granted for taking further action in anticipation of confirmation of the minutes of the Council.

COUNCIL DECISION

Resolved by the Council:

a) That the work of "Imp to Staff Quarters at Rohini SH: Imp to 256 NDMC Staff Quarters, Sector-XI, Rohini" is awarded to the lowest tenderer M/s Mathra Dass Ahuja & Sons which is 31.95% below the Estimated Cost of `.2,79,38,444/- at a tendered amount of `.1,90,12,791/- which is 26.65% below the justified Cost.
b) That further action may be taken by the Department in anticipation of confirmation of the Minutes by the Council.

ANNEXURE - I

ITEM NO. 06 (A-01)/26.04.2012 & 01.05.2012

1. Name of the subject/project:

Sub:- Improvement to Staff Quarters at Rohini.

SH:- Imp. to 256 NDMC Staff Quarters, Sector – XI Rohini.

2. Name of Deptt./ Deptt. concerned:

Civil Engineering Department, NDMC

3. Brief history of the subject/project:

There are 256 flats (type –III 220 & type-II 36 Flats) at NDMC Housing Complex Rohini, Sector-XI Extension. These flats were constructed in the year 1999-2000. The present condition of the existing mosaic and plain cement concrete flooring in these flats is not good and requires improvement as per latest norms.

The RWA of the Housing Complex has requested at number of times about this and to improve this complex. References received from the RWA are also placed in the file.

The Project report of this work has also been prepared and duly singed by the officers concerned as per the standing order issued by SE(Planning).

The estimate has been prepared as per approved project report by the Technical sub-committee.

4. Detailed proposal on the subject/project:

For up-gradation of the Housing Complex, following major items have been considerate in the proposal.

(i) P/L vitrified floor tiles in type-III flats and ceramic floor tiles in type-II flats:- During course of inspection by Senior Officers of NDMC it was noticed that the condition of floor is not appreciable and therefore flooring with tiles may be provided as improvement works to the flats as has been done in other complexes.

(ii) P/F flush door shutters with 1mm lamination sheet on both sides in WC and bath room:- Earlier 12mm thick particle board are provided in the existing paneled door shutters of bath room and WC. This has been damaged due to water.

(iii) Ceramic wall tiles in the passage along with WC and bathroom:- This is also an improvement nature of work.

(iv) Other co-related items have also been taken in the estimate.

5. Financial implications of the proposed project/subject:

The Improvement works being carried out to increase the life of the structure and hence the socio-economic aspect will be met. These improvements to staff quarters will benefit the habitant staff of NDMC P.E. amounting to Rs.3,35,83,000/- has been prepared for obtaining A/A & E/S.

6. Implementation schedule with timeliness for each stage including internal processing:

1. 15 Months from the award of the work.
2. Likely date for processing
   (i) D.E. - 15.05.2012
   (ii) NIT - 15.06.2012
   (iii) Tender Award - 30.09.2012

7. Comments of the Finance Department on the subject:

Finance Department observe as under:

1. The item taken in the estimate such as vitrified tiles in type-III flats and ceramic floor tiles in type-II flats, P/F flush door shutters with 1mm lamination sheet on both sides in WC and bath rooms, ceramic wall tiles in the passage along with WC and bathroom, flush pointing with cement mortal and other correlated items, deptt. ensure that the existing items have outlived their lives.

2. Deptt. may certify that the proposal in hand is within the norms of NDMC and meant for these types of flats and there is no other economic way to fulfill the requirement.

3. Deptt. also bring on record whether this type of treatment has been given to other complexes of the NDMC.

4. The project report placed in the file may be signed by all the members and necessary corrections, i.e. HOA, estimated cost etc. may be done on the same.

5. Deptt. may bring on record the total expenditure incurred during the last three years for annual repair and maintenance and on special repairs if any.

6. It needs to be ensured that dismantled items have been taken into consideration properly.

7. Another estimate for this complex has also been received in F.D. The deptt. may clarify as to why a single estimate cannot be prepared to, so that to call one tender for entire work.

8. There is no budget provision for 2012-13 under the proposed HOA. Availability of funds for execution of work may be clarified.

9. The deptt. may certify that items and specifications taken in the estimate are within approved norms of NDMC for these types of flats.

8. Comments of the Department on comments of Finance Department:

Parawise clarifications to the observations raised by finance department are as under:-

1. (i) The items like P/L vitrified tiles in type-III flats and ceramic floor tiles in type two flats are taken in the estimate as per modification of circular issued vide No.D/67/EC/C-II dated 31.01.2008 (placed in the file) as the condition of existing floors are not appreciable/good condition.
(ii) The item of flush door shutters with 1mm lamination sheet on both sides in WC and bath rooms are taken in the estimate to replace the damaged and outlived their lives.
(iii) Flush pointing has been taken on the roof to stop the seepage from the roof in rainy season as the existing pointing has been damaged.

2&9 It is certified that the estimate has been framed within the norms/approved norms of NDMC and meant for these type of flats and there is no other economic way to fulfill the requirement.

3. This type of work has already been executed in other Housing Complexes of NDMC of per modified norms please.

4. All the Sub-Committee members mentioned in the circular issued by SE(Planning) and placed at Page-73 have already signed the project report. The estimated cost has now been corrected in the project report at the time of signing the PR SE(BM) was incharge of both SE(BM-I) & SE(BM-II).

5. Details of expenditure incurred during the last three year for A/R & M/O is enclosed herewith. Further no work has been executed on special repairs to this complex during the last three year.

6. Credit for the material received after dismantling has been taken in the estimate please.

7. This estimate was prepared and submitted in the year 2011. Modifications are being incorporated time to time in this estimate accordingly to the requirement of allotties, modifications in norms and decisions reviewed by Senior Officers. The scope of work of this proposal differs from the other estimate submitted to Finance Department.

8. Though the scheme exist in the budget book, but the provision for this enhance scope of work was not taken in the proposed budget. However this amount will be sought in the R.E(Revised budget estimate) 2012-13.

9. Final views of Finance Department:

In view of information brought on record at 11/N and 13/N by the deptt.. Deptt. may process the PE amounting to Rs. 3,35,83,000/- for approval of the competent authority. Availability of funds needs to be ensured in RE-2012-13 as stated at P-11/N.

10. Legal implication of the subject/project:

NIL

11. Details of previous Council Resolution, existing law of Parliament and Assembly on the subject:

NIL

12. Comments of the Department on the comments of Law Department:

LA has seen the case.

13. Final view of Law Department (wherever necessary):

It has no legal issues.

14. Certificate that all Central Vigilance Commission's guidelines have been followed while processing the case:

Certified that all Central Vigilance Commission (CVC) guidelines have been followed while processing the case

15. Recommendation:

The case is placed before the Council for obtaining A/A & E/S amounting to Rs.3,35,80,000/- for Improvement to Staff Quarters at Rohini.

16. Draft Resolution:

Resolved by the Council, that the proposal for Improvement to Staff Quarters at Rohini amounting to Rs.3,35,80,000/- as proposed by the Sub-committee has been approved and department to initiate action in anticipation of confirmation of the minutes by the Council.

COUNCIL'S DECISION

Resolved by the Council to accord approval to the proposal of the Sub-committee for Improvement to Staff Quarters at Rohini, at an estimated cost of `.3,35,80,000/-.

It was also resolved by the Council that further action may be taken by the Department in anticipation of confirmation of the minutes by the Council.

ITEM NO. 06 (A-25)

1. **Name of the subject/project**

Requirement of ROW and land on temporary basis at Sarojini Nagar & INA for Delhi MRTS Project of Phase-III and at AIIMS for Central Road Tunnel between AIIMS and Trauma Centre.

2. **Name of the Department**

Civil Engineering Department, Road-III Division

3. **Brief history of the subject/project**

(i) DMRC has planned to take up the construction work of underground tunnel for Delhi MRTS Project of Phase-III between Bhikaji Cama Place to Hazrat Nizamuddin and at AIIMS for Central Road Tunnel between AIIMS and Trauma Centre DMR had requested to hand over possession of land temporary vide their letter No. DMRC/PM-3A/Line-7/III-202/Land/2011/5371 dated 19.06.2012 **(Annexure 'A' See pages 45 - 48**).

(ii) Subsequently, DMRC had submitted the drawings for the taking over possession of land on temporary basis 351 metre ROW and 140 metre ROW at Sarojini Nagar and 634 metre section of ROW on Maharaja Agarsen Marg and INA side for a period of 4 years and 109 metre section of ROW at AIIMS for a period of 1 year. The ROW at Maharaja Agarsen Marg upto 400 metre length falls in the jurisdiction of NDMC. It is also proposed to carry out that the joint survey of the ROW to ascertain the road furniture on these sections. (Drawing attached)

(iii) The details of land required by DMRC on temporary basis are as under:-

351 metre ROW at IIIrd Cross Road between X-Avenue to D-Avenue, 140m ROW at D-Avenue between IInd Cross Road to IIIrd Cross Road at Sarojini Nagar and 400 metre section of ROW on Maharaja Agarsen Marg in Laxmi Bai Nagar (Total requirement 634 out of which only 400m in NDMC area) for a period of 4 years and 109 metre section of ROW of Aurobindo Marg near FOB towards Yusuf Sarai at AIIMS for a period of 1 year.

4. Detailed proposal on the subject/project

DMRC requires the land for construction of Delhi MRTS Project of Phase-III and at AIIMS for Central Road Tunnel between AIIMS and Trauma Centre:-

1. Allotments for four years

(a) 351 metre ROW at IIIrd Cross Road between X-Avenue to D-Avenue

(b) 140m ROW at D-Avenue between IInd Cross Road to IIIrd Cross Road at Sarojini Nagar

(c) 400 metre section of ROW on Maharaja Agarsen Marg in Laxmi Bai Nagar alls in the jurisdiction of NDMC for a period of 4 years.

2. Allotments for one year

(a) 109 metre section of ROW **of Aurobindo Marg near FOB towards Yusuf Sarai** at AIIMS for a period of 1 year

(b) The work will be carried out by DMRC as deposit work to AIIMS for connecting AIIMS to Trauma Centre on Ring Road near Jhandu Singh Marg. 109M Road portion of Aurobindo Marg will be resorted by DMRC after completion of work. The land between Aurobindo Marg and Trauma Centre does not belongs to NDMC.

The DMRC will be requested to conform its commitment to the following actions:-

a) "Diversion, Restoration of Drainage System damaged during construction of underground corridor has to be carried out by DMRC.

b) Relaying/ Redevelopment of affected roads, pavements, road furniture, other utility and green areas etc. by DMRC as per scheme approved by the NDMC.

c) Clearance from other departments i.e. Water Supply, Sewerage, Horticulture & Architect Department including other statutory bodies like DUAC, UTTIPEC, Traffic Police, Fire Services, ASI etc. is to be obtained by DMRC.

d) DMRC has to ensure that during construction no water-logging takes place in and around the work zone and no lines are diverted/ shifted without permission.

e) DMRC has to get approve the circulation plan around construction area from the UTTIPEC."

5. Financial Implication of the proposed Project/Subject.

There will be no financial implication on NDMC on account of transfer of this land with inventories to DRMC. Since, DMRC will restore the temporary land alongwith the inventory as to original condition of the roads, footpath, other utilities etc. as per the inventories prepared and accepted jointly by NDMC and DMRC.

6. Implementation schedule with time limits for such stage including internal processing.

The land will be used for four years period and shall be returned after completion of construction and restoration the same at Sarojini Nagar and Maharaja Agarsen Marg and the land at AIIMS will be returned after one year.

7. Comments of the Finance Department on the subject

The margin note the added in the draft agenda. Finance Department has no objection to it.

8. Comments of the Department on comments of Finance Department.

As desired the details has been incorporated in draft Agenda in detailed proposal at point 2(b).

9. Final views of Finance Department.

Finance has no objection to the proposal.

10. Legal implications on the subject/project

NIL

11. Details of previous Council Resolution existing law of Parliament and Assembly on the Subject.

N.A.

12. Comments of Law Department on the subject.

No law point involved. However, may please see if a public notice for temporary closure of a portion of public street is required.

13. Comments of the Department on the comments of Law Departments

Before taking up the work DMRC will put public notice in consultation with traffic police for diversion of traffic before execution of the work.

14. Final views of Law Department.

Law Department has no objection to the proposal.

15. Certification by the department that all Central Vigilance commission (CVC) guidelines have been followed while processing the case.

N.A.

16. Recommendations:-

The case is laid down before the Council for according the approval for following:-

(a) To issue 'No Objection' to handover the possession of ROW and land temporarily which belongs to NDMC for a period of four years at Sarojini Nagar and Maharaja Agarsen Marg in Laxmi Bai Nagar and at AIIMS for a period of one year subject to the undertaking from DRMC as mentioned at Point 4 above, for carrying out work of Delhi MRTS Project of Phase-III and at AIIMS for Central Road Tunnel between AIIMS and Trauma Centre.

(b) The approval is subject to grant of prior permission and 'no objection' by the L&DO for the above;

(c) DMRC shall not use the permanent buildings/exterior walls/walkways/platforms for any commercial activities, including advertisements, hawkers, vending, kiosks, etc. except with prior approval of NDMC.

(d) DMRC will restore the land temporary allotted to them at their own cost after completion of the work and will return back to the NDMC.

(e) To initiate further action in anticipation of confirmation of minutes for the council meeting.

17. Draft Resolution

Resolved by the Council to accord approval to the following:-

(a) To issue 'No Objection' to handover the possession of ROW and land temporarily which belongs to NDMC for a period of four years at Sarojini Nagar and Maharaja Agarsen Marg in Laxmi Bai Nagar and at AIIMS for a period of one year subject to the undertaking from DRMC as mentioned at Point 4 above, for carrying out work of Delhi MRTS Project of Phase-III and at AIIMS for Central Road Tunnel between AIIMS and Trauma Centre.

(b) The approval is subject to grant of prior permission and 'no objection' by the L&DO for the above;

(c) DMRC shall not use the permanent buildings/exterior walls/walkways/platforms for any other commercial activities, including advertisements, hawkers, vending, kiosks, etc. except with prior approval of NDMC.

(d) DMRC will restore the land temporary allotted to them at their own cost after completion of the work and will return back to the NDMC.

(e) It was also resolved by Council that further action may be taken by the department in anticipation of confirmation of the minutes by the Council.

COUNCIL'S DECISION

Resolved by the Council to accord approval to the following:-

a) To issue 'No Objection' for temporarily handing over the possession of NDMC land and ROW thereon to DMRC for a period of four years at Sarojini Nagar and Maharaja Agarsen Marg in Laxmi Bai Nagar and at AIIMS for a period of one year subject to the undertaking from DRMC as mentioned in Point 4 of the agenda, for carrying out work of Delhi MRTS Project of Phase-III and at AIIMS for Central Road Tunnel between AIIMS and Trauma Centre.

b) The approval is subject to grant of prior permission / 'no objection' by the L&DO for the above;

c) DMRC shall not use the permanent buildings/exterior Walls / walkways / platforms for any other commercial activities, including advertisements, hawkers, vending, kiosks, etc. except with prior approval of NDMC.

d) DMRC will restore the land temporarily allotted to them at their own cost after completion of the work and will return back to the NDMC.

e) It was also resolved by Council that further action may be taken by the department in anticipation of confirmation of the minutes by the Council.

Annexure 45 – 48

Annexure ends

ITEM NO. 07 (A-26)

1. Name of the Subject/Project:

Subject:- Improvement to pavement/footpath (PIP Scheme) under R-IV Divisoin during 2012-13.

SH:- Improvement to footpath at Madhulimaye Marg, Niti Marg & Shanti Path From Satya Marg to Rail Museum R/A and Sunehri Bagh Road remaining portion.

2. Name of the Department:

Civil Engineering Department, Roads-IV Division.

3. Brief History of the Project:

(i) To review the condition of remaining footpaths required re-construction under R-IV Division was inspected by CE(C-I) alongwith field staff.

(ii) Condition of footpath under the captioned work was found deteriorated due to wear & tear, cutting by various utility providers and have outlived their life.

(iii) These footpath were constructed in the year 1989 & 1993 respectively.

(iv) AIP for the same was accorded by the Chairperson to process the estimate.

(v) Accordingly, the preliminary estimate for above noted work has been framed amounting to ` 1,35,76,600/- on the basis of DSR 2012/market rate with 5 % contingencies, which has been checked by the planning division & concurred by Finance deptt.

4. Detailed proposal on the subject/project

Improvement to footpath includes following Scope of work:-

(a) Factory made CC slab of M-30 grade of size 400x400x50mm in grey & red colour combination in approved pattern/Gang saw cut red & white sand stone.

(b) RCC bollards on the entries of footpath to prevent damage from the vehicles.

(c) Constructing bell mouth (silt chamber type) having the cover with frame in the shape of kerb stone.

(d) Table top on entries of footpath with CC interlocking pavers & DQ Cobble stone flooring.

5. **Financial Implication of the proposal subject/Project.**

The Financial implication of the scheme works out to ` 1,35,76,600/-.

6. **Implementation schedule with time limits for such stage including internal processing.**

Approval of P.E. – 30th September-2012
Approval of D.E. – 31st October-2012
Approval of NIT – 30th November-2012
Approval of Tender – 31st January-2013
The schedule period of completion of eight months after award of work.

7. **Comments of the Finance Department of the subject.**

Finance Deptt. vide diary No. 1870/Finance/R-Civil dated 7th Sept.'12 has concurred as follows:-

In view of AIP of the competent authority at Page-16/N & clarification now given by the department FD has no objection to the proposed estimate amounting to ` 1,35,76,600/- (Rupees One Crore Thirty Five Lacs Seventy Six Thousand Six Hundred Only) as checked by planning at page-26/N on the above cited subject against the proposed HOA: 21-412-40-0-23 for which requisite funds needs to be arranged by the department in the RE 2012-13 before incurring any liability.

8. Comments of the Department on comments of Finance Department.

Requisite funds have been sought in RE 2012-13 & BE 2013-2014 accordingly to proposed expenditure plan.

9) Final views of the Finance Department

Concurred for approval of A/A & E/S vide diary no. 1870/Finance/R-Civil dated 7th September – 2012.

10) Legal Implications of the subject/ project:

Nil

11) Details of previous Council Resolutions, existing Law of Parliament and Assembly on the subject.

N.A.

12) Comments of the Law Department :

It has no legal issue.

13) Comments of the Department on the comments of the Law Department.

Nil.

14) Final view of law Department (wherever necessary)

No comments.

15) Certification by the Department that all Central Vigilance Commission (CVC) guidelines have been followed while processing the case.

Certified that all CVC guidelines have been followed.

16) Recommendations

The case is placed before the Council for consideration and accord of Administrative Approval and Expenditure Sanction of ` 1,35,76,600/- (Rupees one Crore thirty five lacs seventy six thousands six hundred only)for the work of Improvement to pavement/footpath (PIP Scheme) under R-IV Division during 2012-13. SH: Improvement to footpath at Madhulimaye Marg, Niti Marg & Shanti Path From Satya Marg to Rail Museum R/A and Sunehri Bagh Road remaining Portion and to initiate action in anticipation of confirmation of minutes.

17) Draft Resolution

Resolved by the Council that Administrative Approval and Expenditure Sanction has been accorded for `1,35,76,600/- (Rupees one Crore thirty five lacs seventy six thousands six hundred only) for the work of Improvement to pavement/footpath (PIP Scheme) under R-IV Division during 2012-13. SH: Improvement to footpath at Madhulimaye Marg, Niti Marg & Shanti Path From Satya Marg to Rail Museum R/A and Sunehri Bagh Road remaining Portion and to initiate action in anticipation of confirmation of minutes.

COUNCIL'S DECISION

Resolved by the Council:

a) To accord administrative approval and expenditure sanction to the estimate amounting to `1,35,76,600/- (for the work of Improvement to pavement/footpath (PIP Scheme) under R-IV Division during 2012-13. SH: Improvement to footpath at Madhu Limaye Marg, Niti Marg & Shanti Path From Satya Marg to Rail Museum R/A and Sunehri Bagh Road remaining Portion.

b) It was also further resolved by Council that necessary action may be taken by the department in anticipation of confirmation of the minutes by the Council.

ITEM NO. 08 (E-02)

1. Name of Subject

Agenda for NDCC-II building

2. Name of Department

Estate-I

3. Brief History of subject

3.1. Ministry of Home Affairs (MHA) occupies a space of 132811 Sqft from 1st to 5th Floor of NDCC Phase-II building on licence basis. Their present licence is valid from 17.11.2011 to 31.3.2021.

3.2. Ministry of Home Affairs vide office memorandum No. F.No. 14035/3/2011 – Delhi- II dated 10th September 2012 have forwarded a copy of minutes of meeting chaired by Secretary and Financial Advisor (Home), MHA on 3.9.2012. **(Annexure 'A' See pages 62 - 64)**

3.3. In these minutes, it has been conveyed that it is felt by MHA that instead of paying rent to the NDMC, MHA may purchase the building from NDMC.

4. Detailed proposal:

4.1. As per the book 'New Delhi Eighth City' authored by Sh. Madan Thapliyal who was Director (Public Relations) NDMC, Press Information Officer and In-charge of the NDMC Library, the foundation stone of Headquarters of the New Delhi Municipal Committee, the New Delhi Town Hall was laid on 14th March 1932. The extract from the speech of Sir John Thompson, Chief Commissioner, Delhi delivered on 14.3.1932 when he laid the foundation stone of New Delhi Town Hall is as under :-

"It gives me peculiar pleasure to comply with your request that I should lay the foundation stone of the New Delhi Town Hall. It marks a definite stage forward in the civic history of New Delhi and I am glad that this tags should have been reached before I go. It is only from the beginning of this month that New Delhi has become what you have called a full-fledged municipality and it speaks well for your energy that before its close you should have laid the foundation of your Town Hall. In one respect your experience has been almost unique. You have been presented with a model city and you have to see that the standard is maintained. But your task is not the easier for that. The standard set for you is the highest and it is by that standard that your work will be judged."

4.2. As per sanction dt. 26th March 1932, an estimated amount of Rs.1,36,000/- for construction of Municipal Town Hall New Delhi was sanctioned by the Chief Commissioner, Delhi. Another Rs.23,000/- was sanctioned for residence of Secretary, New Delhi Municipal Committee. As per this book, land for the Town Hall as well as residence of the Secretary was provided by the Government free of cost. The building was completed and inaugurated by Hon'ble Viceroy Lord Willingdon on 13th August 1933. It appears from this publication that prior to the construction of this building, the headquarters of New Delhi Municipal Committee operated from rented buildings. The headquarters of Municipal Government of New Delhi Municipal Committee was thus completed and become operational from 13th August 1933.

4.3. It is well known that N.D.M.C. has an area of about 42 Sq.Kms. and as per statement of Objects and Reasons attached to the New Delhi Municipal Council Bill of 1994, "the New Delhi Municipal Council area comprises the territory that has been described as Lutyens' Delhi and which has historically come to be regarded as the seat of central authority in Union of India. It comprises important buildings like Rashtrapati Bhawan, Parliament House, Supreme Court, North and South Blocks and buildings abutting Central Vista and also all diplomatic missions which functions as territorial entities under the sovereign jurisdiction of their Flag States. The Government of India are nearly the sole land-owners and also own about eighty percent of the buildings in the New Delhi Municipal area. Private ownership of property in this area is marginal".

4.4. The State bhawans, the buildings of the State Governments are also housed in N.D.M.C. area. Properties of the Union of India and State Governments are exempt from payment of property taxes. The properties of the Diplomatic Missions are regulated by Vienna Convention of 1960 and are not contributing to municipal finances. Through executive orders Union of India properties are liable to service charges. Railways refuse to follow these orders. With the limited resources available from property tax, to provide the quality municipal services in N.D.M.C. area, particularly to the properties of the Union Government, State Government and Diplomatic Missions and avoiding dependence on loan and grants from the Government, N.D.M.C. decided to develop renting stock by developing certain buildings and to provide municipal services out of the user charges / licence fee derived from these buildings. Development of Yashwant Place Complex in late sixties and certain Municipal markets was in that direction.

4.5. The New Delhi Municipal Committee, with a view to meet the requirements of various departments of the N.D.M.C. for additional space and also to meet its day to day requirements of municipal services, decide to re-develop the headquarters complex known as New Delhi Town Hall. The Committee vide Reso. No. 72 dt. 12th February 1969 approved the construction of ***"New Delhi City Centre"***. The said city Centre was to be constructed in two Phases. In the first phase, was constructed the 20 storey building on the vacant portion of the plot and in the second phase was to be constructed a multi-storey block, auditorium, art gallery and library after demolishing the Town Hall building. The construction was carried out in three phases as under :-

Phase-I – 20 Storey building which was completed in 1984

Phase-II- 32 storey tower for office use

Phase-III - Art gallery, Committee room and auditorium

4.6. M/s. Raja Rewal and Kuldeep Singh were appointed as Architect Consultants in June 1985 for Phase-II and Phase-III. In 1986, the Ministry of Urban Development changed the FAR limits resulting into huge restrictions on construction of building and proposed 32 storey building was changed into 10 storey office complex. During 1992, Phase-II and Phase-III were named Block – C and Block-B respectively of the New Delhi Civic Centre. Delhi Urban Art Commission approved the building in 1992 and in the year 1992, it was proposed that the already constructed Phase-I will be used for providing excess space, if any, for user by others and NDCC Phase-II building for housing offices of the Committee. As per Council's Reso. of 01.10.1992, it was decided that the existing Palika Kendra building would be utilized for commercial purposes as envisaged. Consequently the proposed building will be utilized for housing offices of the Committee.

4.7. During the construction of the building, there were objections from ASI that the proposed building is within the regulated area opposite Jantar Mantar Monument. There was lot of correspondence between the N.D.M.C. and ASI and this badly delayed the construction and completion of this building.

4.8. After completion of the Palika Kendra in 1984 and shifting of offices of the Committee in this building. In April 1992 order for demolition of the old Town Hall building was issued for constructing a new building for establishing new headquarters of the municipal government of New Delhi. The construction of NDCC Phase-II was challenged in the Delhi High Court and Supreme Court in litigation raised by one Sh. Narender Kumar Anand who was not allowed construction by ASI as the same was within the prohibited area. The Supreme Court finally decided the issue in their judgment dt.16.1.2012 in the case Archaeological Survey of India Vs. Narender Anand, CA No. 2430 of 2006. The Supreme Court held that NDMC has not constructed this building in violation of ASI notification.

4.9. When the NDCC Phase-II building was completed and the Council had to shift its offices to the said building, it was decided that pending shifting of Council's offices from various other buildings to the main building, this newly constructed building may be temporarily permitted to be occupied by O.C., of Common Wealth Games 2010 for period upto March 2011 and as soon as the building is vacated, it will be utilized for other offices and shifting of the Council's Secretariat and Council's meeting room to the new building. When the building was vacated by O.C. of Common Wealth Games, MHA showed interest in occupying 05 floors in this building for their offices on payment of same user charges as were being paid by the O.C. of Common Wealth Games. This user was agreed to for a period upto 31st March 2021. Now the MHA wants to purchase this building.

4.10. Mayur Bhawan, Akbar Bhawan and Lok Nayak Bhawan are occupied by the various offices of the Central Government. Major portion of Mayur Bhawan is occupied by the Income Tax Deptt., Lok Nayak Bhawan by the Directorate of Estate and MHA while Akbar Bhawan, which was constructed as a hotel building was occupied from 1986 by Ministry of External Affairs, C-DoT and ET&T. A portion at the Ground Floor and the basement of the Annexee building was vacated by the ET&T and is now occupied by Gesture Hotel on a licence basis. Their term has expired but the Court has allowed them to continue till further orders.

4.11. In 2005, the Ministry of Home Affairs in the letter dt. 28th April 2005, proposed that Akbar Bhawan, Lok Nayak Bhawan and Mayur Bhawan be transferred to the Directorate of Estate, Ministry of Urban Development in lieu of the markets that are being transferred to the N.D.M.C.

4.12. The Council, in its Special Meeting held on 24.5.2005 at 11:00 AM, considered the above proposal.

The Council was informed of the views, received in writing, of the Hon'ble Chief Minister, Govt. of NCT of Delhi, on the matter, which are reproduced as under :

"I agree with the observations forwarded by the Advisor (Revenue) and the Legal Advisor, NDMC. Our endeavour should be to make NDMC a financially viable body and avoid the debt trap which other civic bodies progressively fall into.

Further, I believe that instead of taking a decision for transfer of properties/markets, the issue of maintenance should be kept for most in our minds. Multiplicity of authorities leads to dilution of responsibility and accountability. This also cause confusion in the citizens perceptions as to who maintains the properties/markets as a result of which both the user and the upkeep of the asset suffers.

Sd/-
(Sheila Dikshit)
Chief Minister
23.5.2005."

Similarly, of other Members presents, Shri O.P. Kelkar, Pr. Secretary (UD), Govt. of NCT of Delhi also placed on record his comments which are as under :

"1. As per Section 144 of the NDMC Act, 94, it is not appropriate to transfer any properties of NDMC to any agency organization unless "a fair and normal competitive price is paid" and without the sanction of the Council. Therefore, this proposal is not according to the legal provisions governing the transfer of properties of the Council.

2. As per the items circulated by Secy, NDMC, there is going to be huge revenue loss to the NDMC and there is no mention about any compensation resultantly this is going to be weaken the financial position of the Council, which is not desirable. The Council has been doing a good job and has built up its financial position and no efforts should be made to weaken it under any pretext.

3. It is not clear from the proposal as to how would NDMC will gain from this proposal? Chairperson NDMC may like to clarify during the meeting on this point.

4. On transfer of the L&DO markets and Director of Estate Markets to NDMC, the Govt. of India should pay to NDMC for maintenance of these markets if there is any short fall on account of realization of license fee from these markets. In conclusion, the UD Deptt., GNCTD does not feel inclined to agree with the proposal of transfer of the NDMC commercial complexes to the Director of Estates, Ministry of UD, Govt. of India.

5. It has been noted that NDMC is already performing its obligation towards maintaining these markets as a part of its normal obligatory functions.

Sd/-
(O.P. KELKER)
Pr. Secretary (UD)
24.5.2005"

Smt. Tajdar Babar, Vice-Chairperson, NDMC had following comments :

"(a) As regards transfer of all the markets under L&DO and Dte. Of Estates in NDMC area to NDMC, it is a good proposal being considered by the Government since all the Civic responsibilities are being borne by NDMC with utmost care without any profit from these markets since long and Govt. is just holding its title. In case, these markets are transferred to NDMC, the revenue generated from these markets will compensate the responsibilities being borne by NDMC without any profit since long.

(b) So far as the creation of a "Corpus of Fund" by the NDMC is concerned, it is not clear how much revenue will be generated from these markets and what proportion of amount will have to be invested by NDMC for creation of such Fund towards its renovation/development. Although, NDMC has already such a provision, of funds for development of such markets in its budgetary allocation, it would be appropriate to bring out the facts on record about generation of estimated revenue from these markets.

(c) As regard transfer of the buildings/properties with NDMC to the Dte. of Estate, Ministry of U.D., Govt., of India is concerned, the undersigned will not asset to this proposal, as the same will land NDMC in financial debt trouble like other Corporations and its decades old cherished dream for financial independence to finance its obligatory functions through remunerative projects will never be fulfilled.

Sd/-
(TAJDAR BABAR)

VICE CHAIRPERSON"

4.13. The Council resolved that "N.D.M.C. be given due and fair compensation in order to ensure that the present stream of revenues from these properties to N.D.M.C. is safeguarded and a Committee be set up to recommend the principles and quantum of fair compensation payable to the N.D.M.C. for transfer of such properties to Directorate of Estates." (**Annexure 'B' See pages 65 - 72**)

4.14. After considering the objections raised by the NDMC, proposal for the transfer of three buildings was de-linked from the transfer of markets and markets were transferred in April, 2006 without insisting upon the transfer of the three buildings to Dte. of Estate, MoUD.

4.15. Under the N.D.M.C. Act 1994, Chapter-X relate to "Property and Contracts". Section 141 relate to disposal of immovable properties. The said section provides that the Chairperson may with the sanction of the Council, lease, sell, let out on hire or otherwise transfer any immovable property belonging to the Council. The consideration for which any immovable property may be sold, leased or otherwise transferred shall not be less than the value at which such immovable property could be sold, leased or otherwise transferred in normal and fair competition. As per sub-section (3) of this section, the sanction of the Council under this section may be given either generally or for any class of cases or specially for any particular case.

4.16. After the N.D.M.C. Act 1994 came into force, general guidelines to attend to cases of Estate Deptt. were not available. The Council in Resolution dt. 19th March 1999, approved detailed guidelines on the aforesaid subject. This was re-considered in the meeting of the Council on 30.8.2000 (The copy of resolution may be seen at **Annexure 'C' See pages 73 - 75**). In respect of building with Govt. Deptt., the decision was under:-

"(ii) New licence to Ministries/Govt. Deptt. in commercial complexes shall be as per the provisions of section 141 (2) of the NDMC Act. 1994

(iii) The present approved rate of 5% per year on the renewal is not in accordance with the renewals by the Central PWD, in the case of Government properties, where the increase has been offered at about 9% per annum and as per the increase permissible under the Delhi Rent Act 1995 where the permissible yearly increases have been approved at 10%. Accordingly, the enhancement of licence fee on the renewal of the licence fee may be at 10% per year and the licence may be for a period of ten years.

(iv) In the case of renewals of the licenses of the premises with the Ministries/Government Departments, the renewal, if agreed shall be at 10% per annum or the Central PWD enhanced rates, whichever is higher."

4.17. The licence fee being received from the portions on the buildings occupied by departments of the Central Government, is already on the lower side as compared to the licence fee paid by the departments or occupiers other than the Central Government Departments, as is clear from the following :-

4.18. In Mayur Bhawan 56278 sq.ft. is with the Income Tax Deptt. at Rs.87.37 per sq.ft. licence fee payable by other licensees i.e. M/s. Aristo Pharmaceuticals and All India Council for Technical Education is at Rs.130/- per sq. ft. p.m. In Lok Nayak Bhawan, 288249 sq.ft. is with Directorate of Estate and MHA at Rs.46.24 per sq.ft. p.m. of the covered area. In the case of Akbar Bhawan, an area of 332244 sq.ft. is on licence with the Ministry of External Affairs at a licence fee of Rs.58.96 per sq.ft. p.m. of the covered area. The annual increase is 8%. In the same building, covered area of 15,000 sq.ft., is occupied by Gesture Hotel at Rs.90.65 per sq.ft. p.m. In the same complex, licence fee paid by other Central Government Departments in Chanakya Bhawan is Rs.145.48 per sq.ft. p.m.

4.19. In NDCC Phase-II, MHA is paying user charges at Rs.232/- per sq.ft. p.m. when in the same building, other departments are paying Rs.350/- per sq.ft. p.m. In newly constructed buildings at Talkatora Stadium and Shivaji Stadium the payment of licence fee has been expected at Rs.330/- & Rs.380/- per sq.ft. p.m. respectively.

4.20. The requests are being made by the licensees of municipal markets that they should be given ownership rights on the premises occupied by them. The Council has rejected their demand on the ground that selling N.D.M.C. buildings is not a municipal function and so far no case has been approved by the Council for sale of N.D.M.C. buildings.

4.21. The proposal from the MHA is to purchase the re-developed Town Hall building, the headquarters of New Delhi Municipal Government which has been re-developed to house N.D.M.C. offices. Temporarily space has been allowed to be occupied by Government Departments on payment of user charges so long as the accommodation is not being occupied by the Council for its offices.

4.22. The land was allotted in 1932, as aforesaid for construction of New Delhi Town Hall. On the said land, three Blocks have been constructed, namely, Block-A, Block-B and Block-C and these are integral and supplementary to each other and not separate buildings on separate piece of land. The construction has been raised and FAR availed on the said piece of land as a single unit and the land cannot be divided for sale of a Block of the said Town Hall building. All the Blocks are on the said land and are called instead of New Delhi Town Hall "New Delhi Civic Centre" and as aforesaid, neither the buildings nor the land can be divided.

4.23. NDMC has been trying to get some additional land from the L&DO to develop further rent stock which can be utilized by the NDMC or other Government Departments but land is not being made available by the L&DO. If the existing buildings are also sold or purchased by the licensees, further land in NDMC area would not be available. As such to improve the renting stock, the NDMC has resorted to re-develop the existing buildings and structures like NDCC, Yashwant Place etc.

4.24. The Council has to take a decision as to whether it permits selling of the Headquarters building of the N.D.M.C. known as New Delhi Civic Centre Phase-II and if so, on what terms and conditions.

4.25. Constructing and selling of the buildings in N.D.M.C. area is not a municipal function. The N.D.M.C. has been constructing buildings for its own occupation or to collect user charges on month to month basis to have a regular source of revenue to provide quality civic services in the N.D.M.C. area. N.D.M.C. has not so far opted to sell its properties and thereby reduce its options to have a regular stream of revenues. If at all N.D.M.C. decides as a special case to sell its properties, it has to be at a comparative rates but if one property is sold to a licensee there would be claims from more than 3000 licensees to sell the properties on the same principle as may be disposed of to the MHA.

4.26. The spirit of the 74th Constitution Amendment was to make the local bodies self sufficient and raise their revenues so that they do not depend on the loans and grants from the Government. NDMC has been following the spirit of the 74th Constitution Amendment as far as finances are concerned, in letter and spirit and NDMC is the only local body which is debt free. All the loans were repaid alongwith interest in 2002 and from 2002, NDMC is providing services out of its own resources without dependence on loans or grants from the Government.

4.27. In this regard, it may be brought on record that the MCD has given a portion of their newly constructed building to Income Tax Deptt. on a long lease after collecting Rs.1800 cr. The rate has been fixed on the basis of tenders available with the MCD in the following manner :-

(i) Rs.30500/- per sq. ft. for an area of 557024 sq. ft. for office block.

(ii) Rs.15250/- per sq. ft. for an area of 29590 sq. ft. for service block.

(iii) Rs.1110/- car parking at Rs.5,00,000/- per car lot.

In other words, it has been given to the Ministry of Finance (Income Tax Deptt.) at a comparative market rent.

4.28. It may be beneficial to bring on record that N.D.M.C. is already been asked to provide municipal services in the N.D.M.C. area to 80% of the properties without collecting any property tax. The State Govt. and Diplomatic Missions as well as the Railways do not contribute. The licence fee being received by the N.D.M.C. from the Govt. buildings is also highly subsidized. If the Govt. starts purchasing these properties of the N.D.M.C. it will only cripple the local bodies financially and ultimately it may adversely effect providing quality municipal services which N.D.M.C. is expected to be and which was the policy direction of March 1932 when the foundation stone of New Delhi Municipal Committee Town Hall building was laid.

5. Financial implications of the proposed subject

If we accept MHA's proposal it shall have a serious impact on NDMC revenue.

6. Implementation schedule with timelines for each stage including internal processing.

Not applicable

7. Comments of Finance Deptt on the subject

Sustainable and reliable source of revenue through licence fee has been the strengths of NDMC which has made NDMC to meet out its growing needs of funds on its own over the years in the matters of public utility services in the area of its operations. Selling out the properties on outright basis is financially unviable for NDMC and its is not recommended.

8. Comments of the Deptt on the comments of the Finance Deptt

NIL

9. Legal implications of the subject

Chapter-X relates to property and contracts. Section-141 provides for disposal of immovable property. According to this section, the Chairperson may with the sanction of the council, lease, sell let out on hire or otherwise transfer any immovable property belonging to the Council. This section makes it clear that only if the Chairperson wants to sell the property or lease out, he has to do so with a sanction of the Council. Here, the Chairperson is not proposing letting out or sale of the properties. It is the occupant who wants to purchase it which is not permissible under the NDMC Act. The NDMC Act had does not provide a right to the occupant to purchase a property and as such the Council has a right to reject the proposal of the licensee to purchase the property. If it is agreed to, it will have wider repercussions as most of the occupants/licensees will move applications for purchase of the property and if denied, it will involve avoidable litigation.

10. Details of previous Council Resolutions on the subject

NIL

11. Comments of the Law Deptt on the subject

As recorded in para 9 above.

12. Comments of the Deptt on the comments of the Law Deptt

NIL

13. Clarification by the Deptt that all CVC guidelines have been followed

Not applicable.

14. Recommendations

The Council may consider that the proposal of MHA may not be accepted in the light of the facts narrated above.

15. Draft Resolution

COUNCIL'S DECISION

The Council considered the proposal of Government of India, Ministry of Home Affairs to purchase NDCC Phase-II building from NDMC and unanimously resolved to reject it.

The Council further authorised the Department to take further necessary action in the matter in anticipation of the confirmation of the minutes by the Council.

Annexure 62 – 75

Annexure ends

ITEM NO. 09 (E-03)

1. **Name of the Subject** :-

1.1 Operation and Management of Five Star Hotel Premises at 1, Man Singh Road after the expiry of the extended license period on 10 October 2012.

2. **Name of the Department** :

2.1 Estate-I Department.

3. **Detailed History on the Subject Matter**:

3.1. This proposal was considered by the Council in its meetings held on 07.10.2011 and 25.07.2012. A copy each of these two Agenda Items is at **Annexure-'A' (See pages 109 – 116)** and **Annexure-'B' (See pages 117 – 121).**

3.2 In these meetings Council decided as under :-

(i) Meeting of 07.10.2011

a) To accord sanction for extension of existing collaboration project and lease deed for one year up to 10.10.2012, subject to the condition that the Indian Hotel Corporation[IHCL] shall agree to pay license fee as per mutually agreed terms and conditions retrospectively w.e.f.11.10.2011.

b) To accord sanction for further review and actions in accordance with the decision of Ministry of Urban Development, the legal advice the Committee's recommendations and Consultant's Reports.

c) The Council also directed that the Department should work out the timelines for completing the above exercise and the Council be informed of the progress.

d) *It was also resolved by the Council that further action may be taken by the department in anticipation of confirmation of the minutes by the Council.*

(ii) Meeting of 25.07.2012

a) After considering the facts and circumstances of the case, it was resolved by the Council, by majority, that the Council may charge from the Licensee, M/s. IHC Ltd. License fee @ of 17.25% of the Gross turnover or Rs.21 crores a year for the period from 11.10.2011 to 10.10.2011, whichever is higher.

b) The Council further directed that the final report of the Consultant appointed to recommend further course of action be brought before the Council at the earliest.

c) It was also resolved by the Council that further action in the matter be taken by the department in anticipation of confirmation of the Minutes by the Council.

3.3 The Report of Consultant and the opinion of the Addl. Solicitor General have been received and are being placed before the Council, through this Agenda Item. **The Council is now required to take a decision in the matter**.

3.4 To arrive at a decision in the matter, it appears necessary to place before the Council history of the project and chronology of dates and events.

3.5 In early 1976, a piece of land measuring 3.78 acres at 1, Man Singh Road, along with structures was offered by the then Ministry of Works and Housing to N.D.M.C. to construct a hotel which should be available for the PATA Conference of 1978. The New Delhi Municipal Committee, as it then was constituted, accepted the offer of allotment of land to construct the Hotel. It appears from the Committee's Agenda Item that a request from Indian Hotels Co. Ltd. was also pending with the Ministry of Works and Housing for allotment of this plot of land to

IHCL for construction of a hotel. IHCL approached the New Delhi Municipal Committee to collaborate in construction of the hotel. An extract from the Agenda placed for consideration of the Committee in April, 1976 and its Resolution are extracted as under :- Quote

"The offer of India Hotels Co. Ltd. appears to be quite favourable if compared with the return that we are getting from ITDC in respect of Akbar Hotel. There is also an advantage that entire initial expenditure of preparation, design and management and supervision of the project would be borne by IHC. Broad terms and conditions of joint participation can be discussed in detail and interest of the Committee can be ensured. It is for consideration and in the interest of the Committee to take the following decisions:-

i) Acceptance of the allotment of land by the Ministry of Works and Housing for the construction of a hotel on the terms and conditions as may be offered.

ii) Acceptance of the proposals of M/s. The Indian Hotels Co. Ltd. in principle, for participation jointly in the construction and running of the hotel.

iii) Discussing further details with M/s. The Indian Hotels Co. Ltd. in order to finalize a draft of the License deed for approval of the Committee.

<u>Committee's Resolution / Observation</u> :

Resolved that :-

(i) The allotment of land by the Ministry of Works & Housing for the construction of a hotel on the terms and conditions as may be offered be accepted.

(ii) Proposals of M/s. The Indian Hotels Co. Ltd. For participation jointly in the construction and running of the hotel be accepted in principle.

(iii) Draft License deed to be executed with M/s. The Indian Hotels Co. Ltd. be discussed and finalized for approval of the Committee". Unquote

3.6 Copy of letter of allotment of land is **<u>Annexure-'I' (See pages 122 – 124).</u>**

3.7 A Collaboration Agreement was thereafter entered into between New Delhi Municipal Committee and IHCL. A copy of this agreement is at **<u>Annexure-II (See pages 125 – 145).</u>** After executing the Collaboration Agreement, a License deed was also drawn between the New Delhi Municipal Committee and IHCL **[Annexure-III See pages 146 - 160]**. IHCL was responsible for construction of the building on the plot of land allotted to the New Delhi Municipal Committee and cost to the extent of Rs. 475 lac was to be provided by the Committee. Through a Supplementary Deed, the cost of the land and building was fixed at Rs. 626 lac. Any expenses in addition to the above were to be met by IHCL.

3.8 Relevant clauses from this License Deed are as under :- Quote

"*<u>Clause-I - License</u>*

1. *The Licensor has, subject to the provisions of sub-clause1 of Clause-II hereinafter, granted License to the Licensee to enter into and occupy the said hotel from a date to be mutually agreed upon for the purpose of running a hotel of acceptable standards together with all the related facilities and business appurtenant the ratio, for the furtherance and development of tourism in India.*

2. *In terms of the Collaboration Agreement entered into between NDMC and the Indian Hotels Company Limited on 18th December, 1976 at New Delhi [hereinafter called the Collaboration Agreement], the Licensor hereby agrees and allows the Licensee to commence hotel operations partially by the end of March, 1978 notwithstanding the fact that the hotel building is not completed in all respects in terms of the Collaboration Agreement provided a minimum of 40 guest rooms and one restaurant are ready for use and occupation.*

<u>Clause II – Term</u>

1. *The license hereby granted shall be in force a period of thirty three years commencing from the date of occupation of the hotel by the first paying guest subject to the condition that the Licensee shall be bound by and observe and perform all the terms and conditions contained in this license throughout the period of this license.*

2. *On expiry of the period of license of the said hotel building hereby granted, the Licensor shall have the option to grant the license for a further period on such terms and conditions as may be mutually agreed upon between the Licensor and the Licensee. If the Licensee shall be desirous of obtaining a License for a further period after the expiry of the present License, it shall give to the Licensor, a notice in writing of not less than sixty (60) days prior to the date of expiry of the present License for the consideration of the Licensor.*

Clause – III – License Fee and Manner of Payment

1. *In consideration of the Licensor granting to the Licensee, the License in respect of the said hotel building as hereinabove referred to, the Licensee shall pay to the Licensor as and by way of License fee an amount equivalent to 10-1/2 percent (ten and a half percent) of the gross income of the Licensee for every financial year of the Licensee as certified by the statutory auditors of the Licensee or a sum equivalent to 15% (fifteen percent) of the Licensor's investment in the said hotel building, the terms of the Collaboration Agreement, whichever is higher. The liability for the payment of License fee as aforesaid shall commence from the date of commissioning of 300 rooms in the hotel or first day of December, 1978, whichever is earlier. The License fee in respect of the period which is less than a full financial year shall be paid by the Licensee to the Licensor on a prorate basis on the basis of the statement certified by the statutory auditors of the Licensee.*

EXPLANATION : i) Financial Year: For the purpose of this Clause, the term 'financial year' of the Licensee shall mean the 12 month period commencing from the first day of April of any year and ending on the 31st day of March of the following year.

(ii) Gross Income : For the purpose of this Clause, the term 'gross income' of the Licensee for any financial year shall represent the total amount of income derived by the Licensee from the said hotel as certified by the statutory auditors of the Licensee. The gross income shall include receipt of income on account of rooms, restaurants, banquet parties, pool side snack bar, bar-be-que, room service, public rooms, function rooms, laundry, shop rentals, entertainment shows, counter spaces, show windows, showcases and barber and beauty shops. The gross income shall not include;

a) Income of the shops, counter spaces and any other area sub-Licensed by the Licensee to other persons or parties from whom the Licensee is only entitled to rental in respect of the area sub-Licensed.

b) Income from rooms shall be net income after adjusting the commissions or discounts paid or payable to travel agents, tour operators, group leaders or the agencies making the bookings of rooms in the said hotel.

c) Sales taxes, other taxes pertaining to sales and service charges collected on behalf of the employees.

2. *Before a financial year comes to an end, the Licensee shall estimate the gross income from the said hotel for the ensuing financial year and accordingly estimate the amount of License fee payable by the Licensee to the Licensor as aforesaid. The License fee so estimated or the minimum annual guaranteed amount, whichever is higher, shall be paid by the Licensee to the Licensor in advance every year in twelve (12) equal monthly installments. The monthly installment will be paid on or before the 10th of the month for which it is due and payable.*

3. *The Licensee shall furnish to the Licensor every year, within a period of thirty(3) days of the date on which the audited accounts of the Licensee are approved and adopted at the Annual General Meeting of the shareholders of the Licensee, a statement duly certified by the statutory auditors of the Licensee appointed in pursuance of the relevant provisions of the Companies Act, 1956 giving break-up of the various items comprising the total income in relation to the business of the Licensee in the said hotel during the preceding financial year.*

4. *Within thirty(30) days of holding the Annual General Meeting of the shareholders of the Licensee in accordance with the provisions of Company Law at which the annual audited accounts of the Licensee are placed and approved, the Licensee shall pay to the Licensor the License fee falling short of the License fee becoming due and payable on annual audited income basis as certified by the statutory auditors on the basis of the License fee stipulated in sub-clause 1 here above and the estimated License fee paid to the Licensor as stipulated in sub-clause 2 hereinabove. Any amount of License fee paid in excess by the Licensee to the Licensor shall be adjusted from the next installments of License fee as due and payable by the Licensee to the Licensor.*

5. *Within thirty(30) days from the date of the Licensee commencing operations in the said hotel building, whether partially or fully, the Licensee shall furnish to the Licensor a Bank Guarantee underwritten by anyone of the nationalized banks having a branch in New Delhi equivalent to the amount of 3 months' License fee as estimated by the Licensee, as and by way of security.*

Clause- VI – Possession of Hotel Building

1. *The Licensor and the Licensee shall mutually fix the date on which the possession of the said hotel building shall be handed over to the Licensee for commissioning it as a hotel, whether partially or fully notwithstanding that the construction of the said hotel building in terms of the Collaboration Agreement has not been completed and the Licensor has not given the Completion Certificate in respect of the said hotel building to the Licensee. At the time of handing over possession of the said hotel building as aforesaid the Licensor and the Licensee will jointly make an inventory of the assets being handed over to the Licensee for partial or full commissioning of the hotel and the Licensee shall not contend thereafter that the hotel building or equipment, installations, fittings, fixtures, or any of the other assets listed in the inventory to be prepared as aforesaid are not complete in any respect whatsoever. If any change, addition or alteration be necessary, the Licensee shall do the same at its own cost after obtaining the Licensor's written permission. The Licensor shall have no objection to the Licensee replacing any of the fittings and fixtures such as bath tubs, sanitary ware, lifts, doors etc. at the cost of the Licensee after giving intimation to the Licensor to this effect in writing.*

2. *The ownership of the said hotel [the land on which the said hotel is situated belongs to the Licensor] shall at all times vest in the Licensor, together, with all fittings, fixtures and other installations of immovable type or of the type the removal of which is likely to cause damage to the building. A list of such fittings, fixtures and installations shall be drawn jointly by the representatives of the Licensor and the Licensee before the Licensee takes over the hotel building for the purpose of running a hotel of acceptable standard therein.*

3. *All movable assets in the hotel building referred to in Schedule-III to the Collaboration Agreement as well as all other assets including assets such as air-conditioning compressors, air handling units, fan coil units, pumps, cooling towers, piping conduiting, electrical panels, lighting fixtures, diesel generating sets, water treatment plants, boilers, laundry equipment, kitchen equipment and other hotel equipment which the Licensee pays for an equips and furnishes the hotel building with, shall belong at all times to the Licensee. The Licensee shall be entitled to all rights, title and interest to or in respect of such assets throughout the currency of this agreement as well as upon its termination.*

4. *Upon the termination of this agreement, the Licensor may purchase the Licensee's assets at reasonable prices to be mutually agreed upon between the Licensee and the Licensor.*

<u>Clause- IX – Future Expansion</u>

During the period of the License hereby granted or the renewed period of the License, should it be necessary or expedient in the interest of furtherance and development of tourism in the Capital City – Delhi to expand or add to the facilities in the said hotel building in terms of additional guest rooms, function rooms, public areas, restaurant and other facilities either in the same premises and/or adjoining property, if and when made available, the Licensor hereby permits the Licensee to carry out such additions or expansion on the terms and conditions to be mutually agreed upon

<u>Clause- X – Termination</u>

If the Licensee commits a default in the payment of the License fee in the manner provided in this Deed of License or ceases to do business in the said hotel building or commits breach of any of the terms of this Deed willfully or otherwise, the Licensor may give a notice in writing to Licensee for remedying the breach and if the Licensee fails to do so within a period of thirty (30) days from the date of such notice, the Licensor may terminate the License without giving any further notice.

<u>Clause- XII – Handing over possession of the Hotel Building to the Licensor</u>

On the expiry of the License period and in the event of the License having been terminated earlier, the Licensee shall hand over the possession of the hotel building together with fittings and fixtures and all other installations belonging to the Licensor as per the Collaboration Agreement [excluding those items of the Licensor replaced by the Licensee in terms of the Deed of License heretofore] in the same conditions as far as practicable as at the time of taking them from the Licensor alongwith the installations as described in the Deed of License heretofore save normal wear and tear and modifications alongwith the building referred to in this Deed with its fittings and fixtures and all other installations as stipulated in this License heretofore, within thirty(30) days from the expiry of the License period or termination of the License deed as the case may be. The Licensee shall pay such damage charges for Overstayal in the premises from the date of expiry of the License period or from the date the License is terminated at the rate as may be determined by the Licensor from time to time and which shall not be less than the License fee paid immediately before the expiry of the License period and in the event of the License having been terminated earlier, the Licensee shall have the right to take away the Licensee's assets including the assets referred to in Schedule-III to the Collaboration Agreement and all other assets belonging to the Licensee, which Licensee may voluntarily bring into the hotel at its own cost. ***Unquote***

3.9 The License commenced from 11.10.1978 and was for a period of 33 years up to 10.10.2011. IHC was to pay a License fee of 15% of cost of 626 lacs or 10.5% of gross income whichever is higher. In addition House Tax of Rs.12 lacs and ground rent of about Rs.23 lacs were also payable on yearly basis.

3.10 IHCL has paid the License fee as per the License deed and minor disputes about charging of the interest during moratorium period and method of calculation of gross income and interest on the additional amount due have also been settled. During these 33 years, as against minimum License fee of less than Rs 3300 lac, IHC have paid License fee of about Rs 26000 lac. IHC have also incurred an expenditure of about Rs 13300 lac in this Hotel Project. **(Annexure-'IV' See page 161 - 162).**

3.11 As per requirement of Clause-II(2) of the License deed, IHC has exercised the option of grant of License for a further period on terms and conditions as may be mutually agreed upon and this option is under consideration of the Council. A copy of option dated 15 February, 2010 is at **Annexure-'V' (See page 163)**

3.12 On the date of completion of 33 years of License, no dues, no disputes or violations of the terms of the License are available on record.

3.13 Prior to establishment of New Delhi Municipal Council through the NDMC Act 1994, the New Delhi Municipal Committee, as it then was, was governed by the Punjab Municipal Act 1911. As per section 416(2)(a) of the NDMC Act, 1994 any License or permission granted under the Punjab Municipal Act 1911 and in force immediately before the establishment of the Council shall in so far as it is not inconsistent with the provisions of NDMC Act 1994, shall continue in force and deemed to have been made under the provisions of the N.D.M.C. Act 1994 unless and until it is superseded by any License or permission granted under the provisions of the NDMC Act 1994.

3.14 Under the N.D.M.C. Act 1994, Chapter-X relate to "Property and Contracts". Section 141 relates to the disposal of immovable properties. The said section provides that the Chairperson may with the sanction of the Council, lease, sell, let out on hire or otherwise transfer any immovable property belonging to the Council. The consideration for which any immovable property may be sold, leased or otherwise transferred shall not be less than the value at which such immovable property could be sold, leased or otherwise transferred in normal and fair competition. As per sub-section (3) of this section, the sanction of the Council under this section may be given either generally or for any class of cases or specially for any particular case.

3.15 After the coming into force of the N.D.M.C. Act 1994, general guidelines to attend to cases of disposal of immovable property were not available. The Council in its Resolution of 19 March 1999, approved detailed guidelines on the subject. In respect of "special categories of properties" the approved guidelines as contained in clause 9 of the said resolution was that "hotels, cinemas and similar projects etc. may be governed as per mutually agreed terms and conditions as entered into by the Council from time to time".

3.16 The above policy of 19 March 1999 was reconsidered by the Council in its meeting on 30 August 2000. Para 3 and 6(i) of the Agenda Item are relevant and are re-produced hereunder :-
Quote

"3 It has been observed that renewal in case of premises of hotels and the cinema complex is on mutually agreed term. The existing Estate Policy provides for determining terms and conditions as also License fee on mutually

agreed terms as approved by N.D.M.C. vide its resolution No. 6 dated 18.3.99. Clause 9 for special categories reads as under :-

"Hotels / Cinemas and similar other projects may be governed as mutually agreed terms and conditions as entered into by the Council from time to time."

(i) The above decision appears contradictory to section 141(2) of N.D.M.C. Act, which relates to the disposal of immovable property and puts an embargo on transfer of premises on non-competitive terms. The Section reads as under :-

"141(2) – The consideration for which any immovable property may be sold, leased or otherwise transferred shall not be less than the value at which such immovable property could be sold, leased or otherwise transferred in normal and fair competition."

(ii) Thus, it is obvious from the above Section that its use should be allowed on payment of license fees determined on competitive basis. In case Council goes by the existing policy as stated above, the existing licensee can always involve the Council in unending disputes as it has happened in case of Chanakya Cinema in which the licensee started litigation against N.D.M.C. soon after obtaining the License. Same is the fate of premises licensed for hotel businesses where the licensees stress on irrational terms and drag the Council in various courts.

"6. In view of the above position, following proposal is laid before the Council for consideration and approval :-

(i) ***On the expiry of present term of licenses of hotels/cinemas and other similar commercial complexes, the licenses shall not be renewed. The fresh License shall be as per provisions of Section-141(2) of the N.D.M.C. Act, 1994." Unquote***

3.17 The Council approved the proposal contained in para 6 of the Agenda Item that on the expiry of the term of License of the hotels/ cinemas and other similar commercial complexes, the Licenses shall not be renewed. A fresh License shall be as per provisions of section 141(2) of the N.D.M.C. Act 1994.

3.18 After the above resolution, the claim of further renewal of License of Chanakya Cinema Complex came up for consideration of the Council. In this case the premises were allotted on auction basis on License for a period of 10 years from 01.10.1970. It had a renewal clause for a period of 10 years. The renewed License deed was for a period of 10 years from 01st October 1980. It had no clause for further renewal. The New Delhi Municipal Committee, however, offered to the licensee to renew it for further period of 10 years on increased License fee. This was not accepted by the licensee and no License deed was executed and as such, from 01st October 1990, M/s. Aggarwal & Modi became unauthorized occupants. Instead of extending the License in 2000, the Council decided to develop Cinema Complex as a Multiplex. M/s. Aggarwal & Modi gave an offer to develop it as a Multiplex. This was not accepted by the New Delhi Municipal Council. Since the License had not been renewed and they were un-authorized occupants in the premises, an effort was made to take a vacant possession of the premises. M/s. Aggarwal & Modi filed a writ petition in the Delhi High court and challenged the Council's Reso. of 30 August 2000 and claimed that provisions of section 141 are not attracted. The writ petition was dismissed by the Single Judge vide Judgement dt. 08th August 2003. However, the Court permitted petitioner to continue to occupy the premises up to 30th September 2003. The petitioner filed an LPA against the order of the Single Judge. The DB of the Delhi High Court vide judgement dt. 30 August 2005 dismissed the appeal and imposed a cost of Rs. 25,000/- on the appellant. The Appellants filed a Civil Appeal in the Supreme Court which was dismissed by the Supreme Court on 31st August 2007. Para 23 of the Supreme Court judgement is as under :- **Quote**

> ***"23. Disposal of public property partakes the character of trust and there is distinct demarcated approach for disposal of public property in contradiction to the disposal of private property i.e. it should be for public purpose and in public interest. Invitation for participation in public auction ensures transparency and it would be free from bias or discrimination and beyond reproach." Unquote***

3.19 Facts of the case Aggarwal and Modi V/s NDMC differs from the case of M/s IHC Ltd. in the following respects

(i) Aggarwal and Modi were un-authorized occupants and were occupying the premises from 01.10.1990 without licence deed. IHCL are in occupation of premises by virtue of a valid licence deed which has been extended upto 10.10.2012

(ii) In case of Chanakya Cinema, the council had decided to convert it into a multiplex for which Aggarwal and Modi had no expertise. In the case of hotel at Man Singh Road, there is no proposal to change the usage of the building. IHCL has expertise to run similar hotel in Delhi and other places.

3.20 As referred to in Para-3.11 above, IHC has exercised option for consideration of Council, as available under Clause-II(2) of License and has sought grant of License for a further period after expiry of the present term of License and this option is for consideration of the Council the Licensor.

3.21 After receipt of the option from IHC, the Chairperson, NDMC on 27.07.2010 constituted a Committee headed by Financial Advisor and included Legal Advisor and Director(Estate-I) to suggest action to be taken on the option exercised by IHC. A copy of the said order is at **Annexure-'VI' (See pages 164 – 166)**. The Committee held its meeting from time to time and advised the Estate Department to first obtain legal opinion on the applicability of provision of section-141(2) of the NDMC Act and only if the property is not to be put to auction and is proposed to be given to IHC, would the Committee give its recommendations to grant License for a further period on mutually acceptable terms and conditions.

3.22 The Estate Department suggested to IHC to obtain a legal opinion about applicability of provision of Section-141(2) of the NDMC Act and also sought opinion from Standing Counsel of the Council. The opinion dated 26.11.2010 of Shri Harish Salve as obtained by the IHC is at **Annexure-'VII' (See pages 167 – 180)** and the opinion of the Standing Counsel Smt. Madhu Tewatia dated 15 March 2011 is at **Annexure-'VIII' (See pages 181 – 186)**. Shri Salve opined as under :- **Quote**

"

Question	**Answer**
Whether the provisions of Sections141(2) of NDMC Act, 1994 will be attracted/applicable when the renewal/extension of the License of the Taj Mahal Hotel comes up for consideration by NDMC	Considering the nature of the transaction, the renewal of the License may not be governed by section-141(2) of the Act. Even if it is, the renewal of the License, the consideration of which is a share of revenue for the hotel property, cannot be considered to be a violation of section-141(2) of the Act.
Whether the resolution dated 30th August,	The resolution would apply to situations of

2000 passed by NDMC apropos the provisions of Section-141(2) shall be applicable to the case of the Taj Mahal Hotel when the License granted by NDMC to IHCL is considered for extension/renewal by NDMC?	License simplicitor where property [land and/or buildings] of the NDMC are made available to other agencies for use. It cannot apply to a joint venture in which there is a revenue share arrangements.
Whether the judgement of Delhi High court in the Chanakya case, the appeal against which was also dismissed by the Supreme Court shall be applicable to the case of renewal/extension of License in respect of the Taj Mahal Hotel and if not, the reasons therefore ?	In the negative.

"

Unquote

3.23 Smt. Madhu Tewatia, Standing Counsel opined as under :-

1. **Quote** "The Resolution of the Council may not therefore be applicable in terms Stricto Sensu as in the present case, the License term would require to be extended or renewed subject to mutually agreed terms which does not fall in the category of cessation of License and consequent of a fresh lease or License." **Unquote**
2. **Quote** "The decision of the Supreme Court of India interpreting the provisions of section-141(2) and Resolution dated 30.08.2000 would not prohibit the continuation of the license arrangement of the NDMC with IHCL, the vital and dominant consideration always being maximum consideration for immovable

property even in cases governing contractual rights inter-se the parties where the NDMC is to offer state grant. "Further, the Standing Counsel has also mentioned that " NDMC could vary the percentage of revenue sharing based on gross receipts of the hotel, so as to get an amount equivalent to the fair market value." **Unquote**

3.24 After receipt of the opinion of Shri Salve and Smt. Madhu Tewatia, SC, the Estate Department placed a brief for consideration of the Committee **Annexure-'IX' (See pages 187 – 192)**. The Committee submitted its report on 14.07.2011 and a copy of the same is at **Annexure-'X' (See pages 193 – 200)**. Among other things, the Committee recommended that the License may be extended further for a period of 30 years and License fee, with a minimum as well as percentage of gross income, whichever is higher, may be negotiated. License fee suggested was as under :-

Duration	**Minimum Fee**	**Fee as Percentage of turnover**
First ten years	21 crore per annum	17.25% of gross turnover
Second ten years	25 crore per annum	18.25% of gross turnover
Last ten years	30 crore per annum	19.25% of gross turnover

3.25 A copy of letter dated 15.07.2011 from IHC on the subject is at **Annexure-'XI' (See pages 201 – 203)**.

3.26 On 1 August, 2011 in the Ministry of Urban Development, there was a meeting in regard to payment of certain dues in respect of certain hotels. An extract from minutes of this meeting dated 1 August 2011 is as under :- **Quote**

"The issue of renewal of License of Hotel Taj Man Singh came up for discussion. Chairman, NDMC pointed out that as per the License, the existing operator has to first right of refusal. To maximize revenues, it was felt that NDMC should invite open bids and then ask the existing operator to match the highest bidder to exercise their right of first refusal. In case they are not willing to pay this amount, the bid of the highest bidder may be considered as per rules, after due diligence and following all procedural formalities". Unquote

3.27 Pursuant to these minutes, Chairperson, NDMC vide letter dated 14.09.2011 wrote to the Ministry clarifying that:-

i) The stand of NDMC was not correctly reflected in the minutes.

ii) The direction on 'Fresh Auction and First right of refusal' may not be implementable and may be reconsidered in view of the provisions of the existing agreement.

3.28 There was another meeting in the Ministry on 14 November 2011 and the relevant minutes of the meeting are as under :-.

Quote "The Minutes of the meeting held on 01.08.2011 and 26.08.2011 and the D.O. letter written by Chairperson NDMC in response to the minutes was mentioned. Additional Secretary (UD & DL) and JS (FA) stated that NDMC should strive to get as close to the market rent as possible, even if it has to negotiate with M/s IHC in relation to the said minutes. Secretary NDMC stated that in the Meeting of the Council held on 07.10.2011, the Council has resolved to accord sanction for extensions of existing collaboration agreement and licence deed with M/s IHC for a period of one year subject to the condition that M/s IHC shall pay licence fee as per mutually agreed term and condition. It was further stated by him that NDMC has also already initiated the process of appointing a Transaction Consultant.

Secretary (UD) noted NDMC's above decision and advised that the Council may take further appropriate steps." **Unquote**

A copy of these minutes is at **Annexure-XII (See pages 204 – 206)**

3.29 While the opinion of Shri Harish Salve, Sr. Advocate, Smt. Madhu Tewatia, Standing Counsel, report of the Committee and minutes of the Ministry of Urban Development were under consideration for being placed before the Council, it was felt that the department may examine other aspects such as recent transactions in DDA, DIAL, DMRC of similar nature and the practices followed in hotel projects in other states where revenue sharing has been the bidding criteria. It was also felt that NDMC may also assess NDMC's and IHC investment in this venture. Accordingly, ITDC was approached to make available their consultancy services and give recommendations in this regard.

3.30 Since the License was up to the period ending 10 October 2011, a proposal was put up to the Council as Item No.2(L-03) in its meeting held on 07.10.2011for Council's decision for the period after 11.10.2011. Copy of the Agenda Item is at **Annexure-'A' (See pages 109 – 116)**. Council's decision was as under :- **Quote**

"(i) To accord sanction for extension of existing collaboration project and lease deed for one year upto 10.10.2012, subject to the condition that the Indian Hotel Corporation[IHCL] shall agree to pay license fee as per mutually agreed terms and conditions retrospectively w.e.f.11.10.2011

(ii) To accord sanction for further review and actions in accordance with the decision of Ministry of Urban Development, the legal advice the Committee's recommendations and Consultant's Reports.

(iii) Council also directed that the Department should workout the timelines for completing the above exercise and the Council be informed of the progress." Unquote

3.31 After the receipt of intimation from the ITDC that they were not in a position to take up assignment, RFP was issued on 19 October 2011 and tenders were invited. IDFC was the successful bidder and the work was assigned to them on 3 December 2011. IDFC cited conflict of interest in not taking up this project as a reason and withdrew its proposal **[Annexure-XIII-A & XIII-B See pages 207 - 208]**. RFP was again invited and M/s. Ernst & Young were the successful bidder. They were assigned this work.

3.32 Since the report of Consultants was not available and IHC were paying License fee at the old rate of 10.5% of the gross income, an Agenda Item was placed before the Council in its meeting on 25 July 2012 **(Annexure-B, See pages 112 - 121)** and Council decided as under :- **Quote**

"After considering the facts and circumstances of the case, it was resolved by the Council, by majority, that the Council may charge from the Licensee, M/s. IHC Ltd. License fee @ of 17.25% of the Gross turnover or Rs.21 crores a year for the period from 11.10.2011 to 10.10.2011, whichever is higher.

The Council further directed that the final report of the Consultant appointed to recommend further course of action be brought before the Council at the earliest.

*It was also resolved by the Council that further action in the matter be taken by the department in anticipation of confirmation of the Minutes by the Council." **Unquote***

3.33 Vide letter dated 17.08.2012, M/s IHC Ltd. have made payment of about Rs. 11.3 Cr for the period 11.10.2011 to 31.08.2012.

4. **Report of the Consultant**

4.1 Report from the Consultants has been received. The report is in two Volumes. Volume-I relates to the analysis and Volume-II, a report of Legacy Law Office giving an overview on the legal aspects concerning Contractual Arrangement between NDMC and IHC pertaining to the Taj Mahal Hotel. A copy of the Volume-I and Volume-II are at **Annexure-XIV- A** & **Annexure-XIV-B (In separate booklet)**. Letter dated 23.08.2012 received from the Consultant is placed at **Annexure – XIV- C (See pages 209 – 213).**

4.2 Chapter-5 of Volume-1 relates to comparable analysis. The conclusion arrived at in this chapter are available at Para-5.4 of report and are reproduced as under :- **Quote**

- IHC is one of the largest players in the Indian Hotel Industry, the next biggest player [by revenues], EIH has only 3,721 rooms compared to 13,606 rooms of IHC. Furthermore IHC also has the maximum number of hotels as against its comparables.
- Revenues parameters such as Occupancy ratio, RevPAR and ADR for Taj Mahal Hotel are all higher than the ratios of comparable hotels in the Delhi Lutyens area.
- EBITDA of Taj Mahal Hotel in FY12 [Unaudited] is 39.2%; EBITDA margin [excl Lease payments] for the Taj Mahal Hotel for the FY12 is 53.5%.
- Lease cost of the Taj Mahal Hotel has been – 10.5% of revenues over the last few years.
- IHC [Taj Mahal Hotel] has not defaulted in making lease payments to NDMC.

- Among the 7 Hotel properties leased by NDMC, it receives the largest consideration from Taj Mahal Hotel. **Unquote**

4.3 Chapter-6 of Report relates to "Financial Analysis". While making the financial analysis the objectives was to consider return to NDMC under the following scenarios :-

- The hotel is operated by any Private Sector Partner (PSP)
- Hotel operated by IHC Group
- Hotel operated by NDMC

4.4 The conclusions are available in para-6.4 of the Report and are reproduced as under :- **Quote**

- Present value of cash flows from Taj Mahal Hotel is INR 3,543 million for scenario 1; property is operated by a private sector partner other than IHC.
- Present value of cash flows from Taj Mahal Hotel is INR 6,088 million for scenario 2; property is operated by IHC. The reason for the higher cash flow in scenario 2 is primarily attributed to two reasons :-
  - High capital expenditure in scenario 1
  - A construction period of 1.5 years is estimated for scenario 1 when the PSP looses revenue due to restoration activities. Whereas for scenario 2, it is expected that the hotel will continue operations without loss of any revenues.
- Present value of cash flows from Taj Mahal Hotel is Negative INR 2,581 million for scenario 3; property is operated by NDMC. The negative cash flow is attributed to lack of capacity to efficiently handle the property by NDMC. Thus NDMC may choose not to opt for scenario 3.
- Present value of cash flows Taj Mahal Hotel available to firm is highest for scenario 2. **Unquote**

4.5 Chapter 7 of Report relates to the "Commercial structuring options". The purpose of this chapter was to illustrate various commercial structuring options and valuation of returns to NDMC under each option. The conclusions arrived at are available at para-7.5 of the Report and are reproduced as under: - **Quote**

- **Commercial structuring option** – A revenue share mechanism with guarantee of a minimum payment would ensure that NDMC can benefit from the future upside of the property whilst limiting the downside. The mechanism would also be favourable to a PSP, as unlike an upfront premium mechanism the PSP would not have to incur huge initial capital expenditure.
- Economic return to NDMC is expected to be maximum under scenario 2, where NDMC negotiates and extends the contract with IHC. **Unquote**

4.6 The conclusion of the report are Chapter-8. It has been divided into legal aspects, commercial aspects, qualitative aspects and conclusion. The chapter is reproduced as under :- **Quote**

Conclusion

In order to reach to a conclusion, this report attempts to analyze all possible risks and return to NDMC in the current state of affairs.

The final conclusion is based on detailed analysis of legal, financial and qualitative aspects surrounding the situation.

Legal Aspects

As per the legal opinion given by M/s. Legacy law offices [enclosed a Volume-II of this report], NDMC has the following legally tenable options :-

- NDMC to re-negotiate the financial and other terms and conditions with IHC and thereby extend the lease period

- NDMC to conduct an open competitive bid for selection of a private sector partner.
- NDMC to conduct an open competitive bid for selection of a private sector partner with rights of first refusal to IHC

The detailed legal opinion is presented as Volume-2 of this report

Commercial aspects

Volume-1 of this report discusses in detail the commercial aspects relating to the project. The commercial aspects evaluated have been further segregated under 3 broad topics namely (a) Comparable analysis; (b) financial analysis under various scenarios for NDMC (c) commercial structuring options alongwith risk analysis and impact or financial consideration to NDMC.

Topic a [Comparable analysis] – Key findings are as follows :

Commercial Analysis Topic A

- IHC is one of the largest players in the Indian Hotel Industry, the next biggest player [by revenues], EIH has only 3,721 rooms compared to 13,606 rooms of IHC. Furthermore IHC also has the maximum number of hotels as against its comparables ;
- Revenues parameters such as Occupancy ratio, RevPAR and ADR for Taj Mahal Hotel are all higher than the ratios of comparable hotels in the Delhi Lutyens area;
- IHC [Taj Mahal Hotel] has not defaulted in making lease payments to NDMC'

- Among the 7 hotel properties leased by NDMC, it receives the largest consideration from Taj Mahal.

Topic b [Scenario analysis] - The three scenarios considered were

- Scenario 1 – Taj Mahal hotel is operated by a Private Sector Partner (PSP) selected through an open competitive bid conducted by NDMC (Other than IHC)
- Scenario 2 – Taj Mahal hotel is operated by IHC Group through re-negotiated contract between NDMC and IHC
- Scenario 3 – Taj Mahal hotel is operated by NDMC

Key findings from topic b [financial analysis under various scenarios], are as follows :

- Present value of free cash flows to firm is higher for scenario 2

  When compared to scenario 1. The detailed reasoning is explained in the key takeaways section of chapter 6

Topic B (Commercial Analysis)

- Present value of cash flows from Taj Mahal Hotel is Negative

  INR 2,581 million for scenario 3. The negative cash flow is

  attributed to lack of capacity to efficiently handle the property

  By NDMC. Thus, NDMC may choose not to opt for scenario 3

Topic C [commercial structuring options]

Covers risk analysis and impact of commercial structuring options on financial consideration. Key finds are as follows :

- A revenue share mechanism with guarantee of a minimum payment would ensure that NDMC can benefit from the future upside of the property whilst limiting the downside. The mechanism would also be favourable to a PSP, as unlike an upfront premium mechanism the PSP would not have to incur huge initial capital expenditure.

- Economic return to NDMC is expected to be maximum under scenario 2, where NDMC negotiates and extends the contract with IHC.

Qualitative Aspects

The key qualitative aspects taken into consideration are as follows :

- The hotel is located within 2 kms of eminent structures such as the Indian Parliament and President's House and security is one of the key concerns.
- The property has been a host to some of the country's most prestigious events such as the BRICS Summit.
- IHC has enormously contributed in creating the brand name of Taj Mahal Hotel, The Tata Group of which IHC is a part of, has every strong corporate governance norms and is among the most trusted brands of India incorporate.
- For NDMC, one of the key decision parameters for selecting a PSP would be high returns from the property. However in our opinion, other factors such as risk of non performance and risk of non-payment by a PSP are equally important. These factors would significantly affect the returns to NDMC.

Conclusion

Therefore, from the above we conclude that NDMC may choose any one of three legal options described above, however from a risk management and commercial consideration perspective NDMC stands to benefit most if the existing contract with IHC is renegotiated and extended. **Unquote** "

5. Legal Opinions

5.1 After the receipt of Report of the Consultant opinion of the Addl. Solicitor General was also sought. His opinion is at **Annexure-XV (See pages 214 – 235)**.

5.2 The legal opinion available in this case are from Shri Harish Salve, Sr Advocate who has given his opinion on request from IHC. A copy of which is at Annexure-VII. The opinion given by Ms. Madhu Tewatia, S.C. of the NDMC as sought by the Estate Department of NDMC and is available at Annexure-VIII. The Consultant has given a report on legal aspects from Shri Gagan Anand, Advocate. Sr. Partner-Corporate Practice Legacy Law Offices. His report is at Annexure-XIV B.

5.3 The opinions are summarized hereunder:-

(i) Legal opinion of Shri Harish Salve, Sr. Advocate is as under:- **Quote**

Query	Opinion
Whether the provisions of Sections141(2) of NDMC Act, 1994 will be attracted/applicable when the renewal/extension of the License of the Taj Mahal Hotel comes up for consideration by NDMC	Considering the nature of the transaction, the renewal of the License may not be governed by section-141(2) of the Act. Even if it is, the renewal of the License, the consideration of which is a share of revenue for the hotel

	property, cannot be considered to be a violation of section-141(2) of the Act.
Whether the resolution dated 30th August, 2000 passed by NDMC apropos the provisions of Section-141(2) shall be applicable to the case of the Taj Mahal Hotel when the License granted by NDMC to IHCL is considered for extension/renewal by NDMC?	The resolution would apply to situations of License simplicitor where property [land and/or buildings] of the NDMC are made available to other agencies for use. It cannot apply to a joint venture in which there is a revenue share arrangements.
Whether the judgement of Delhi High court in the Chanakya case, the appeal against which was also dismissed by the Supreme Court shall be applicable to the case of renewal/extension of License in respect of the Taj Mahal Hotel and if not, the reasons therefore ?	In the negative.

Unquote

(ii) Legal opinion of Smt. Madhu Tewatia, Standing Counsel is as under :- **Quote**

1. The Resolution of the Council may not therefore be applicable in terms Stricto Sensu as in the present case, the License term would require to be extended or renewed subject to mutually agreed terms which does not fall in the category of cessation of License and consequent of a fresh lease or License.
2. The decision of the Supreme Court of India interpreting the provisions of section-141(2) and Resolution dated 30.08.2000 would not prohibit the continuation of the license arrangement of the NDMC with IHCL, the vital and dominant

consideration always being maximum consideration for immovable property even in cases governing contractual rights inter-se the parties where the NDMC is to offer state grant. "Further, the Standing Counsel has also mentioned that " NDMC could vary the percentage of revenue sharing based on gross receipts of the hotel, so as to get an amount equivalent to the fair market value. **Unquote**

(iii) Legal opinion of Shri Gagan Anand as contained in para-4 of Volume-II of the Consultant Report are as under :- **Quote**

"4 Legally tenable options for way forward :

a) NDMC to re-negotiate the financial and other terms and conditions with IHC

The New Delhi Municipal Council Act, 1994 [NDMC Act] came into force on the 25th day of May, 1994 for the establishment of the New Delhi Municipal Council and for matters connected therewith or incidental thereto. The License Deed was entered into by NDMC and IHC was on 8th December, 1976. Therefore, in the absence of a specific provision regarding the retrospective effect of the Act, a view can be taken that the conditions mentioned in the Act would not have any impact with respect to a Contract entered into by the parties prior to the date of coming into force of the Act

Moreover, it would be pertinent to note that relevant negotiation enabling provision of the License Deed, which is as follows :-

"On the expiry of the period of License of the said hotel building hereby granted, the licensor shall have the option to grant the License for a further period on such terms and conditions as may be actually agreed upon between the licensor and the licensee"

Therefore, it is to be understood that there is a negotiation enabling provision in the License Deed so as to facilitate the extension of the License period, in case both the parties mutually agree to the same.

b) Inviting bids without granting any special rights to IHC

i. **Vashisht Kumar jaiswal Vs State of UP And Ors,** The court had opined that, once a public contract has been granted for a specific period then on the expiry of the period there is no question of renewal and there must be public auction/public tender after advertising in well known newspapers having wide circulation, otherwise Article 14 of the Constitution will be violated, and a monopoly may be created.

If it is held that even if the period of the contract has expired there can be extension of the contract then logically it would mean that a contract can go on for term after term and can be extended for 100 years or even more. This would create a monopoly in favour of a party, which would be illegal. It would also be against the interest of the State because in a public auction the State naturally can get higher amount of royalty for grant of the mining lease. In fact granting such extension creates an impression that there is some collusion between the guarantee and the authorities.

ii. **Nex Tenders (India) Private Limited Vs. Ministry of Commerce and Industry & Ors.** - It was held that a public authority even in contractual matters should not have unfettered discretion and in contracts having commercial element even though some extra discretion is to be conceded in such authorities, they are bound to follow the norms recognized by courts while dealing with public property. This requirement is necessary to avoid unreasonable and arbitrary decisions being taken by public authorities whose actions are amenable to judicial review. Therefore, merely because the authority has certain elbow room available for use of discretion in accepting offer in contracts, the same will have to be done within the four corners of the requirements of law especially Article-14 of the Constitution.

iii. **In Nagar Nigam Vs. Al Faheem Meat Exports(P) Ltd.** - It was held that public auction or tender has to be allowed by Government or any public authority, instead of private negotiation, considering various aspects and also the public interest.

In view of the above described case law, NDMC can exercise the option of inviting fresh bids for operating and maintaining the Hotel in future in public private partnership mode without granting any special rights to IHC.

c) Inviting bids while granting special rights to IHC.

There is no legal right vested with IHC for seeking any special rights/privileges in any bidding process to be conducted by NDMC. However, keeping in view the peculiar facts of the case wherein IHC has invested in the fittings, fixtures etc., besides creating goodwill and has been regularly paying good revenue to NDMC, NDMC may consider granting the right of first refusal to IHC in case NDMC decides to invite bids for operating and maintaining the hotel in Public Private Partnership mode. The grant of the right of first refusal to IHC by NDMC due to such justifiable reasons shall be lawful. **Unquote**

(iv) Legal opinion of the Addl. Solicitor General on the queries made by Director(Estate-I) are as under :- **Quote**

Vide Para-13 of the Statement of facts in view of the above facts, NDMC has sought my opinion on the following issues :-

(i) whether the decision of the Council taken through the resolution dt. 30th August 2000 that fresh licenses shall be as per provisions of section 141(2) of the N.D.M.C. Act

1994 is applicable to the facts of the case where IHCL has exercised option for grant of License for a further period as per Clause II(2) of the License deed;

(ii) whether the judgement of Delhi High Court in the case of M/s. Aggarwal & Modi of which appeal was dismissed by the Supreme Court shall be applicable to the case of grant of License for a further period as opted by IHCL;

(iii) whether the provisions of section 141(2) of the N.D.M.C. Act 1994 be attracted / applicable when notice exercising option for grant of License for a further period as per provisions of Clause II (2) of the License deed is under consideration of the Council.

(iv) whether the option exercised by IHCL as per Clause II(2) of the License deed has to be rejected on the ground that as per provisions of section 141(2) of the N.D.M.C. Act 1994 only option available with the Council is to put the property to auction/ tender to get the best price of License fee with a view to obtain normal and fair competition.

Opinion of Add. Solicitor General

Query No.1 :-

Reply :- As is clear from the facts stated hereinabove the investment in land and building in this case was done by NDMC to the extent of Rs.475 lacs, however, by a Supplementary Lease Deed the said value was fixed at Rs.626 lacs. The additional cost was borne by IHCL. As per the terms of the license clause II (1), the License was for a period of 33 years commencing from the date of occupation by the first guest. This was an admitted case of the parties to the agreement now that the said period of 33 years was over on 11.10.2011. As per clause II(2) of the Terms of Agreement, the expiry of period of License, licensor shall have options to grant

License for the further period of such terms and conditions as mutually agreed upon by the licenser and the Licenses. If the licensee shall be desires of obtaining a License for a further period after the expiry of the License, it was obligatory to give licensor notice in writing of not less than 60 days prior to the date of expiry of the present License for the consideration of licensor. Admittedly, the said notice for consideration of extension of license was given by licensee in the year 2011. Pending consideration of the request of the Licenses, licensor NDMC extended the period of license for one year.

Perusal of the terms of License Deed therefore clearly shows that there was no renewal clause in the license deed, giving right to the licensee to seek the renewal.

As is also clear from the facts narrated above the NDMC Act came into force in the year 1994 and Sec.141 (2) thereof (quoted above) specifically provides that the consideration for which any immovable property may be sold**, leased** or otherwise transferred shall not be less than the value at which such immovable property would be sold, leased or otherwise transferred in normal and fair competition. The language of Sec.141 (2) is clear, unambiguous and mandatory in nature. In view of the clear and ambiguous nature of Sec.141(2) which is a statutory provision , the NDMC has no option but to lease the property now by normal and fair completion process so as to fetch a market value for leasing out the property.

As quoted above in para 8 of the narration of facts, given by the NDMC in view of the provisions of Section 141(2) of the NDMC Act, 1994, NDMC in its meeting held on 30th August, 2000 resolved that on the expiry of the terms of the license of the hotels/cinemas and other similar commercial complexes, the licenses shall not be renewed. The fresh licenses shall be as per the provisions of section 141(2) of the NDMC Act, 1994.

The aforesaid resolution of NDMC dated 30th August, 2000 came up for consideration of the Delhi High Court and Supreme Court in the case of Aggarwal and Modi Ent. Pvt. Ltd., hereinafter referred to as Chanakya Cinema case. In Chanakya Cinema case, also like in the present case, tenders were invited by NIT for grant of license. M/s. Aggarwal and Modi Ent. Pvt. Ltd. was the successful bidder for cinema hall and this culminated into execution license agreement dated 30th October, 1967 with NDMC. The licensee was granted license to use the proposed building housing a cinema for a period of 10 years. The agreement provided renewal clause whether licensee was given an option to get the license renewed for another period of 10 years on the terms and conditions to be mutually agreed between the parties. There was no further extension contemplated in the License deed. Upon the expiry of the renewal period, NDMC refused to renew the license and instead sent cancellation notice dated 14th September, 1990 to the licensee. The licensee instituted a suit. However, an out of court settlement was arrived at whereby NDMC agreed for renewal of license for a further period of 10 years from 01.10.1990 to 30.09.2000 by enhancing the license fee over and above the license paid earlier. Clause 7 reads as under:

"7. Next renewal due in the year 2000 will be decided between the licensor and licensees on mutually settled terms and conditions at that time."

However, the settlement failed to take off as the licensee failed to withdraw the pending case and instead filed a writ petition.

In the meantime, NDMC decided to redevelop the site as a multiplex. The licensee submitted a representation seeking right to develop the multiplex and seeking the renewal of the license of the cinema complex. The said representation was rejected on the ground that the request for redevelopment of multiplex and renewal of license is not in consonance of provision of Section 141(2) of NDMC Act. Another writ petition was filed challenging the said order. The writ petition was heard by the Ld. Single Judge of High Court. The Ld. Single Judge framed the following issue:

"The principal question involved in this writ petition is whether a party who has been issued a license/lease and has consequently enjoyed a long tenure in this complex can insist as a matter of law and legal right that the NDMC should not auction the same but must re-allot it to the petitioner as the petitioner was the original allottee inter alia on its plea that it was entitled to renewal in the year 2000."

The Ld. Single Judge came to the following conclusions:

"(i) Whether the grant was a license or lease had become academic because according to the appellants' own showing the period stipulated originally in the lease/license had come to an end. Even otherwise, the terms of acceptance of the tender in 1967 do not indicate any renewal beyond 2000.

(ii) As per the contractual terms, the appellants had no right to seek any renewal beyond 30th September, 2000 as there was no clause to this effect.

(iii) If a public authority were to allot an estate by inviting public tender then the very fact that more revenue was likely to be generated was clearly indicative of public interest as laid down by the Division Bench of this court in CWP No. 1066/1998 decided on 29th May, 1998.

(iv) Appellants were estopped from pleading discrimination qua hotels at this stage. Even otherwise hotels and cinema complexes, though figuring together in classification, could not be equated for the purpose of Article 14 as inherently the business of hotels and cinemas are different and, therefore, there was no discrimination, hostile or otherwise.

(v) The decision of the NDMC not to renew the lease of hotels/cinemas after present term coming to an end was a policy decision, adopting a uniform yardstick of the expiry of existing leases of hotels/cinemas and was, therefore, perfectly valid and reasonable. If the NDMC takes recourse to Section 141(2) of the Act for generating higher revenue from its resources such a policy decision cannot be questioned unless it is unconstitutional and it was not for the court to consider where a different policy should have been followed on the ground that other policy would have been fairer or wiser or more scientific or more logical.

(vi) Section 141 of the Act deals with the lease, let out on hire or transfer otherwise of any immovable property belonging to the Council. Section 141(2) clearly indicates that sale, lease or transfer of such property should not be less than the value at which such property could be sold, leased or otherwise transferred in normal and fair competition. Thus, it is evident that the transfers should be at the market rate when any property of the Council is sold, leased or otherwise transferred.

(vii) The impugned action could neither be treated as unreasonable, nor it was against public interest nor could it be termed as irrational, discriminatory or arbitrary to be affected by the judgment of the Supreme Court in Ramana Dayaram Shetty v. The International Airport Authority of India and Ors. (AIR 1979 SC 1628)

16. The Writ Court accordingly dismissed the writ petition and granted appellants time to vacate the cinema complex on or before 30th September, 2003 subject to filing of an undertaking to vacate the complex by this date."

The decision of the Ld. Single Bench of the High Court was challenged before the Dn. Bench of the High Court of Delhi by way of a Letters Patent Appeal. The Hon'ble Division Bench framed the following questions for consideration:

"(i) Whether the appellants had any right of renewal or extension of lease under the lease agreement?

(ii) Whether, in the facts and circumstances of the case, Section 141(2) of the Act would apply and it is incumbent upon the NDMC to resort to the procedure laid down in this Section for grant of lease?

(iii) Whether the impugned decision dated 13th November, 2001 rejecting the offer of the appellants for extending the lease beyond 30th September, 2003 and to convert the cinema in a multiplex is arbitrary and/or discriminatory?"

The Hon'ble High Court in para 29 of the judgment summarized the position regarding the License Deed and its covenants as under:

(a) In the public auction held in the year 1965, bid of the appellants was accepted and 10 years' lease was granted i.e. from 1st October, 1970 to 30th September, 1980 (first block). This license deed contained renewal clause as per which one renewal could be allowed.

(b) On the appellants' exercising their option to renew the license/lease agreement dated 23rd September, 1980 was entered into for second block i.e. 1st October, 1980 to 30th September, 1990 by enhancing the license fee and mentioning the same in the said license deed. However, the appellants themselves challenged this license deed on the ground that it was executed under coercion and was not binding by filing Suit No.295/1981.

(c) Even if this license deed dated 23rd September, 1980 is to be treated as binding, fresh renewal could be, as per the license deed, only on both the parties agreeing for renewal and on terms on which renewal is to take place. No such thing happened. No further license deed was executed. Therefore, contract between the parties came to an end.

(d) Offer of further renewal beyond 1st October, 1990 (third block) was initiated vide NDMC's letter dated 2nd December, 1991. Although response dated 5th December, 1991 was given which was not an acceptance in the eyes of law; no further license deed/agreement was executed although offer dated 2nd December, 1991clearly stipulated that the same was subject to execution of fresh agreement. Moreover, the offer contained in the letter dated 2nd December, 1991 was challenged by the appellants themselves by filing CWP No. 3244/1992 meaning thereby it did not accept the said offer. However, they continued in possession because of stay orders granted in the writ petition. In this manner although without a contract, even the third block contained in the offer dated 2nd December, 1991 expired on 30th September, 2000. Therefore, this 'extension' did not flow from the lease executed in the beginning which had already expired, but was the result of the offer of the NDMC, an offer which did not fructify into a binding contract but the appellants enjoyed the occupation and term of 3rd block completed under the umbrella of court order.

(e) The Council extended the lease for another 3 years i.e. from 1st October, 2000 to 30th September, 2003. Again a unilateral act to validate the possession of the appellants for this period and to enable it to consider the proposal of the appellants. Otherwise there was no subsisting lease or agreement written or oral which gave any right to the appellants to seek further renewal under the lease.

The Hon'ble High Court in para 30 of its judgment held as under:

"30. It clearly follows from the aforesaid discussion that initial license/lease agreement dated 16th September, 1970 and thereafter second lease deed dated 23rd September, 1980 (even if it is to be treated as binding) came to an end and, therefore, there was no contract between the parties governing contractual relationship. Thus in so far as the appellants are concerned, they could not exercise any right for further extension under any contract/lease in the absence of any agreement in this behalf operating between the parties." (Emphasis Supplied)

In para 32 of the judgement, the Hon'ble Division Bench culled out the law relating to the lease deeds and renewal and extension thereof as under:-

"32.

a) In India, a lease may be in perpetuity and the law, either the Transfer of Property Act or the general law abhors a lease in perpetuity. If there is a covenant for renewal in the lease agreement, lessee can exercise his right unilaterally for extension of lease, for which consent of Lesser is not necessary.

(b) Where the principal lease executed between the parties containing a covenant for renewal, is renewed in accordance with the said covenant, whether the renewed lease shall also contain similar clause for renewal depends on the facts and circumstances of each case, regard being had to the intention of the parties as displayed in the original covenant for renewal and the surrounding circumstances.

(c) There is difference between an extension of lease in accordance with the covenant in that regard contained in the principal lease and renewal of lease. In the case of extension it is not necessary to have a fresh deed of lease executed. However, option for renewal consistently with the covenant for renewal has to be exercised consistently with the terms thereof and, if exercised, a fresh deed of lease shall have to be executed between the parties.

(d) Failing the execution of fresh deed of lease, another lease for a fixed terms shall not come into existence though the principal lease in spite of the expiry of the term thereof may continue by holding over for year by year or month by month, as the case may be.

(e) If the language in the lease deed is ambiguous, the court would opt for an interpretation negating the plea of the perpetual lease. Where there is a clause for renewal subject to the same terms and conditions, it would be construed as giving a right to renewal for the same period as the period of the original lease, but not a right to second or third renewal and so on unless, of course, the language is clear and unambiguous. While ascertaining the intention of the parties in this behalf, lease deed has to be read as a whole."

The Hon'ble Division Bench in para 33 of its judgment came to the conclusion that there is no right to seek any renewal under the lease (License Deed).

While considering the applicability of section 141(2) of the NDMC Act, the Hon'ble High Court in para 40 of the judgment culled out the principles regarding disposal of the public property as under:

"40.
(a) The demarcated approach for disposal of public property, in contradiction to the disposal of private property is that it should be for public purpose and in public interest.

(b) Disposal of public property partakes the character of a trust.

(c) Public purpose would be served only by getting best price for such property so that larger revenue coming into the coffers of the State administration can be utilized for beneficent activities to sub-serve public purpose, namely, the welfare State.

(d) For getting the best price, the public property should be put to public auction or by inviting tender with open participation i.e. ensure maximum public participation and a reserve price. This also ensures transparency and such an auction would be free from bias or discrimination and thus beyond reproach.

(e) Private negotiations should always be avoided as it cannot withstand public gaze and cast reflection on the Government or its official and is also against social and public interest.

(f) In exceptional cases, the authorities may depart from public auction or tender process and even dispose of the property at lower price than the market price or even for a token price. However, resort to this process can be taken only to achieve some defined constitutionally recognized public purpose, one such being to achieve the goal set out under Part-IV of the Constitution of India.

(g) When the statute provides for several modes for disposal of the property as in the case of New India Public School (supra) where Section 15(3) provided for the disposal of the property by public auction, allotment, or otherwise, the court declared that the word 'otherwise' would be construed to be consistent with the public purpose as public authority is discharging its public duty while disposing of the property when it is not resorting to public auction but 'otherwise'. Therefore, the court mandated the necessity of unequal guidelines or rules so that it is not at the whim and fancy of the public authorities or under their garb or cloak for any extraneous consideration. Again it would depend upon the nature of the scheme and object of public purpose sought to be achieved while resorting to this mode. The court thus held that it was necessary to make specific regulations or valid guidelines to exercise."

On the basis of the above principles the Hon'ble High Court regarding

applicability of Section 141(2) of the NDMC Act held as under:

"41. This clinching principle for the grant of government property, i.e. normally by public auction and in a given case if that is not possible then by inviting tenders and in no case by private negotiations, is statutorily recognized under Section 141(2) of the Act. In fact the appellants could not dispute this principle enshrined in Section 141(2) of the Act or even inbuilt in Article 14 of the Constitution of India and recognized by the courts dehors Section 141(2) of the Act."

In para 43 of the judgment the Hon'ble Division Bench held that the lease deed having expired, there being no right to seek extension, there being no renewal clause, the requirement of consideration for renewal would be a case of fresh grant on lease. The conclusion in this regard under para 43 reads as under:

"We have already concluded that lease of the appellants had expired long ago. The appellants' right to seek extension of the lease, under the lease agreement, also stood extinguished. If after the lease period is over by efflux of time or otherwise, there is no renewal clause under which right can be exercised to get the lease extended and the lessee has no right to continue in occupation of the premises in question, any 'extension' would be a case of fresh grant only. Therefore, it would be a case of creating lease of an immovable property and once the immovable property is to be `leased', the NDMC has to resort to provisions of Section 141(2) of the Act. That is the only interpretation which can be given to the provisions of Section 141(2) of the Act, more so when the generally accepted principle of law for disposal of public property, as detailed above, is the public auction where most important consideration is the economics of getting maximum price."

Further, in para 48, the Hon'ble Division Bench held as under:

"Obviously, when the appellants have no contractual right to continue and the complex is to be redeveloped into another project, the NDMC shall have to resort to Section 141(2) of the Act while dealing with disposal of the immovable property for another project/purpose. In that eventuality, it no more remains the case of `renewal' of the lease because it would be a fresh grant for altogether different purpose and obviously on different terms for which the authorities will apply different parameters. In such a scenario, grant of lease in favor of the appellants, ignoring the provisions of Section 141(2) of the Act, would be contrary to the statutory mandate. [See: MI Builders Pvt. Ltd. v.Radhey Shyam Sahu [(1999) 6 SCC 464]"

While considering the issue of arbitrariness and discrimination in para 60 of the judgment, the Hon'ble Division Bench noticed that in the case of Sun Air Hotel as well as Bharat Hotel, the allotment was after inviting tenders to a successful tenderer.

The judgment of D.B. and Single Judge were challenged by the Aggarwal & Modi in the Hon'ble Supreme Court.

Hon'ble Supreme Court while upholding the view taken by the Learned Single Judge as well as the Division Bench, in para 22 of the judgement held as under:

"22. The mandate of Sec.141(2) is that any immovable property belonging to NDMC is to be sold, leased, licensed or transferred on consideration which is not to be less than the value at which such immovable property could be sold, leased, or transferred in fair competition. The crucial expression is "normal and fair competition". In other words, NDMC is obligated to adopt the procedure by which it can get maximum possible return/consideration for such immovable property. The methodology which can be adopted for receiving maximum consideration in a normal and fair competition would be the public auction which is expected to be fair and transparent. Public auction not only ensures fair price and maximum return it also militates against any allegation of favouritism on the part of the Government authorities while giving grant for disposing of public property. The courts have accepted public auction as a transparent means of disposal of public property. (See State of U.P. v. Shiv Charan Sharma, Ram & Shyam Co. V. State of Haryana , Sterloing Computers Ltd.v.M&N Publications Ltd., Mahesh Chandra v.Regional Manager, U.P. Financial Corporation, Pachaiyappa's Trust v.Official Trustee of Madras, Chariman and MD, Sipcot v.Contromix(P) Ltd., New India Public School v.HUDA, State of Kerala v. M.Bhaskaran Pillai and Haryana Financial Corpn.v.Jagdamba Oil Mills." (Emphasis Supplied)

Further the Hon'ble Supreme Court in para 23 of the said judgement held that invitation for participation in public auction ensures transparency and it would be free from bias or discrimination beyond reproach. Para 23 reads as –

"23. Disposal of public property partakes the character of trust and there is distinct demarcated approach for disposal of public property in contradiction to the disposal of private property i.e. it should be for public purpose and in public interest. Invitation for participation in public auction ensures transparency and it would be free from bias or discrimination and beyond reproach. (Emphasis Supplied)

Under the terms of the License deed clause II (2), the period of the License was 33 years. Licensor could request for consideration for extension for a further period which is to be considered by the licensor on such terms and conditions as may be mutually agreed upon between the licensor and the licensee. A perusal of the said clauses of the license clearly shows that upon expiry of the term of License, licensor does not have any right to have any further extension, there is no renewal clause under which right can be exercised to get the license extended and the licensor has no right to continue in occupation of premises, any 'extension' would be a case of fresh grant only. There is no compulsion on NDMC as a licensor to renew the License deed. That being the case the provision of Sec. 141(2) as interpreted by Hon'ble Supreme Court in Chanakya Cinema case (supra) will be attracted.

In view of the above, in my opinion, the Council will be bound to lease out property now by invitation by participation in public auction so as to fetch the market value of the property to be licensed/ leased. The query No.1 is answered accordingly.

Query No.2

Reply:- The judgement of the Hon'ble Single Judge as well as the Division Bench of the Delhi High Court in Aggarwal & Modi case was upheld by the Hon'ble Supreme Court. The judgments have been quoted in extensor in response to query no 1 above. The view taken in that case was that the lease/license period having expired, there being no Clause contemplating extension, there being no renewal clause under which right can be exercised to get the lease extended and the lessee has no right to continue in occupation of the premises in question, any "extension" would be a case of fresh grant only. Therefore, in such a case, for creating a lease/license of an immovable property NDMC has to resort to the provisions of Section 141 (2) of the Act. The Hon'ble Supreme Court in the said case has held that immovable property of the NDMC has to be sold, leased, licensed or transferred on a consideration which shall not be the value at which the immovable property could be sold, leased or transferred in fair competition, is fully applicable to the present case. NDMC is bound to follow the law laid down by the Hon'ble Supreme Court and High Court. It may not be out of place to mention here that in the said judgement the Hon'ble Supreme Court has laid down that NDMC is obligated to adopt the procedure by which it can get maximum possible return/consideration for such immovable property and that the methodology which could be adopted in reaching maximum consideration in a normal and fair competition can be public auction which is expected to be fair and transparent. Hon'ble Court has further laid down that the public auction not only ensured fair price and maximum return it also militates against any allegation of favoritism on the part of the Government authorities while giving grant for disposing of public property.

In my opinion, NDMC is bound to follow the judgement of the Hon'ble Supreme Court in M/s Aggarwal & Modi's case. The query No.2 is answered accordingly.

Query No.3

Reply :- The query No.3 is partially answered by answering query No.1 but for the sake of clarity, I may say that the issue was considered by the Hon'ble Supreme Court in para 10 of its judgement in Aggarwal & Modi's case. Para 10 of the judgement reads as follows:

10. In essence, it means that the lease amounts should not be less than the market value. The expression in the renewal clause on which great emphasis is

led speaks of "terms and conditions to be mutually agreed upon". According to the appellants it cannot mean that one of the parties can stipulate unreasonable terms and conditions. In essence, the terms and conditions have to be fair. While determining the fair value the amount is what the existing tenant is required to pay. NDMC itself had required payment of rupees two crores per year. The requirements of Section 141(2) cannot apply to a case of renewal. It is submitted that the appellants have spent more than rupees three crores after 2000. Though there has been no renewal the High Court noted that discriminatory treatment is being meted out to the appellants and, therefore, it had directed the respondent NDMC to give instances where public auction had been resorted to.

While dealing with the aforesaid contention the Hon'ble Supreme Court came to the conclusion in para 22 and 23 reproduced above while answering query No.1 and held that even in such case, the NDMC will have to follow the methodology of Section 141(2).

In my opinion, the provision of Section 141(2) as interpreted by the Hon'ble Division Bench of the High Court and upheld by the Hon'ble Supreme Court in para 22 and 23 of Aggarwal & Modi's judgement will be attracted/applicable in the present case. The NDMC, therefore, has to follow the procedure laid down by the Hon'ble Supreme Court in para 22 and 23 of Agarwal & Modi's judgement and grant License by public auction. The query No.3 is answered accordingly.

Query No.4

Reply :- A detailed discussion in response to query No.1 & 3 hereinabove may also be read as my response to the query No.4. The clause II (2) of the license deed provides that the NDMC has an option to grant a License for a further period on such terms and conditions as may be mutually agreed upon. The licensee can only request the licensor to consider its request for license for a further period. As such the licensee after the lease period is over by efflux of time, there being no renewable clause to seek extension has no right to continue in occupation of premises and any extension would be a case of fresh grant only. In view of the law laid down by the High Court, upheld by the Hon'ble Supreme Court in para 22 and 23 of Aggarwal & Modi's case, the NDMC has no option but to grant lease/license to the Hotel building by invitation for participation in public auction so as to fetch fair market price and maximum returns as contemplated in Section141 (2) of the NDMC Act. Query No.4 is answered accordingly. **Unquote**

6. Views of the Law Department

6.1 In view of the opinions tendered by various legal luminaries as stated above, Law Department has nothing more to add.

7. Views of Finance Department

7.1 Finance Department is of the view that while taking a decision in this matter, the criteria should be to obtain the maximum revenue with minimum risk involved in the process.

8. **Final Submission**

8.1 In Resolution dated 07.10.2011, the Council had decided to accord sanction for further review and actions in accordance with the following parameters.

a) Decision of Ministry of Urban Development
b) The legal advise
c) The Committee's recommendations and
d) Consultant's Reports.

8.2 Directions of Council have been complied with as hereinafter.

8.3 Minutes of Ministry of Urban Development are at para 3.26 and 3.28.

8.4 Legal advise from Shri Harish Salve, Senior Advocate; Smt. Madhu Tewatia, Standing Counsel (NDMC), Consultant's Advocate Shri Gagan Anand, and Shri Rakesh Khanna, Additional Solicitor General are available at para 5 above and Annexures-VII, VIII, XIV B and XV.

8.5 The Committee's Report at Annexure-X.

8.6 Relevant extracts from Consultant's report is at para 4 and full Report is at Annexure-XIV A.

9. Decision Required

9.1 In view of what has been stated above and in the Report of Committee of officers, advice of Ministry of Urban Development, GOI and the Consultant as also the legal opinion tendered by various advocates, standing counsel and the Additional Solicitor General summarized above, the Council may now consider any of the options given below :

(i) The Council may grant extension for a further period on the terms and conditions as may be mutually agreed upon with IHC, **or**

(ii) The Council may decide to go for public auction with first right of refusal to IHC.

COUNCIL'S DECISION

The Council carefully considered all the facts placed before it in the Agenda Item, including the Annexures, and noted that IHC not only has a clean record in its dealing with the Council, but has also made regular payments of license fee to it till date and that there are no disputes between the Council and the Licensee (IHC Ltd).

After discussing at length the pros and cons of the two options proposed in the Item the Council resolved by majority, to opt for public auction, in a fair and transparent manner, of the NDMC property at 1, Man Singh Road, with first right of refusal to Indian Hotel Company. The recourse to public auction would serve to determine the market price of the license fee, that IHC would have to match if they wish to run a hotel at this property. This option, the Council noted would also safeguard its revenue interests.

The Council further resolved by majority to extend the period of license of IHC, on existing terms and conditions, for a further period of one year or till such time a new licensee is chosen through the bidding process, whichever is earlier.

That further action may be taken by the Department in anticipation of confirmation of the Minutes by the Council.

ANNEXURE -A

ITEM NO. 02 (L- 03)/07.10.2011

1.Name of the Subject:

Extension of Collaboration Agreement between NDMC & M/s IHC in respect of Hotel Taj Man Singh beyond 10.10.2011.

2. Name of the Department:

Estate-I Department

3. Brief History of the Subject:

3.1 NDMC, in 1976, with the objective of developing tourism in the capital city before the PATA Conference of 1978 and to boost its own revenues decided to develop a 5 star hotel as per the standards laid down by Government of India. NDMC made a request to the Ministry of Works & Housing, Govt. of India for the plot of land measuring 3.78 acre at 1, Man Singh Road, New Delhi. Around the same time, the Ministry was also approached by Indian Hotels Co. Ltd. (IHC) for this plot. Finally L&DO, Govt. of India initiated the allotment of this plot at 1, Man Singh Road, New Delhi to NDMC.

3.2 NDMC, being an urban local body (*Nagar Palika*), did not and does not have the expertise of setting up or running 5 star hotel. Indian Hotels Co. Ltd. (IHC) approached NDMC in 1976 for developing the 5 star hotel as joint venture project. Considering the lack of expertise with Council and paucity of time (in view of PATA Conference in 1978), it was decided by NDMC to have a collaboration with Indian Hotels Co. Ltd. (IHC). The approval for this joint venture / collaboration was granted by the New Delhi Municipal Committee, vide Resolution No. 35 dt.02.4.1976 **(Annexure – I)**. The plot was allotted to NDMC vide the allotment letter No.L-II-A-16 (436)/76 dated 13.07.1976.

3.3 In this joint venture, NDMC provided the allotted land and financed the construction of building and IHC was to provide technical services such as planning, designing, supervision and quality control for construction of the hotel building by deploying qualified architects, consultants, engineers and quality surveyors. IHC was also to provide, at its own cost, necessary equipments, furniture, furnishings and assets such as kitchen equipment, laundry equipment, furniture and furnishings. IHC was also to undertake, at its own cost and responsibility, regular running of this 5 star hotel as per laid down standards laid down by the D.G. (Tourism) Department of Tourism, Government of India by employing qualified and skilled staffs. This unique joint venture arrangement followed in case of hotel Taj Man Singh is fully captured by 3 agreements :-

3.3.1 License deed (18.12.1976) for land area of 3.78 acre (161706 sqft) and building covered area of 323438 sqft providing that NDMC owns the land and the constructed building with its assets; while IHC owns the movable assets such as laundry equipments, furniture, office equipments, etc. As per the License Deed, IHC was liable to pay the license fee at the rate of 10.5% of gross receipts or 15% of NDMC investments in the hotel building i.e. Rs.6.26 cr, whichever is higher, along with Rs.12 lacs per annum towards House Tax and ground rent of Rs.2.29 lacs per annum.

3.3.2 Collaboration agreement (18.12.1976), detailing the investments by NDMC in Schedule-II and those by IHC in Schedule-III. It captures total investments by NDMC and IHC as Rs.626 lacs and Rs.550 lacs respectively.

3.3.3 Supplementary agreement (25.9.1979), capturing final investments of NDMC of Rs.626 lacs including construction of the hotel building with fixtures and fittings, cost of land & construction supervision.

4. Detailed proposal on the subject:

4.1 The Hotel Taj Man Singh represents an unique Joint Venture/ Collaboration project between the NDMC & IHC where land and construction funding were provided by NDMC and IHC had undertaken construction though this funding and then provided for equipments, regular operations & maintenance. IHC has been fairly regular in clearing their dues of license fees. There have been no major legal disputes or proceedings between NDMC and IHC.

4.2 IHC have strived to increase their consumer base and created a strong brand name for the property. IHC and NDMC have long term interest in the property. After taking over hotel building from NDMC in 1976, IHC have invested about Rs. 129 cr by March 2011 in substantive renovation and refurbishments of the hotel. This can be verified from the audited statements of IHC.

4.3 As per the Agreement and license deed, the term given to IHC was for 33 years i.e. upto 10.10.2011. This was calculated from the date on which the first paying guest occupied the hotel room. The clause – II of the License Deed provides that:-

> *"the licensor shall have the option to grant the licence for a further period on such terms and conditions as may be mutually agreed upon between the licensor and the licensee… if the licensee shall be desirable of obtaining the licence for a further period after the expiry of the present licence it shall give to the licensor a notice in writing of not less than 60 days prior to the date of expiry of the present licence for consideration of the licensor*".

4.4 Thus the license deed of 18.12.1976 itself provides for extension of the license period on mutually agreed terms and conditions. IHC, the collaboration partner and the present operator has applied for extension of term in February 15, 2010. As the original agreement/deed provided option to grant further term to IHC, the case was processed for appropriate decision.

4.5 Chairperson, NDMC constituted a Committee on 27.07.2010 to examine the legal, contractual and financial aspects of the proposal and suggest course of actions on the request received from IHC. The Committee consisted of the following officers:

1.	Financial Advisor	In Chair
2.	Legal Advisor	Member
3.	Director (Estate-I)	Member

4.6 The Committee held a number of meetings/discussions, including those with IHC. It also considered legal advice of Counsel forwarded by IHC and Standing Counsel of NDMC **(Annexure – II)**. She advised that this project is a Joint Venture Collaboration Agreement and it can't be equated with normal license shops/units. She has concluded that 'The decision of the Supreme Court of India interpreting the provisions of section 141(2) and Resolution dt. 30.08.2000 would not prohibit the continuation of the license arrangement of NDMC with IHC, the vital and dominant consideration always being maximum consideration for immoveable property even in cases governing contractual rights inter-se the parties where the NDMC is to offer state grant'. Further the Standing Counsel has also noted that "NDMC could vary the percentage of revenue sharing based on gross receipts of the hotel, so as to get an amount equivalent to the fair market value". Based on this input and detailed examination and discussion, the Committee submitted its detailed report in July, 2011.

4.7 In Brief, the Committee's recommendation regarding license fee as share of gross turnover are summed up as follows :-

Duration	**Minimum License Fee**	**License fee as share in gross turnover**
First ten years	21 crores per annum	17.25% of gross turnover
Second ten years	25 crores per annum	18.25% of gross turnover
Last ten years	30 crores per annum	19.25% of gross turnover

4.8 While the findings and recommendations of the Committee were under consideration, the Ministry of Urban Development, in a meeting with NDMC in August 2011, suggested that fresh bids should be invited for the property while giving first right of refusal to IHC (**Annexure – III). **NDMC has written to the Ministry clarifying that this was not in accordance with the agreement between NDMC and IHC, which are legally binding documents (**Annexure – IV**). The reply from MOUD is still awaited.

4.9 While the committee has given its recommendations based on internal inputs and records, it was felt necessary that the department may also examine other aspects such as recent transactions of DDA, DIAL, DMRC of similar nature and also the practices followed in hotel projects in other states where revenue sharing has been the bidding criteria. The Department should also assess NDMC's and IHC's investments in this joint venture. While NDMC has invested in land and building, IHC has invested in refurbishment, regular operations, brand building and creating a loyal customer base.

4.10 Keeping all above factors in mind, NDMC has decided to take some expert opinion through a Consultant to give us the best possible evaluation for considering the extension on mutually agreed terms and conditions. In this regard, the Department is exploring various options for engaging a Consultant. However, the consultant would need some time to come up with detailed recommendations. Further the reply from MOUD is also still awaited. Therefore it is sought to extend the term of license for one year from 11.10.2011 to 10.10.2012 on the terms and conditions to be mutually agreed to. The matter will be reviewed and further taken up for negotiation, after the decision of the Ministry of Urban Development, based on the Committee's recommendations and Consultant's report.

5.Financial implication of the proposed Subject:

This is a joint venture agreement between IHC and NDMC and one year extension is sought on the existing arrangement while reserving the right to implement the final decision about terms of extension from 11.10.11. Hence no financial implication is involved.

6. Implementation schedule with timelines for each stage including internal processing:

N.A.

7. Comments of the Finance Department on the subject with diary number and date:

Financial Advisor was a member of the Committee. Further the Finance Department vide their note No. 2038/Fin./R-Secy. Dated 3.10.2011 that as the proposal of the deptt. in the draft agenda for extension of the existing Collaboration Agreement with M/s Indian Hotels Co. Ltd. (Hotel Taj Man Singh) for a period of one year on the existing terms and conditions, beyond 10.10.2011 i.e. the date on which the existing agreement & licence deed for 33 years is expiring, is based upon the facts that Ministry of Urban Development has suggested to invite bids for the property while giving first right of refusal to IHC, and also that NDMC has decided to take some expert opinion before considering the extension on mutually agreed term, it would be advisable if the proposed extension is termed as Provisional while reserving the right to implement the final decision from 11.10.2011 itself about terms of extension, after the finality of the discussion/correspondence with MOUD and on the basis of the expert opinion at a late date. Accordingly the draft agenda may be amended accordingly. However, the legal advice may also be taken on this proposal to safeguard the interest of NDMC.

8. Comments of the Department on comments of Finance Department:

Comments of Finance Department have been incorporated in the draft resolution.

9. Legal implication of the subject:

The Agenda is proposed as per the provisions of Collaboration Agreement, License Deed and Supplementary Agreement between IHC and NDMC for this joint venture project.

10. Details of previous Council Resolutions on the subject:

As mentioned in para 3.2 above.

11. Comments of the Law Deptt on the Subject:

The opinion of Standing Counsel of NDMC has been incorporated in the draft resolution and also annexed. Legal Advisor has, inter-alia, observed that when licensee has exercised option, there is not much left, except to decide further period of license and terms and conditions to be mutually agreed upon. He has opined that under section 141, the power for disposal of immovable property is with sanction of the Council. He has noted that the license was issued under Punjab Municipal Act, 1911 and now is deemed to be license under the NDMC Act, 1994 as per s.416(2)(a) and that we may formally inform IHC about the Ministry's stand.

12. Comments of the Department on the comments of the Law Deptt:

Comments of Finance Department has been incorporated in the draft resolution.

13. Certification by the Department that all Central Vigilance Commission (CVC) guidelines have been followed while processing the case.

Not application at this stage.

14 Recommendations:

Considering the facts as brought out above, the case is put up before the Council for sanction for extension of the existing Collaboration Agreement with M/s Indian Hotels Co. Ltd. For Hotel Taj Man Singh and extension of license deed for a period of one year on the terms and conditions to be mutually agreed to as also for reviewing and taking up for negotiations, after the decision of the Ministry of Urban Development, based on the Committee's recommendations and Consultant's report.

15. Draft Resolution

The proposal contained in the agenda presented before the Council was considered in detail and proposal as contained in para 14 of the agenda is approved. Further action may be taken by the department in anticipation of confirmation of minutes.

COUNCIL'S DECISION

The Council expressed its' displeasure regarding delay in processing the case. Considering the urgency of the matter, the council resolved, by majority, as follows:

(i) to accord sanction for extension of existing collaboration project and lease deed for one year upto 10.10.2012, subject to the condition that the Indian Hotel Corporation (IHC) shall agree to pay license fee as per mutually agreed terms and conditions retrospectively w.e.f. 11.10.2011.
(ii) to accord sanction for further review and actions in accordance with the decision of Ministry of Urban Development, the legal advice, the Committee's recommendations & Consultant's reports.

The Council also directed that the Deptt. should workout the timelines for completing the above exercise and the Council be informed of the progress.

It was also resolved by the Council that further action may be taken by the department in anticipation of confirmation of the minutes by the Council.

ANNEXURE –B

ITEM NO. 08 (L-01)/25.07.2012

1. **Name of the Subject** :-

Determination of licence fee for the period 11.10.2011 to 10.10.2012 on mutually agreed terms on One year extension of Collaboration Agreement and license of Taj Man Singh Hotel with the Indian Hotels Co. Ltd. from 11.10.2011 to 10.10.2012.

2. **Name of the Department** :-

Estate-I Department.

3. **Brief History of the Subject** :-

3.1. A proposal to consider extension of the Collaboration Agreement between NDMC and M/s. Indian Hotels Co. Ltd. in respect of Hotel Taj Mansingh from 11.10.2011 was considered by the Council as an Item No.02 [L-03] in its meeting held on 7.10.2011. [**Annexue-'A'**]. The Council resolved as under :-

(i) *to accord sanction for extension of existing collaboration project and lease deed for one year upto 10.10.2012, subject to the condition that the Indian Hotel Corporation [IHC] shall agree to pay license fee as per mutually agreed terms and conditions retrospectively w.e.f. 11.10.2011 ;*

(ii) to accord sanction for further review and actions in accordance with the decision of Ministry of Urban Development, the legal advice the Committee's recommendations and Consultant's reports.

The Council also directed that the Department should workout the timelines for completing the above exercise and the Council be informed of the progress.

It was also resolved by the Council that further action may be taken by the department in anticipation of confirmation of the minutes by the Council. **[Annexure-'B'**]

3.2. The Council Resolution was in two parts :-

(i) the Council accorded sanction for extension of existing collaboration project and lease deed for one year upto 10.10.2012, subject to the condition that the Indian Hotel Corporation shall agree to pay license fee as per mutually agreed terms and conditions retrospectively from 11.10.2011 ; and

(ii) accorded sanction for further review and actions in accordance with the decision of the Ministry of Urban Development, the legal advice, the Committee's recommendations and Consultant's reports ;

3.3. Initially, ITDC was asked to carry out the consultancy assignment but after they conveyed their inability, RFP document was floated amongst the empanelled PPP consultants of Govt. of India. IDFC was the successful bidder but the company soon backed out citing conflict of interests. The RFP was then floated again among the remaining ten empanelled PPP Consultants and this time the work was awarded to M/s. Ernst and Young Private Ltd. The prefeasibility report has been submitted and approved by Competent Authority. The final report is awaited.

3.4. Meanwhile, Ministry of Urban Development, in a meeting dated 14^{th} November, 2011 has stated that NDMC should strive to get as close to the market rent as possible even if it has to negotiate with M/s. IHC Ltd. MoUD has already noted the steps taken by the Council towards granting one year extension to IHC and appointing a Transaction

Consultant and have given the final direction that the Council may take further appropriate steps.

3.5. It is clear from the above that as the recommendation of the Consultant have not been received so far the only option available to the NDMC is to implement the 1^{st} part of the Resolution to collect to licence fee for a period of one year on mutually agreed terms and conditions from 11.10.2011. There are two options - to continue with the present structure of licence fee or to increase it on mutually agreed terms. In pursuance of these directions from the Council, representatives of M/s. IHC were invited to discuss the mutually agreed licence fee for a term of one year from 11.10.2011 to 10.10.2012. M/s. IHC has made an offer of 17.25% of the gross turnover with a minimum of Rs.21 crore, whichever is higher. The representatives of M/s. IHC were asked to confirm their offer and they have confirmed the offer vide letter dated 16.07.2012, a copy of which is annexed at [**Annexure-'C'**].

3.6. To arrive at the mutually agreed terms for one year, the only information available to the NDMC is the report of the Committee (Comprising Financial Advisor, Legal Advisor and Director (Estate-I) constituted by the Chairperson, NDMC in 2010 to examine IHC's request for extension. The Committee had also recommended a licence fee of 17.25% of the gross turnover with a minimum of Rs.21 crore for a period of ten years but no further action was taken on this report. **(Para 4.5, 4.6 and 4.7 of Annexure A).**

3.7. The report of the Consultant is still awaited. MoUD has also indicated its view as per Para-3.4 above. Since the Collaboration Agreement has been extended only for one year, the only information available with the NDMC at present is the recommendation of the aforesaid report wherein the LF was proposed at 17.25% of the gross turnover or Rs.21 crore as the minimum licence fee, whichever is higher.

3.8. Prior to 11.10.2011, M/s. IHC as per the Collaboration Agreement M/s IHC were required to pay 10.5% of the gross turnover or Rs.96 lac as the minimum LF, whichever is higher. The proposal, if approved by the Council would increase the percentage of LF from 10.5% to 17.25%, which is an increase of 6.75% of turnover or 64% as compared to the LF being paid by M/s. IHC upto 11.10.2011.

3.9. The gross turnover of the LF being paid in the last 12 years from 2000 to 2012 is at **Annexure-"D".**

3.10. There has been a substantial increase in the gross turnover and corresponding increase in the LF. The turnover and the LF have gone up in the last 12 years by about 2.7 times i.e. 270%. For the current financial year 2012-13, M/s. IHC has estimated their turnover provisionally at Rs.205.61 crores. With the increase in percentage of LF from 10.5% to 17.25% and increase in turnover the LF would be above Rs.35 crores i.e. an increase in LF by about Rs.15 crores as compared to the LF being paid for the year 2011-12 on the basis of 10.5% of the turnover. This increase takes into consideration, the increase in the turnover and increase in the percentage from 10.5% to 17.25%.

4. Detailed proposal on the subject

4.1 IHC have continued to make regular payments since 11.10.2011@ 10.5% of GTO (**Annexure E**) and undertake to make the balance payments within a week of getting Council's approval.

4.2 As per audited accounts for the year 2011-12, the gross turn over is Rs.200.17 Cr. IHC has provisionally estimated gross turn over for 2012-13 at Rs.205.61 Cr. Licence fee for the period 11.10.2011 to 31.3.2012 will be based on the audited accounts of 2011-12 and that for 1.4.2012 to 10.10.2012 on estimated gross turn over of Rs.205.61 Cr. Difference if any for the period 1.4.2012 to 10.10.2012 will be collected after the accounts for 2012-13 get audited. The rate of licence fee is proposed at 17.25% of GTO for the above period of 11.10.11 to 10.10.12.

4.3 The consultant would need some time to come up with a detailed report after conducting market study and analysis. Therefore, IHC's offer as stated in their letter dated 16.7.2012 is placed before the Council for consideration and decision.

5. Financial implication of the proposed Subject:

5.1 The proposed increase in licence fee will result in revenue of around Rs. 34.5 crores (based on 2011-12 GTO) from this unit during the one year extension from 11.10.11 to 10.10.12. This amount is likely to increase further to Rs. 35 Cr. (approx.) because projected GTO for 2012-13 is Rs. 205.61 Cr.

6. Implementation schedule with timeliness for each stage including internal processing:

NIL

7. Comments of the Finance Department on the subject with diary number and date:

Financial Advisor has seen and concurred vide diary No. 1092/PS/FA/12 dt. 18.7.2012

8. Comments of the Department on comments of Finance Department:

NIL

9. Legal implication of the subject:

NIL

10. Details of previous Council Resolutions on the subject:

As mentioned in para 3 above.

11. Comments of the Law Deptt on the Subject:

Vide Diary No. 44/PS/LA/12 dt. 19.7.2012 Legal Advisor has commented that "It has no legal issue. This is to comply with the directions of the Council."

12. Comments of the Department on the comments of the Law Deptt:

NIL

13. Certification by the Department that all Central Vigilance Commission (CVC) guidelines have been followed while processing the case.

Not applicable as extension has been granted for a limited period of 1 year and is in accordance with provisions of the licence deed and collaboration agreement signed in 1976.

14. **Council Resolution** :-

Considering the fact that at present only the Committee's Report, which formed part of the Resolution dated 07.10.2011 is available, it is recommended that additional revenue may be collected on the basis of the recommendation of the Committee's Report. The matter shall be further placed before the Council for consideration, after receipt of report of Consultant.

COUNCIL'S DECISION

After considering the facts and circumstances of the case, it was resolved by the Council, by majority, that the Council may charge from the Licensee, M/S IHC Ltd License Fee @ of 17.25% of the Gross Turnover or `.21 Crores a year for the period from 11.10.2011 to 10.10.2012., whichever is higher.

The Council further directed that the final report of the Consultant appointed to recommend further course of action be brought before the Council at the earliest.

It was also resolved by the Council that further action in the matter be taken by the department in anticipation of confirmation of the Minutes by the Council.

ANNEXURES 122 – 235

ANNEXURE ENDS

ITEM NO. 10 (S-08)

1.	**Subject:**	Proceedings for deduction of Pension on the basis of conviction by Court in Criminal Proceedings initiated against Sh. D.N. Sharma, Ex. Director (Horticulture) by Dir. (Vigilance), Delhi Administration/ ACB
2.	**Name of the Department:**	Vigilance Department

3. Brief history of the Case:

On receipt of a complaint from some poor persons belong from Rajasthan made complaint (please refer **annexure-A See pages 239 - 249**) against Sh. D.N. Sharma, Ex. Dir.(Hort.) regarding taking money/bribe in the appointment/regularization of Muster roll workers by him and other officers of Horticulture Deptt. was forwarded by CVC and as per orders of the then Administrator, NDMC dated 06.07.90 (please refer **annexure-B See pages 250 - 254**) the case was referred to Director (Vig.) Delhi Administration/ACB for detail investigation. Sh. D.N. Sharma was a category "A" officer of the New Delhi Municipal Committee (now New Delhi Municipal Council) and already superannuated on 31.7.1995 and is drawing pension.

4. Detail of the case

A complaint regarding taking money/bribe in the appointment/regularization of Muster roll workers by Sh D,N. Sharma and other officers of Horticulture Deptt. was forwarded by CVC vide their letter dated 26.3.1990. The complaint from other sources (please refer **annexure-C See pages 255 - 269)** vigilance, CBI, Sh M.L. Khurana, former M.P/President of Bhartia Janta Parti, Sh. V.K. Kapoor, Chief Secretary, PM office were also received regarding corruption and misuse of power by Sh. D,N. Sharma, Ex. Director. The complaint investigated by Vigilance Deptt, NDMC (please refer **annexure-D See pages 270 - 276**) with the statement of Muster Roll workers. They alleged that they paid Rs. 10,000/- each for employment in the Horticulture Deptt. through Sh. Bhoop Singh employee of Elect. Deptt., NDMC. They alleged that about 100 candidates from Rajasthan paid money for getting employment in the Hort. Deptt.

It was also alleged that such irregularity has been committed in the employment of Technical Supervisors on daily wages and more than 500 persons on M. Roll have been engaged more than the actual requirement. Persons were knowingly allowed to continue to work beyond 240 days to facilitate their regularization after accepting money.

Keeping in view the allegations and counter allegations and complaints from different corners it was felt that huge records have to be scrutinized and Director (Hort) was reluctant to produce the relevant records despite repeated requests. It was therefore decided (please refer **annexure-E See pages 277 - 278**) to refer the case to the Director (Vig.) Delhi Administration for detailed investigation vide detailed letter dated 13.07.90 ACB.

After completion of investigation, action was initiated against Sh. D.N. Sharma, Director (Horticulture) Retired and now the ACP, Anti Corruption Branch vide letter No.1066/RC-55/93/HAS/SO/ACB dated 03.04.2012 (please refer **annexure-F See page 279**) informed that Sh. D.N. Sharma R/o E-27, Palika Milan, Sardar Patel Marg, New Delhi has been convicted and sentence to undergo R.I for a period of three years and a fine of Rs. one Lakh for offence punishable u/s 7 of POC Act, 1988 and in default of payment of fine, he shall undergo S.I. for a period of four Months. Convict Sh. D.N. Sharma is further sentenced to undergo R.I. for a period of three years and a fine of Rs. One Lakh for offence punishable u/s 13(2) r/w 13(i)(d) of POC Act 1988 and in default of payment of fine he shall further undergo SI for a period of four months. Both substantive sentences shall run concurrently and the convict is not entitled for the benefit u/s 428 Cr. PC as per judgment dated 16.02.2012 passed by the court of Sh. B.R. Kedia, Special Judge, Tis Hazari, Delhi in case FIR No. 55/93.

Charges as framed by the Anti Corruption against FIR No. 55/93 u/s 7 of POC Act, 1988 and u/s 13(2) r/w 13(i)(d) of POC Act 1988

On the inquiry of Anti Corruptions Branch a FIR No. 55/93 u/s 7 of POC Act, 1988 and u/s 13(2) r/w 13(i)(d) of POC Act 1988 was registered (please refer **annexure-G See pages 280 - 282**) against Sh. D. N. Sharma, the then Director (Horticulture). The charge sheet was prepared and filed by Anti Corruption Branch regarding taking money/bribe in the appointment/regularization of Muster roll workers and other officers of Horticulture Deptt. was forwarded by CVC vide their letter dated 26.3.1990. The complaint from other sources vigilance, CBI, Sh M.L. Khurana, former M.P/President of Bhartia Janta Parti, Sh. V.K. Kapoor, Chief Secretary, PM office were also received regarding corruption and misuse of power by Sh. D,N. Sharma, Ex. Director. The complaint investigated by Vigilance Deptt, NDMC with the statement of Muster Roll workers. They alleged that the paid Rs. 10,000/- each for employment in the Horticulture Deptt. through Sh. Bhoop Singh of Elect. Deptt. They alleged that about 100 candidates from Rajasthan paid money for getting employment in the Hort. Deptt.

5. Decision of the Court Order against the charges

The case was tried in the court Sh. B.R. Kedia, Special Judge-07 (PC Act Cases of ACB, GNCTD), Central District, Tis Hazari Court Delhi and judgment was pronounced on dated

15.2.2012 "that Sh. D.N. Sharma R/o E-27, Palika Milan, Sardar Patel Marg, New Delhi has been convicted and sentence to undergo R.I for a period of three years and a fine of Rs. one Lakh for offence punishable u/s 7 of POC Act, 1988 and in default of payment of fine, he shall undergo S.I. for a period of four Months. Convict Sh. D.N. Sharma is further sentenced to undergo R.I. for a period of three years and a fine of Rs.One Lakh for offence punishable u/s 13(2) r/w 13(i)(d) of POC Act 1988 and in default of payment of fine he shall further undergo SI for a period of four months. Both substantive sentences shall run concurrently and the convict is not entitled for the benefit u/s 428 Cr. PC as per judgment dated 16.02.2012 passed by the court of Sh. B.R. Kedia, Special Judge, Tis Hazari, Delhi in case FIR No. 55/93.

6.THE DECISON OF THE COURT

Special Judge 07 Hon'ble Sh. B.R. Kedia has held that the charges leveled against Sh. D.N. Sharma, Dir. (Hort.) Retd. stands proved, and therefore, he convicted him.

7. Action to be taken by the Council

In case of pensions, as per the communication dated 28.3.1973 of M/o Home Affairs (**Annexure 'J' See pages 286 - 295**) the power of the President in case of Disciplinary matter is to be exercised by New Delhi Municipal Committee. New Delhi Municipal Council is successor of the New Delhi Municipal Committee. In this case pension is likely to be withdrawn/reduced. Council is the authority to take action and as such the Council is to approve the proposal to issue Show Cause Notice for withdrawing/reducing the pension of Sh. D.N. Sharma, Director (Horticulture) Retired.

8. Submissions made by C.O. against the findings of Inquiring Authority.

Show cause Notice is yet to be issued to Sh. D.N. Sharma, Ex. Director (Hort.) on the judgment of Court of Sh. B.R.Kedia, Special Judge wherein his conviction announced.

9. Financial Implication: NIL

10. Implementation Schedule: Immediately after the Agenda is accorded by the Council.

11. Comments of the Finance: N.A.

12. **Legal Implication :** (Page ref. 99/N) Please refer **Annexure-H See page 283**.

13. **Details of previous Council Resolution:** N.A.

14. Comments of the Department on the Comments of the Law Deptt.
(please refer **Annexure-I See pages 284 - 285)**

15. Final view of the Law Department: N.A.

16. **C.V.C. Advice**

This is a court matter and conviction given by the Hon'ble Court. Therefore the advice of CVC not obtained being retired/pensioner case.

17. **Recommendation:**

Council is to issue **SHOW CAUSE NOTICE** to Sh. D.N. Sharma, Director (Horticulture) Retired for proposed withdrawal/reduced pension under rule 9 (1) CCS (Pension) Rules, 1972 on account of his conviction by the Hon'ble Court of Law and the same be issued by Director (Vigilance), NDMC.

<u>COUNCIL'S DECISION</u>

Considering the background of the case put up in the Agenda Note the Council resolved to issue Show Cause Notice to Shri D.N. Sharma, Ex Director (Horticulture), New Delhi Municipal Council indicating that as he has been convicted by the Special Judge 07 (PC Act Cases of ACB, Delhi) under section 13 (2) r/w 13 (i) (d) of PC Act, 1988, New Delhi Municipal Council in its capacity as the Competent Authority proposes to withdraw 85% of his pension per month under Rule 9(1) of CCS (Pension) Rules, 1972. The Council further authorised Director (Vigilance), New Delhi Municipal Council to issue the said Show Cause Notice to Shri D.N. Sharma, Ex Director (Horticulture).

Annexures

239 – 295

Annexure ends

ITEM NO. 11 (C-20)

CONTRACTS/SCHEMES INVOLVING AN EXPENDITURE OF RS. 1 LAC BUT NOT EXCEEDING RS. 100 LACS.

Section 143 (d) of NDMC Act, 1994 provides that every contract involving an expenditure of Rs.1 lac but not exceeding Rs.100 lacs under clause 143 (c) shall be reported to the Council. In pursuance of these provisions, a list of contracts entered/executed upto August, 2012, have been prepared.

A list of the contracts, entered into for the various schemes, is accordingly laid before the Council for information**. (See pages 297 - 305).**

COUNCIL'S DECISION

Information noted.

Annexure 297 – 305

Annexure ends

ITEM NO. 12 (C-21)

ACTION TAKEN REPORT ON THE STATUS OF ONGOING SCHEMES/WORKS APPROVED BY THE COUNCIL.

In the Council Meeting held on 28.8.1998, it was decided that the status of execution of all ongoing schemes/works approved by the Council indicating the value of work, date of award/start of work, stipulated date of completion & the present position thereof be placed before the Council for information.

The said report on the status of the ongoing schemes/works upto July, 2012, had already been included in the Agenda for the Council Meeting held on 28.08.2012.

A report on the status of execution of the ongoing schemes/works awarded upto August, 2012, is placed before the Council for information. **(See pages 307 - 343).**

COUNCIL'S DECISION

Information noted.

(D.S. PANDIT)	**(ARCHNA ARORA)**
SECRETARY	**PRESIDING OFFICER**

Annexure 307 – 343

Annexure ends