

Minutes of 1st Meeting of 2023 of the DTC Board held on Monday, the 9th January, 2023 at 3:00 PM in the Conference Room of Hon'ble Transport Minister, Govt. of NCT of Delhi/Chairman, DTC, 8th Level, Delhi Sectt., New Delhi.

PRESENT:

1. Shri Kailash Gahlot, Chairman
Hon'ble MoT, GNCTD & Chairman, DTC
2. Shri Ashish Kundra, IAS Director
Principal Secretary-cum-Commissioner (Transport),
Govt. of NCT of Delhi
3. Mrs. Shilpa Shinde, IAS Director
Managing Director,
Delhi Transport Corporation

ALSO PRESENT:

1. Mrs. Sunita Chauhan,
Secretary, DTC Board

Principal Secretary (Finance), GNCTD, Secretary (Land & Building), GNCTD, Joint Commissioner of Police (Traffic) Delhi and Commissioner (Planning-II), DDA could not attend the meeting.

Accordingly, as per provisions contained in the DTC (Meeting) Regulations, 1991, the meeting of the DTC Board was adjourned for want of quorum and rescheduled to be held at 3:30 PM. The adjourned meeting was accordingly convened with the permission of the Chair at 3:30 PM with the following Board Members:

PRESENT:

1. Shri Kailash Gahlot, Chairman
Hon'ble MoT, GNCTD & Chairman, DTC
2. Shri Ashish Kundra, IAS Director
Principal Secretary-cum-Commissioner (Transport),
Govt. of NCT of Delhi
3. Mrs. Shilpa Shinde, IAS Director
Managing Director,
Delhi Transport Corporation

ALSO PRESENT:

1. Mrs. Sunita Chauhan,
Secretary, DTC Board

DTC Board

Confirmation of Minutes of 5th Meeting of 2022 of the DTC Board held on 07.10.2022.

The Minutes of the DTC Board Meeting held on 07.10.2022 were circulated on 10.10.2022. Since no corrections/modifications were received from the Directors who attended the said meeting, the aforesaid Minutes were confirmed.

Resolution No. 1/2023 : Item 1/2023: Statement showing Action Taken Reports on the Resolutions adopted by the DTC Board in the meeting held on 31.08.2022 and 07.10.2022.

The Board noted the Item.

Resolution No. 2/2023 : Item 2/2023: Profit & Loss Account and Balance Sheet for the year ending 31st March 2022.

[Shri H.K.Arora, Addl.CAO was called in.]

The Board considered the agenda Item and after detailed discussion, resolved that the 'Profit & Loss Account and Balance Sheet for the year 2021-2022' are hereby approved and adopted.

2. The MD and Dy.CGM(Finance)/Addl. Chief Accounts Officer of the Corporation are hereby authorized to sign the Annual Statement and Balance Sheet on behalf of the Corporation and submit the same to the Comptroller and Auditor General of India.

3. The Board further resolved that –

- (I) MD and Dy.CGM(F)/Addl. Chief Accounts Officer of the Corporation are authorized to incorporate any arithmetical/typographical mistakes as may be noticed during audit without reference to the Board.
- (II) Dy.C.G.M.(F)/Addl.C.A.O./Dy.Manager (A/cs) of the Corporation are further authorised to sign the Income Tax Return for Assessment Year 2022-2023 (Financial year 2021-2022) being mandatory requirement under Income Tax Act.

Resolution No. 3/2023 : Item 3/2023: Posting of Ms. Shilpa Shinde, IAS (AGMUT:2006) as Managing Director, DTC.

[Shri Ashok Kumar, Dy.CGM (P) was called in.]

The Board noted the Item.


DTC Board

Resolution No. 4/2023 : Item 4/2023: Regarding removal of ambiguity in the existing guidelines with regard to monthly remuneration to be paid to retired DTC officials and outside expert/consultant to be engaged as consultant on contract basis.

[Shri Ashok Kumar, Dy.CGM (P) was called in.]

The Board considered the agenda Item and discussed in detail. After discussion, the Board, for the purpose of payment of amount of monthly consolidated remuneration/fee in the case of retired DTC officials/Officers appointed as Consultants in DTC against the vacant sanctioned post, resolved as under:

1. For DTC Pension optee retired employees, the guidelines issued vide Office Memorandum [Para (c)] by the Finance (Accounts) Deptt. of GNCTD (Annexure-B to the Agenda Item) vide no.F.20/472015-AC/204-248 dated 4.12.2015 be adopted in DTC.
2. For non-optee DTC Pension retired employees, the Board directed to prepare cadre-wise monthly consolidated remuneration/fee, and bring it before the Board within next 15 days with clear proposal for decision.
3. The Board further resolved that in future if DTC Pension Scheme is applicable to all employees in DTC and any retired employee engaged as Consultant in DTC, the guidelines as mentioned at Sl. no.(1) above, will be applicable for the purpose of payment of monthly consolidated remuneration/fee.

Resolution No. 5/2023 : Item 5/2023: Engagement of a professional Expert Agency/Program Manager for Operation & Management of DTC E-Buses engaged/to be engaged by DTC under GCC Model.

[Shri Virender Kumar, Dy.CGM(SBU) was called in.]

The Board, in view of the position explained in the agenda Item and after detailed discussion, accorded approval for the action to be taken for preparation of Expression of Interest (EoI), RFP document, technical & financial bids evaluation and issuance of LoA for engagement of Bid Management Consultant (BMC) for piloting the tender including Preparation and finalization of 'Terms of Reference' (ToR) of draft tender inquiry document etc. for the engagement of Professional expert Agency/Program Manager for operation and management of DTC electric buses under GCC model.

2. The Board further approved the proposal submitted by DIMTS along with changes as recommended by departmental committee at Sl. no. 1(e), 3.1 and 10.2 (e) as brought out in Para-6 in the agenda Item for operation & management of e-buses engaged/to be engaged by DTC under GCC Model. In regard to para 4(a), the Board directed to release the monthly payment to DIMTS within 15 days of receiving the invoice by DTC.


DTC Board

3. The Board authorized the Chairman, DTC for taking further necessary action with respect to decision/approval for Expression of Interest (Eoi), RFP document, technical & financial bids evaluation and issuance of LoA for engagement of Bid Management Consultant (BMC) for the engagement of Professional expert Agency/Program Manager for operation and management of DTC electric buses under GCC model.

Resolution No. 6/2023 : Item 6/2023: Engagement of Shri M.K.Sharma, Ex.-Dy.CGM (Mech.) after his retirement as Consultant on contract basis req.

[Shri Ashok Kumar, Dy.CGM (P) was called in.]


The Board, in view of the position explained in the agenda Item and after detailed discussions, accorded approval for engagement of Shri M.K.Sharma, Ex-Dy.CGM(Mech.) as Consultant [Dy.CGM(Mech.)] on contract basis for a period of six months against the sanctioned vacant post of Dy. Chief General Manager(Mech.) on the terms & conditions duly approved by the Board vide Resolution No.51/2017 and circulated vide letter no. PLD-1/Retired Engagement/2017/845/310 dated 24.11.2017, on the monthly remuneration fixed as per letter no. PLD-1/2018/465/101 dated 17.05.2018 i.e. Half of Last Basic Pay drawn by ex-officer at the time of retirement plus DA at the applicable rate at the time of engagement as Consultant.

Resolution No. 7/2023 : Item 7/2023: Implementation of Delhi Electric Vehicle Policy 2020 with special reference to electric two wheelers for the employees of DTC.

[Mrs.Durgesh Nandini, Dy.CGM (Admn.) was called in.]

The Board, after detailed discussions and also keeping in view the drive regarding large scale adoption of Electric Vehicles and maximize reduction of vehicle pollution in Delhi, accorded approval for implementation of Delhi Electric Vehicle Policy 2020 with special reference to electric two wheelers for the employees of DTC as envisaged in the para 3 (I & II) of the agenda Item.

2. The Board, besides the incentives/benefits available in EV Policy 2020 of GNCTD to e-two wheelers; DTC should encourage the use of e-two wheeler by its employees, thereby giving an impetus for faster adopting of EV Policy 2020, further approved as under:


Secy. DTC Board

- (i) free charging facility to the employees for their electric two wheelers/other electric vehicles in DTC Depots/Units for which DTC will install charging infrastructure in its premises at its own cost.
- (ii) In case, the DTC employee does not have enough funds to purchase electric two wheeler then the same can be sold to him on installment by the firms selling electric vehicles.
- (iii) avail loan from financial institutes empanelled by DFC as per the provisions of the EV Policy 2020.
- (iv) loan amount in installments can be deducted from the salary of the employee by DTC and will be credited in the Firm's account directly for which a tri-partite agreement may be made amongst the firm, the purchaser (employee) and the DTC.
- (v) These arrangements will continue only during the employment of employee in DTC. In case of his/her leaving DTC for any reason such as termination, retirement, removal, resignation etc., he/she will settle his/her balance loan with financial institute at his/her own without any commitment on the part of DTC for which a necessary clause shall be inserted in the agreement indemnifying DTC from any responsibility of repaying the loan to the firm.

Resolution No. 8/2023 : Item 8/2023: Benefit of 03 National Holidays (26th January, 15th August & 2nd October) to contractual employees of DTC.

[Mrs.Durgesh Nandini, Dy.CGM (Admn.) was called in.]

The Board considered the agenda item and after discussion & also in view of the opinion of the Standing Counsel, resolved that the benefit of 03 National Holidays (i.e. 26th January, 15th August & 02nd October) be granted to Contractual employees of DTC as per following details:

- i) If a contractual employee performs duty on National Holiday, he/she will be paid wages at the rate of 1.5 times of wages of that day at par with regular employee.
- ii) Contractual employees whose rest coincide with National Holiday or not called for duty on National Holiday, he/she will be paid wages only for that day subject to the condition that he/she is not on the continuous leave before and after the National Holiday.
- iii) If the duty of a contractual employee is booked/spare in the fleet, and he/she does not attend the duty on National Holiday then he/she will be treated as absent and no wages will be paid.



Becy, DTC Board

Resolution No. 9/2023 : Item 9/2023: Engagement of 300 AC LF Electric Buses under FAME-II Scheme of DHI, GOI - Regarding request of operators (M/s. JBM AUTO LTD. & M/s. TATA MOTORS LTD.) for delivery period extension due to COVID – 19 PANDEMIC under force majeure conditions and imposition of Liquidated Damages as per contract on operators due to delay in delivery of buses by them.

[Shri Virender Kumar, Dy.CGM(SBU) was called in.]

A complete copy of Annexure-XIV (Colly.) to the agenda Item (also enclosed herewith) was placed before the Board with the permission of Chair.

The Board, in view of position explained in the agenda Item and after detailed discussions, resolved that the request of both the bidders/operators (M/s. JBM and M/s. TML) for extension of delivery period for prototype & subsequent supplies of the buses under Force majeure due to Covid-19 pandemic be not acceded to.

2. The Board directed that in accordance to the contractual conditions, a Notice be issued to M/s. Ecolife (SPV of M/s JBM) for imposition of Liquidated damages amounting to Rs.13,67,67,956/- (Rupees Thirteen Crore Sixty-Seven Lakh Sixty-Seven Thousand Nine Hundred Fifty-Six Only) for initial 150 buses (out of 200) and also to M/s. TML CV Mobility Solution Ltd. (SPV of M/s. TML) for Rs.9,40,00,421/- (Rupees Nine Crore Forty Lakh Four Hundred Twenty-One Only) for 100 buses (total contractual buses) for delay in prototype, subsequent delayed supply of buses and delay for rectification of defect observed in joint inspection.

3. The Board further directed that notice be also issued to M/s Ecolife for imposition of liquidated damages, if any, as per contractual conditions for the balance 50 buses supplied by them.

4. The Board authorised Chairman, DTC to take further action in the matter.

Resolution No. 10/2023 : Item 10/2023: Disciplinary proceeding against employees of DTC under Rule 9 of the CCS Pension Rule, 1972.

[Mrs.Durgesh Nandini, Dy.CGM (Admn.) was called in.]

The Item was placed on the Table with the permission of the Chair.

The Board discussed the agenda Item in detail and accorded approval for the following:

- (a) In the case of an employee/officer covered under CCS Pension Rules, 1972 and disciplinary proceedings instituted against him prior to retirement and while in service under clause 15 of the DRTA (Condition of Appointment &

Services Regulations), 1952, in that case after retirement, the Disciplinary Authority for imposing the punishment in respect of posts upto Sr. Manager level will be CMD/MD and in respect of posts of the level of Dy.CGM & above will be the DTC Board.

- (b) In all other cases, where charge sheet could not be issued to a pensioner, prior to the retirement, disciplinary proceedings after retirement will be instituted as per Rule 9 of CCS Pension Rules, 1972, with the approval of CMD/MD, DTC in respect of all posts in accordance with the powers already vested and in respect to posts of the level of Dy.CGMs & above, by the DTC Board.

Resolution No. 11/2023 : Item 11/2023: Engagement of Premium Buses from Private operators on DTC Permits.

[Shri Anuj Sinha, Dy.CGM (Traffic) was called in.]

The Item was placed on the Table with the permission of the Chair.

2. The Board, in view of position explained in the agenda item and after detailed discussion, accorded "In-Principle" approval for engagement of Premium Buses for categories as mentioned in Table-I of the agenda Item subject to the condition that legal opinion be obtained first from the Standing Counsel/Additional Solicitor General in respect of operation of premier buses Intra-city within city limits of Delhi.

3. The Board further approved the following:

- (i) DTC to prepare tender for obtaining rates for categories as per Table-I.
- (ii) authorized Chairman, DTC to take decision in respect of finalization of tender document and specification of Premium buses for the categories mentioned in above Table-I.
- (iii) for referring the matter to Transport Department, GNCTD to convey their approval for engagement of Premium Bus through private operators as per the decision of DTC Board along with exemption on the applicability of Pink Single Journey Pass on these services.

Chairman
DTC Board



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(1) - 1/3/21 - Complete Annexure - XIV
Total Pages - 25 Total

Subject: - Request for delivery period extension due to COVID - 19 Force Majeure Pandemic by M/s JBM Auto Ltd. and M/s Tata Motors Ltd for engagement of 300 AC LF electric buses

In accordance with LoA dated 30/03/21, SPV of JBM had to execute a Concession Agreement within one month from the date of issue of LoA i.e. 29/04/21. However, on request of JBM this date (for executing Concession Agreement) was extended upto 24/05/21. Subsequently, JBM made another request for additional time of 8 weeks for execution of Concession Agreement. This request was turned down with the approval of Hon'ble Minister/ Chairman DTC. Hence, legally allowed final date for executing Concession Agreement for JBM remained 24/05/21 (being the extended time frame allowed by DTC). However, JBM signed the Concession Agreement on 23/09/21 (after about 4-month delay of allowed timeline).

2. The LOA issued to JBM clearly specified that all the work shall be executed in accordance with the terms and conditions and specifications stipulated in Volume- I, II and III of the RFP document as amended upto date. Volume II contained the Draft Concession Agreement, hence all works had to be executed as per the Concession Agreement Concession Agreement which clearly spelt out the time frame to be followed by JBM for supply of Prototype as well as for supply of buses thereafter.

3. It is quite evident that JBM has failed to meet the timeframe agreed upon by both the parties. Similarly, TML has also faltered upon the time frame agreed upon. The Bid Management Consultant(BMC) had stated that as far as supply of Prototype is concerned, in Clause 13.6 reference of Force Majeure has not been made. As far as procurement of buses is concerned, Clause 13.9.1 refers to Force Majeure event, but it is not applicable here. Further, the applicability of provisions of Concession Agreement is primarily effective after the execution of the same between Authority and the Operator. Based upon the opinion of the BMC, DTC was of the view that the request of JBM may not be acceded to. However, on the direction of Hon'ble Chairman, DTC/ MOT opinion of Standing Counsel as well as opinion of Shri Chetan Sharma, Additional Solicitor General was taken.

4. To summarize, both the legal opinion of Standing Counsel as well as Additional Solicitor General have held that in the RFP and even in the LoA, there is no penalty provided for non-execution of the Concession Agreement by the successful bidder within a specified timeframe. Further, they have also held that as per Clause 12 of the LoA, until a formal Agreement is executed, this Letter will constitute a binding contract between successful bidders and the DTC. In conclusion, the legal opinion from ASG says that the existing terms of the RFP and LoA were binding between the parties. Since the LoA consisted of Draft Concession Agreement, the terms of the Concession Agreement are binding and applicable to both the parties, i.e., Liquidated Damages clause as well as Force Majeure Clause. The legal opinion supports the applicability of Force Majeure Clause with effect from issuance of LoAs.

(11)
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5. On the basis of the legal opinion provided by Standing Counsel and Additional Solicitor General, the matter has been re-examined on the issue of applicability of Liquidity damages and Force Majeure clause from the date of issue of LoAs i.e. 30.03.2021. After examination, following are the observations:

i. The Article no. 29 of Volume II of RFP on Force Majeure is placed at 1032/Cr. to 1027/Cr. The clause 29.5 of Article 29 provides as under:

"29.5 Duty to report Force Majeure Event

29.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 29 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

29.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

29.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required, and such other information as the other Party may reasonably request the Affected Party to provide."

ii. Keeping in view the above provisions of clause 29.5 of Article 29 of Volume II of RFP on Force Majeure, the request letters of M/s JBM Auto Ltd has been examined as under:

M/s JBM Auto Ltd.				
S.No.	Date-wise Description of Request	Whether the request has been received by DTC	Documents submitted in support of request for	Observation of DTC

- 115/N - (iii)

		within specifie d time of 7 days as per provisio ns of Force Majeure clause 29.5.	conside ration				
1	2	3	4	5			
1.	Dated 22.04.2021 (page. - 1034/Cr. to 1033/Cr.) To provide additional time of 15 days (i.e. till 15.05.2021) for submission of Performance Bank Guarantee and additional time of 30 days (i.e. till 30.05.2021) for execution of Contract agreement due to restriction in movement of staff which has hampered all activates related to issuance of performance Bank Guarantee and formation of SPV with Registrar of Company by the curfew imposed by Delhi Govt. with effect from 22.04.2021.	Yes	Intimate d for impositi on of public curfew w.e.f. 22.04.2 021 by Delhi Govt.	Request was considered by DTC vide letter dated 20.05.2021 (page.- 1038/Cr.) and time extended for submission of PBG and execution of Contract agreement till 24.05.2021.			
2.	Dated 06.05.2021 (page. - 1288/Cr. to 1237/Cr.) Requested for additional time of 8 weeks for the contract execution and also 8-week extension for prototype delivery and additional time of 8 weeks for supplies over and above delivery timelines of RFP/LOA after lifting of the lockdown by various State governments.	Separate state wise order has been examined under column 5	Lockdo wn orders of Uttar Prades h, Haryan a, Karnata ka, Mahara shtra & Delhi	State	Duration	Whether the request has been received by DTC within specified time of 7 days as per provision s of Force Majeure	Observation of DTC

(iv)
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<p>Reasons:</p> <p>1. Due to imposed lockdown by Govt. of Delhi and many state like Uttar Pradesh, Haryana, Karnataka, Maharashtra etc</p> <p>2. Movement of manpower alongwith material for manufacturing of the structure and other assemblies/sub-assemblies has been affected in major way.</p> <p>3. Vehicle design & development is also affected since their majority suppliers are based out of Maharashtra & Delhi NCR subsequent part development and their pre testing is significantly affected due to state wide lockdown imposed by the respective state govt.</p> <p>4. Non availability of concentrated oxygen for industrial activates due to shortage in health care facility and various state govt. has ordered to supply oxygen only to health sector which has led to no production with them and over vendors for various assemblies and sub-assemblies.</p> <p>5. Most of the suppliers has shut-down completely or working with very limited work force.</p>	Maharashtra dated 13.04.2021 & dated 21.04.2021	14.04.2021 to 01.05.2021 (18 days)	No	No documents/evidence like purchase orders placed in Maharashtra's companies have been submitted in support of request made.
	Delhi dated 19.04.2021	19.04.2021 to 26.04.2021 (07 days)	No	No documents/evidence like purchase orders placed in Delhi's companies have been submitted in support of request made.
	Delhi dated 25.04.2021	27.04.2021 to 03.05.2021 (07 days)	No	No documents/evidence like purchase orders placed in Delhi's companies have been submitted in support of request made.
	Karnataka dated 26.04.2021	27.04.2021 to 12.05.2021 (16 days)	No	No documents/evidence like purchase orders placed in Karnataka's companies have been submitted in support of request made.
	Haryana dated 02.05.2021	03.05.2021 to 10.05.2021 (07 days)	Yes	No documents/evidence like purchase orders placed in Haryana's companies have been submitted in support of request made.
	Uttar Pradesh dated 20.04.2021	24.04.2021 to 01.05.2021 & 02.05.2021 to 04.05.2021 (04 days)	No	No documents/evidence like purchase orders placed in Uttar Pradesh's companies have been submitted in support of request made.
	Uttar Pradesh dated 04.05.2021	08.05.2021 to 09.05.2021 (02 days)	Yes	No documents/evidence like purchase orders placed in Uttar Pradesh's companies have been submitted in support of request made.

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(vi)

-118/N-

suppliers for raw material or semi-finished goods.

Any disruption in supply chain affects them directly or indirectly and same has happened in recent past due to COVID-19

restrictions/lockdown imposed by various state governments as their direct suppliers or their suppliers were either under lockdown or working with limited manpower strength which leads either no production or very limited production.

2. Initially the lockdown/restrictions due to spread of COVID -19 were imposed in State of Maharashtra i.e. from 15th April 2021 onwards and they have many direct suppliers from Maharashtra and also many suppliers of their suppliers in various parts of the country are located in Maharashtra hence with imposition of restrictions in Maharashtra majority of their supply chain has been disrupted.

3. Government of NCT of Delhi has also imposed lockdown/restrictions from 19th April 2021 and their suppliers located in NCT of Delhi has also affected and shown inability to meet the supply commitments.

4. As the COVID-19 situation getting worsen across the country many other states like Tamil Nadu, Karnataka, Haryana, Rajasthan, Gujarat, Uttar Pradesh etc has

- 118/N - (vii)

announced lockdown/restrictions starting last week of April and First week of May and many state has extended the same till 7th/14th June.

5. Our majority of the suppliers are located in above states and most of them has conveyed us that they are not in position to meet supply commitments due to complete or partial restrictions of movement of persons due to above conditions. It may kindly be noted that partial lockdown/restrictions are still persistent in few states affecting the supply chain of our suppliers and our sub suppliers so our vendors are not in position to give firm commitments of supply dates.

6. The second wave of COVID was very intense and affected many leading to fear and panic amongst the public even our own plants are affected as many of our staff was down with COVID or preferred staying at home due to fear of getting the infection so we were also working with minimal workforce in above period.

7. We are hereby enclosing the list of our major suppliers affected due to lockdown/restrictions and their communication to us in this regard at Annexure-1 and also enclosing respective state government notification in this regard for your reference.

8. It may be noted taking cognizance of

(viii)

-126/N-

second wave of COVID-19, Government of India has also issued instructions through its various ministries wherein not only the immediate intermediate milestones are allowed extensions but also corresponding time extensions has been given for entire project execution timelines. One such instruction issued by Ministry of New and Renewable Energy, Government of India Enclosed herewith as Annexure-2 wherein they have clearly stated in Para-5 that not only the intermediate milestones are to be extended but the entire project completion period is to be extended.

9. Since we were affected due to various reasons mentioned above and unable to start any development of the buses and once we start our production on resumption of supply chain and lifting of lockdown/restrictions it will not be possible to meet the intermediate delivery milestones as mentioned in LOA due to cascading effect of loss of production in affected time and plant capacity as mentioned. Hence it is necessary to provide extension for all delivery milestones of the contract

10. As lockdown/restrictions are still persistent in many states and it may get extend also by respective state Governments which is not in our control and it may further delay related activities for manufacturing of buses. We may request

- 12/11 - (IX)

further for additional time if circumstances remain same for substantial time

3 (B) - Annexure - I, List of Major Suppliers affected and their declarations

Name and State of Supplier	Commodity being supplied	PO number	Whether the request has been received by DTC within specified time of 7 days as per provisions of Force Majeure (Letter Date 06.07.2021)	Observation of DTC
1. Apar Industries Ltd. letter dated 25.05.2021	HV cables	4500027187 dated 05.05.2021	No	The copy/ ies of Purchase order in support of disruption of work due to Covid 19 were not provided to DTC.
2. Bender India Pvt. Ltd Dated 27.05.2021	Insulation monitoring devices	4500425214 dated 20.04.2021	No	The copy/ ies of Purchase order in support of disruption of work due to Covid 19 were not provided to DTC.
3. DANA TM4 India Pvt. Ltd. dated 19.04.2021	Traction motor and controller	NA	No	The copy/ ies of Purchase order in support of disruption of work due to Covid 19 were not provided to DTC.
4. Galactic Electric Pvt. Ltd	Emergency switches	4500424981 dated 19.04.2021	No (Vender's letter date has not been mentioned but decision is as per the content of letter)	The copy/ ies of Purchase order in support of disruption of work due to Covid 19 were not provided to DTC.
5. William Controls India Pvt. Ltd. dated 17.05.2021	Accelerator pedal	NA	No	The copy/ ies of Purchase order in support of disruption of work due to Covid 19 were not provided to DTC.
Pranav Vikas India Ltd Dated 05.05.2021	Battery cooling system	NA	No	The copy/ ies of Purchase order has/have not been provided by M/s JBM for consideration of supplier's declarations.
Trinity Touch Pvt. Ltd Dated 25.05.2021	Power distribution unit	4500424620 dated 17.04.2021	No	The copy/ ies of Purchase order in support of disruption of work due to Covid 19 were not provided to DTC.
Anest Iwata Motherson Pvt. Ltd. Dated 05.06.2021	Air compressor kit	4500425400 dated 21.04.2021	No	The copy/ ies of Purchase order in support of disruption of work due to Covid 19 were not provided to DTC.

-122/14- (X)

Amphenol Omniconnect India Pvt. Ltd. dated 26.05.2021	Charging socket	NA	No	The copy/ies of Purchase order in support of disruption of work due to Covid 19 were not provided to DTC
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3 (C) - Annexure-2,

Description	Observation of DTC
Office Memorandum No. F.No.283/18/2020-dated Grid Solar Issued by Ministry of New and Renewable Energy, Government of India giving time extension for various projects	Does not apply for the DTC project for engagement of buses

3 (D) - Orders of different States

State	Duration	Whether the request has been received by DTC within specified time of 7 days as per provisions of Force Majeure (Letter Date 06.07.2021)	Observation of DTC
Maharashtra dated 13.04.2021	14.04.2021 to 01.05.2021 (18 days)	No	Documents evidence like copies of purchase orders have not been submitted in support of request made. The order has already been considered in the previous request dated 06.05.2021
Delhi dated 19.04.2021 and 29.05.2021	19.04.2021 to 26.04.2021 (7days)	No	Documents evidence like copies of purchase orders have not been submitted in support of request made. The order has already been considered in the previous request dated 06.05.2021
Haryana dated 02.05.2021	03.05.2021 to 10.05.2021 (7 days)	No	Documents evidence like copies of purchase orders have not been submitted in support of request made. The order has already been considered in the previous request dated 06.05.2021
Uttar Pradesh dated 17.04.2021 & 20.04.2021	24.04.2021 to 25.04.2021 & 01.05.2021 to 02.05.2021 (4 days)	No	Documents evidence like copies of purchase orders have not been submitted in support of request made. The order has already been considered in the previous request dated 06.05.2021
Rajasthan dated 06.05.2021	10.05.2021 to 24.05.2021 (14 days)	No	Documents evidence like copies of purchase orders have not been submitted in support of request made. Further in this order the order is already allowed

— 123/N — (X)

Gujrat Government orders dated 12.04.2021			No	No directions are available for the industry. Further, Documents evidence like purchase orders have not been submitted in support of request made
Karnataka dated 26.04.2021	27.04.2021 to 12.05.2021 (16 days)	No	No	Documents evidence like copies of purchase orders have not been submitted in support of request made. The order has already been considered in the previous request dated 06.05.2021
Tamil Naidu dated 08.05.2021	10.05.2021 to 24.05.2021 (14 days)		No	Documents evidence like copies of purchase orders have not been submitted in support of request made.

4	<u>Dated</u> 27.10.2021 (Page. 1236/Cr. to 1157/Cr.) of M/s Ecolife (SPV of M/s JBM Auto and M/s Mind & Co.) Repetition of request with the same contents as submitted in the letter dated 06.07.2021 by M/s JBM Auto Ltd.	Same as given in para 3 (A)	Same as given in para 3 (A)	Already examined and the details are given in paras from 3 (A) to 3 (D) above.
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In view of the above examination, it is clearly evident that M/s JBM Auto Ltd/ M/s Ecolife has not complied the terms and conditions of Force Majeure clause of Contract Agreement. As such M/s JBM Auto Ltd/ M/s Ecolife is not entitled for any relief under provisions of Force Majeure clauses.

6. Similarly, on the basis of the legal opinion provided by Standing Counsel and Additional Solicitor General, the matter has been re-examined on the issue of applicability of Force Majeure clause under Article no. 29 of Volume II of RFP (1032 to 1027/Cr.) from the date of issue of LoA i.e. 30.03.2021 in the matter of M/s Tata Motors Ltd. After examination, following are the observations:

(XII)

- 12/8/21 -

M/s Tata Motors Ltd.				
S No	Date-wise Description of Request	Whether the request has been received by DTC within specified time of 7 days as per provisio ns of Force Majeure clause 29.5.	Docume nts submitt ed in support of request for conside ration	Observation of DTC
1	Dated 26.04.2021 (page. - 1037/Cr. to 1035/Cr.) To postpone the timeline of execution of contract agreement from 30.04.2021 to 30.06.2021 due to Covid 19 pandemic.	Yes	No	Request was considered by DTC and time extended for execution of Contract agreement till 24.05.2021 vide letter dated 20.05.2021 (page. - 1039/Cr.).
2	Dated 21.05.2021 (page. - 1059/Cr. to 1058/Cr.) Request for extension of execution of contract agreement of one month from the date of lifting of lockdown in Maharashtra for time to be taken for creation of SPV by the Registrar of Companies in Mumbai, supply chain disruption, non availability of labour/manpower, connectivity, transportation, lockdown situation.	No	No	As per provisions of Force Majeure conditions, the request was not submitted alongwith supporting documentary evidence like State order for imposition of lockdown, copies of the purchase orders for the supply of components, assembly/sub-assemblies and declaration of their suppliers/vendors as a proof for disruption of supply chain. The request of M/s TML was not acceded by DTC and the same was intimated to M/s TML vide letter dated 18.06.2021 (page. - 1060/Cr.)
3	Dated 31.07.2021 (received through email dated 17.08.2021	No	No	Karnatak The contractor failed to comply the contractual a Govt. conditions of Force Majeure for providing relief at Lock on weekly basis in accordance to Clause 29.5.2021 down along with the supporting documents at 17.08.2021

- 125/11 - (Xiii)

<p>) (page. - 1077/Cr. to 1065/Cr.)</p> <p>To extend the timelines for delivery because immediately after issuance of LoA on 30.03.2021, the country faced a massive covid 19 second wave which peaked in the month of April & may 2021 leading to lockdown getting imposed by various state government till mid of June 21, thus creating a force majeure condition in the country on account of the epidemic. Resultantly, the manufacturing activities was hampered and brought to halt with no scope for augmentation on account of the supply chain getting shutdown/ disrupted, non-availability of labour/manpower, connectivity, transportation & restriction on movement of men and material in compliance of Govt. order/guidelines issued to prevent spread of virus in the interest of health & life of public. The above said reasons were totally beyond the control of TML and not attributable to either party.</p> <p>A reference be made to the Government Notification dated 9.05.2021 wherein the automobile industry/ manufacturing/ parts was not exempted from the lockdown</p>	<p>order dated 09.05.2021, Newspa per clippings Internal/ Circular of Tata motors, Vendor commun cation letters, lockdown n situation & impact on vendors charts</p>	<p>order for imposition of lockdown, failure to submit copies of the purchase orders for the supply of components, assembly/sub-assemblies and declaration of their suppliers/vendors. Further, the contractor has submitted its request to extend the timelines for delivery after due date of supply of prototype bus i.e. 29.06.2021.</p> <p>However, the submitted detail along with the submitted documents have been examined and the same is given below: -</p> <p>i). The submitted Annexure - 1 as relevant Government notification putting the restrictions on manpower deployment has been examined and the detail is given in para 3 (B) below.</p> <p>ii). The submitted Annexure - 2 (Colly.) as the relevant newspapers clipping reporting the movement of labour force have been examined and the detail is given in para 3 (C) below.</p> <p>iii). The submitted Annexure - 3 (Colly.) as TML internal notices have been examined and the detail is given in para 3 (D) below.</p> <p>iv). The submitted Annexure - 4 (Colly.) as Letter from one of the vendors expressing their inability to continue the supply of material in line with agreed time-lines, lockdown situation & impact on vendors and lockdown announced on 19th Apr in Uttarpradesh have been examined and the detail is given in para 3 (E) below.</p> <p>v). The submitted Annexure - 5 (Colly.) as the relevant Govt. notification putting restriction on the production and movement thereof impacting supply chain for various bus components Suppliers have been examined and given at para 3 (F) and 3 (G) below.</p>
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(Xiv)

-12/6/N.-

restrictions except to the extent where manufacturing was being undertaken for defense and medical fields. Even in respect of these two fields, the restrictions on operations and utilization of manpower was restricted to less than 50% only. The relevant Government Notifications are attached herewith and marked as Annexure - 1.

Moreover, a large number of manpower from Maharashtra, Gujarat, Uttarakhand, Uttar Pradesh, Jharkhand and Karnataka comprising of the migrant labour, returned to their villages during this period over which TML had no control. This additionally impacted the manpower requirements due to this force majeure situation in the country. The relevant newspaper clippings reporting the movement of labour force are attached herewith and marked as Annexure - 2 (colly.).

TML with a view to comply with the restrictions enforced had to reduce the manpower reporting in its manufacturing plants and corporate offices. TML also had to declare additional off-days in the factories. The series of such notices is attached herewith and marked

- 127/N - (XV)

as Annexure - 3
(colly.).

It is also pertinent to mention that, due to the impact of virus spread, there was an acute shortage of medical oxygen across the country including the state of Delhi, which was well published daily in media during these months. Since oxygen is used in various bodybuilding and production/gas welding activities, the entire supply of oxygen was diverted to handle the medical emergencies in the country bringing the production activities to standstill.

Since lockdown was imposed in various states including Govt of Maharashtra, Delhi & Uttar Pradesh, Karnataka from April 2021, it also led to factories/industrial units and offices including Government offices work with minimal staff due to restriction on movement of people and goods and few of our plant/ vendors observed shutdowns for brief periods to avoid virus spread and break the chain. The communication from one of our vendors of axles highlighting the impact of COVID-19 restrictions on production of axles is attached herewith as Annexure - 4.

Apart from the problems in retaining or allowing the labour

- 128/H - (XVI)

	force to discharge their duties, another major factor that impacted the manufacturing was the availability of critical parts and raw material. In this regard, the relevant Government Notifications putting restrictions on the production and movement thereof are attached and marked as Annexure - 5 (colly.)			
3 (B)	<u>Annexure - 1</u> Relevant Government notification putting the restrictions on manpower deployment.	No	Karnataka Govt. circular no. CI 06 SPI 2020 dated 09.05.2021 and press clipping	The submitted letter dated 09.05.2021 of Govt. of Karnataka is an addendum circular to the already issued circular under the subject inclusion to list of industrial activities to be considered as essential commodities and requiring continuous operations. The letter dated 09.05.2021 has been submitted by the Contractor on 17.08.2021 through email, which is not in compliance to the force majeure clause. Further, the document named as Covid LIVE... which have been displayed along with circular on the same page is without any supporting documents. M/s TML has submitted the above said circular and displayed document without any supporting documentary evidence like copies of the purchase orders for the supply of components, assembly/sub-assemblies and declaration of their suppliers/vendors as a proof for disruption of supply chain. As such, both the documents cannot be considered for the request of extension of delivery timeline.
3 (C)	<u>Annexure - 2 (colly.)</u> The relevant newspapers clipping reporting the movement of labour force	No	Press clipping	M/s TML has submitted newspaper clipping reporting the movement of labour force on 17.08.2021 without any supporting documentary evidence like copies of States order for imposition of lockdown, copies of the purchase orders for the supply of components, assembly/sub-assemblies and declaration of their suppliers/vendors as a proof for disruption of supply chain. As such, the document cannot be considered for the request of extension of delivery timeline.
3 (D)	<u>Annexure - 3 (Colly.)</u> TML internal notices	No	Block closure by TML Circulars	M/s TML has submitted their internal circulars on 17.08.2021 after due date of supply of prototype bus i.e. 29.06.2021. The request for extension of delivery timeline cannot be considered with the submitted documents which are their internal circulars without any supporting documents like state order, vendors declarations and copies of purchase orders issued by M/s TML.

- 129/N - (xvii)

3 (E)	<u>Annexure - 4 (Colly)</u> i). Letter from one of our vendors expressing their inability to continue the supply of material in line with agreed time-lines. ii). Lockdown situation & impact on vendors iii). Lockdown announced on 19 th Apr in Uttarpradesh	No	No	i). The submitted letter dated 15.04.2021 of M/s MERITOR addressed to its Customer Partner is in regard to the announcement of new stringent measures with effect from 20 hrs on 14.04.2021 by the Govt. of Maharashtra. The said letter is not specifically addressed to M/s TML and neither mention any purchase order of spare part nor express the inability to continue the supply of material in line with agreed time-lines. The letter dated 15.04.2021 has been submitted by the Contractor on 17.08.2021 which is not in compliance to the force majeure clause. As such, the same cannot be considered for the request of extension of delivery timeline. ii). & iii). -The request for extension of delivery timeline cannot be considered with the submitted documents which have been prepared in-house by M/s TML without any supporting documents like state order, vendors declarations and copies of purchase orders issued by M/s TML.
3 (F)	<u>Annexure - 5</u> Relevant Government Notification putting restriction on the production and movement of critical parts and raw material	No		The referred relevant Government Notification putting restriction on the production and movement of critical parts and raw material have not been submitted along with this letter under examination i.e. letter dated 31.07.2021 received on 17.08.2021 through email. However, the same referred documents have been submitted by M/s TML along with their letter dated 31.07.2021 submitted again on 08.12.2021. These submitted documents i.e. States orders have been examined for which the detail is given at para 5 below. The submitted detail of 9-items i.e structure, panel, AC etc given in the letter dated 31.07.2021 received on 17.08.2021 has also been examined for which the detail is given at para 3(G) below:

3 (G)

S. No	Items' Categories	State	Lockdown period	References / Govt. Notifications/Circulars	Observation of DTC
1	Tubular Parts Structure	Faridabad Haryana	30th April 2021 to 7th June 2021	DMC-SPO-2020/5215 (2-May-21), DMC-SPO-2020/5439 (9-May-21), DMC-SPO-2020/3093 (16-May-21), DMC-SPO-2020/6008 (30-May-21)	The information regarding State DMA orders for putting restriction on the production and movement of critical parts and raw material have not been submitted in time in accordance to the Force Majeure conditions under contract. Further, the copies 'under reference/Govt. notification/circulars have also not been submitted along

(XVIII)

- 130/N -

2	Sheet Metal Parts Structure	Lucknow - UP	20.04.2021 to 31.05.2021 1 to 01.06.2021 1 to till further order	No-720/2021-CX-3 (20Apr-21), No-729/2021-CX-3 (30May-21)
3	RFP Pannel	Sikandra bad, Lucknow - UP	20.04.2021 to 31.05.2021 1 to 01.06.2021 1 to till further order	No-720/2021-CX-3 (20Apr-21), No-729/2021-CX-3 (30May-21)
4	Aluminium Skirt Parts & Extrusion /Profiles	Faridabad - Haryana	30th April 2021 to 7th June 2021	DMC-SPO-2020/5215 (2-May-21), DMC-SPO-2020/5439 (9-May-21), DMC-SPO-2020/3093 (16-May-21), DMC-SPO-2020/6008 (30-May-21)
5	AC	Noida - UP	20.04.2021 to 31.05.2021 1 to 01.06.2021 1 to till further order	No-720/2021-CX-3 (20Apr-21), No-729/2021-CX-3 (30May-21)
6	Wiper-Doga	Bangalore - Karnataka	21.04.2021 to 07.06.2021 1 to 1	RD 158 TNR 2020 (20Apr-21), No CI06SPI2020 (23Apr-21), RD158 TNR2020 (7May-21), RD158 TNR2020 (7May-21), COVID-19/2021-22 (5Jun-21)
7	Doors & FLAPS	Faridabad - Haryana	30th April 2021 to 7th June 2021	DMC-SPO-2020/5215 (2-May-21), DMC-SPO-2020/5439 (9-May-21), DMC-SPO-2020/3093 (16-May-21), DMC-SPO-2020/6008 (30-May-21)
8	Wiring Harness	Bangalore - Karnataka	21.04.2021 to 07.06.2021 1 to 1	RD 158 TNR 2020 (20Apr-21), No CI06SPI2020 (23Apr-21), RD158 TNR2020 (7May-21), RD158 TNR2020 (7May-21), COVID-19/2021-22 (5Jun-21)

with letter dated 31.07.2021 received on 17.08.2021 through email after due date of supply of prototype bus i.e. 29.06.2021.

Further, documents evidence like copies of purchase orders & vendors declaration have not been submitted in support of request made.

-134/N- (xix)

9	Seat	Kanpur, UP	20.04.2021 1 to 15.06.2021 1	No-720/2021-CX-3 (20Apr-21), No- 729/2021-CX-3 (30May-21)									
4	<u>Dated 25.09.2021</u> Correction in the delivery schedule for supply cum-operation and maintenance agreement ("Concession Agreement") to be executed between the DTC and TML CV (SPV of M/s TML) (page. 1064/Cr. to 1061/Cr.)		No	No	<p>The Concession Agreement was executed on 01.10.2021 in between DTC and TML CV (SPV of M/s TML) including consideration of the delivery schedule as per RFP document and thereafter same delivery schedule as per LoA.</p> <p>Once TML CV (SPV of M/s TML) has signed the concession agreement on 01.10.2022 including delivery schedule given in LoA, this implies that TML has agreed for delivery schedule as per LoA. Hence, the request of M/s TML, vide letter dated 25.09.2021 for correction in the delivery schedule, does not stand.</p>								
5	<u>Dated 31.07.2021</u> received again on 08.12.2021 (page. - 1153/Cr. to 1078/Cr.)				<p>The same letter has already been received by DTC on 17.08.2021 through email without annexure-5. Now this letter with same contents has been again submitted on 08.12.2021 along with the annexure - 5 for relevant Govt. notifications putting restriction on the production and movement of critical parts and raw material. The request of M/s TML vide letter dated 31.07.2021 has already been examined and the details of which have been given in the paras from 3 (A) to 3 (G) above. However, the annexure - 5, submitted this time, has been examined as under:</p> <table><tr><th>State</th><th>Duration</th><th>Whether the request has been received by DTC within specified time of 7 days as per provisions of Force Majeure</th><th>Observation of DTC</th></tr><tr><td>Karnataka dated 05.06.2021</td><td>24.05.2021 to 14.06.2021 (21 days)</td><td>No</td><td>Not in compliance to force majeure contractual conditions. No documents/evidence like purchase orders placed in Karnataka's companies have been submitted in support of request made</td></tr></table>	State	Duration	Whether the request has been received by DTC within specified time of 7 days as per provisions of Force Majeure	Observation of DTC	Karnataka dated 05.06.2021	24.05.2021 to 14.06.2021 (21 days)	No	Not in compliance to force majeure contractual conditions. No documents/evidence like purchase orders placed in Karnataka's companies have been submitted in support of request made
State	Duration	Whether the request has been received by DTC within specified time of 7 days as per provisions of Force Majeure	Observation of DTC										
Karnataka dated 05.06.2021	24.05.2021 to 14.06.2021 (21 days)	No	Not in compliance to force majeure contractual conditions. No documents/evidence like purchase orders placed in Karnataka's companies have been submitted in support of request made										

-132/N- (XX)

					No	Not in compliance to force majeure contractual conditions No documents/ evidence like purchase orders placed in Haryana's companies have been submitted in support of request made.
				Haryana na dated 02.05. 2021	03.05.20 21 to 10.05.20 21 (07 days)	
				Haryana na dated 09.05. 2021	10.05.20 21 to 17.05.20 21 (07 days)	No Not in compliance to force majeure contractual conditions No documents/ evidence like purchase orders placed in Haryana's companies have been submitted in support of request made.
				Haryana na dated 16.05. 2021	17.05.20 21 to 24.05.20 21 (07 days)	No Not in compliance to force majeure contractual conditions No documents/ evidence like purchase orders placed in Haryana's companies have been submitted in support of request made.
				Haryana na dated 30.05. 2021	31.05.20 21 to 07.06.20 21 (07 days)	No Not in compliance to force majeure contractual conditions No documents/ evidence like purchase orders placed in Haryana's companies have been submitted in support of request made.
				Karna taka dated 23.04. 2021	Weekly curfew	No Not in compliance to force majeure contractual conditions

-133/H- (XXI)

			No documents/ evidence like purchase orders placed in Karnataka's companies have been submitted in support of request made.
	Uttar Pradesh dated 20.04.2021	24.04.2021 to 25.04.2021 & 01.05.2021 to 02.05.2021 (04 days)	No Not in compliance to force majeure contractual conditions No documents/ evidence like purchase orders placed in Uttar Pradesh's companies have been submitted in support of request made.
	Uttar Pradesh dated 30.05.2021	31.05.2021 to 01.06.2021 (02 days)	No Not in compliance to force majeure contractual conditions No documents/ evidence like purchase orders placed in Uttar Pradesh's companies have been submitted in support of request made.
	Karnataka dated 07.05.2021	Weekly curfew	No Not in compliance to force majeure contractual conditions No documents/ evidence like purchase orders placed in Karnataka's companies have been submitted in support of request made.
	Karnataka dated 20.04.2021	21.04.2021 to 04.05.2021	No Not in compliance to force majeure contractual conditions No documents/ evidence like purchase orders placed in Karnataka's companies have

-134/N- (XXII)

							been submitted in support of request made.
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As per the above examination detail, it is clearly evident that M/s Tata Motors Ltd. / M/s TCMSL has not complied the terms and conditions of Force Majeure clause of Contract Agreement. As such M/s Tata Motors Ltd. / M/s TCMSL is not entitled for any relief under provisions of Force Majeure clauses.

7. It is submitted that the above examination has been made after considering the legal opinion of Standing Counsel and ASG for applicability of all the terms including Force majeure with effect from date of issue of LoA. In view of the examination above for M/s JBM Auto Ltd and M/s Tata Motors Ltd. at para 5 and 6 respectively, it is stated that there are no documents/evidence and copies of purchase orders to support the claims of JBM and TML that their work chain/ supply chain got disturbed due to any Force Majeure reason. As such, both the contractor are not entitled for any relief under provisions of Force Majeure clauses.

8. Both the SPVs did not deliver the electric buses as per the delivery schedule given in LoAs. Therefore, Operators are required to pay Damages due to delay in delivery as per terms and conditions of the Contract Agreement. The clauses of Volume II related to Damages due to delay in delivery of buses are reproduced as under:

"13.6 Supply of Prototype

13.6.1 The Operator shall, no later than 90 (ninety) days from the date of L O A, procure a Prototype and demonstrate to the Authority, tests and trials to be conducted in accordance with the provisions of Clause 13.5.

13.6.2 In the event that the Operator fails to procure the Prototype within the period specified in Clause 13.6.1, the Authority may recover from the Operator an amount equal to Rs. 2500/- per bus per day for first thirty days of delay in the delivery of Prototype and Rs. 5000/- per bus per day after thirty days of delay in the delivery of Prototype as Damages; provided that such Damages shall not exceed 5% (five per cent) of the cost of each bus (as per Clause 1.2.6 of Vol-I of RFP).

13.8 Procurement of Buses

Upon approval of the Prototype Bus in accordance with the provision of Clause 13.7, the operator shall procure the remaining Buses which shall include readiness of Buses for commencement of Services, in accordance with the provisions of Schedule -G and shall comply with timelines specified therein. The operator agrees that the Buses shall include the same specifications and standards as the approved Prototype provided in this Article 13.

135/N - (xx/iii)

13.9 Delay in Procurement

13.9.1 In the event the Operator is unable to procure any Bus as per this Article 13, for reasons not attributable to the Authority or due to a Force Majeure Event, the Operator shall pay Damages at the rate of Rs. 2500/- per bus per day for first thirty days of delay in the delivery of Bus and Rs. 5000/- per bus per day after thirty days of delay in the delivery of Bus (whose procurement is delayed) till the date of procurement of such Bus.

13.9.2 If the procurement of any Bus is delayed by a period exceeding 60 (sixty) days as provided in the Procurement Schedule or if the Damages payable by the Operator for such delay in procurement of Buses amounts to 5% (percent) of the cost of each bus (as per Clause 1.2.6 of Vol-I of RFP), notwithstanding anything provided in this Agreement, it shall be regarded as an Operator Event of Default.

13.9.3 The Damages payable by the Operator shall become due and payable within 7 (seven) days of receipt of notice in this regard from the Authority."

9. Apart from the damages towards late delivery of buses, there is also damage clause with regard to the delay in rectification of the defects observed on offering of the bus for inspection by the operator prior to the entry into commercial service. The relevant clause 14.1.4, Volume-II is reproduced as under:

"The Authority Representative shall submit an inspection report for each Bus specifying the defects and deficiencies that shall be rectified by the Operator in conformity with the Specifications and Standards (the "Punch List"). The Operator shall, no later than 20 days, rectify each item in the Punch List and notify the Authority of the same. The Authority may, in its discretion, inspect the Bus within 7 days thereof and in the event that any defect or deficiency specified in the Punch List shall have remained without rectification thereof, the Operator shall pay to the Authority as Damages, 0.1% (point one per cent) of the Performance Security per Bus for each day of delay for each bus until all items of the Punch List are rectified."

10. Keeping in view the aforesaid clauses, the liquidity damages amounting to Rs.13,67,67,956/- (Rupees Thirteen Crore Sixty-Seven Lakh Sixty-Seven Thousand Nine Hundred Fifty-Six Only) for initial 150 buses (out of 200) have been worked out for M/s Ecolife and liquidity damages amounting to Rs. 94000421/- (Rupees Nine Crore Forty Lakh Four Hundred Twenty-One Only) for 100 buses (total contractual buses) of M/s TCMSL. The details of the same are placed at page 1056/Cr. to 1049/Cr.

11. Further, Chairman, DTC/ Hon'ble MoT vide his minutes dated 23.05.2022 (at 55/N) inter-alia directed that DTC may place on record the readiness of those depots which were earmarked for these buses. In regard to the readiness of depots, it is stated that the inspection has been carried out by DTC with respect to installation,

- 236/N - (XXIV)

operation of maintenance facilities and equipment necessary for performing its maintenance obligations as per clause 17.15.1 of Concession Agreement in Mundhela Kalan depot and Rohini sector - 37 depot on 10.06.2022 and 14.06.2022 respectively. The Rajghat - II depot has also been inspected on 15.06.2022 and 25.08.2022. The relevant clause 17.15.1 is reproduced as under:

"17.15.1 The Operator shall, at each Maintenance Depot, install and operate the maintenance facilities and equipment necessary for performing its Maintenance Obligations under and in accordance with this Agreement. Such maintenance facilities and equipment shall include:

- (a) Bus washing plant;*
- (b) portable lifting jacks;*
- (c) measuring and recording devices;*
- (d) special tools, jigs & fixtures;*
- (e) paint shop;*
- (f) wheel repair shop;*
- (g) Wi-Fi data retrieval and diagnostic system facilities; and*
- (h) hardware (two) desktop computers) and software for the Maintenance Management Information System (the "MMIS")."*

12. The inspection reports of above depots are placed at page -1009 to 989/Cr. & page. 1047/Cr. and the main points of inspection reports are as under:

- **Rohini Sector-37 depot:** The operator has created maintenance facilities and equipment necessary for performing its maintenance obligations in line with clause 17.15.1 of the Draft Concession Agreement (DCA) of RFP.
- **Rajghat Depot-II:** The Operator has not created/installed the maintenance facilities and equipment as per clause 17.15.1 of Volume-II of DCA of the RFP such as washing plant for buses, paint shop, wheel repair shop, Wi-Fi data retrieval and diagnostic system facilities and software for the Maintenance Management Information System (the "MMIS").
- **Mundhela Kalan depot:** The operator has created maintenance facilities and equipment necessary for performing its maintenance obligations except bus washing plant which is not installed in the depot so far and the software for Maintenance Management Information System (the "MMIS") is also not installed.


13. In view of above, M/s Ecolife (SPV of M/s JBM) & M/s TCMSL (SPV of M/s TML) have been requested vide letters dated 08.07.2022 (page. 987 to 986/Cr.), reminders vide letter dated 23.08.2022 (page. 1044/Cr.) and letter dated 26.08.2022 (page. 1048/Cr.) to take necessary action for completion of the job in the depots with respect to required plant & machinery in compliance to the contractual conditions. Further, both the operators have also been requested to submit following applicable permits for depots in accordance to Schedule-C of Vol-II (DCA) of the RFP

— 137/N — (XXV)

- (i) Fire safety clearance from Fire Department.
- (ii) Insurance for Depot, Electrical & Civil Infrastructure and other Authority owned assets.
- (iii) Customs Clearance Certificate for any testing or maintenance equipment (if needed).
- (iv) Clearance of Pollution Control Board for installation of diesel generator sets.
- (v) License from Inspector of factories or other competent authority.
- (vi) Clearance of Pollution Control Board for Asphalt Plant (if needed).
- (vii) Any other permits or clearances required under Applicable Laws.

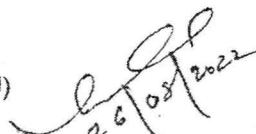
14. On the basis of detailed analysis, the complete examination report brought out in para 5 & 6, details of liquidated damages due to delayed delivery of buses given in para 10 and status of readiness of depots given in para 12 for both the operators are submitted for kind perusal and approval for putting up the agenda item before the DTC's Board for information and appropriate direction/decision in regard to issuance of show cause notice for recovery of liquidated damages due to late delivery of buses by both the operators please.

Dy. CGM (M) SBU
947F/076650649
date: 26/8/22


26/8/22
Manager - V (SBU)



A/Foreman (SBU)
26.08.2022

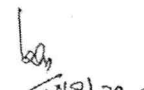
Consultant (SBU)


26/08/2022

CGM (Tech.)
Dy. CGM (M), SBU
Date: 26/08/22

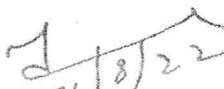
CGM (SBU)


29/08/2022


29/8/22
V. K. Gupta
CGM (Tech.)

M.P.

As recommended.


31/8/22

Shruti PTF
date

Consultant (SBU)
CGM (SBU)
29/09/2022


31/8/22