

MoU between NTPC & IWAI

A Memorandum of Understanding was signed between Inland Waterways Authority of India (IWAI) and NTPC Limited on 24.9.2008 for transportation of imported coal from Haldia/ to their thermal power plants at Farakka/ Kahalgaon/ Barh through National Waterway No-1

MoU has been signed by Shri S.C. Srivastava, Member (Cargo & Finance) on behalf of IWAI and by Shri R.L. Mattoo, Executive Director (Fuel Management) on behalf of NTPC Ltd.

Text of Memorandum of Understanding signed between NTPC & IWAI

This Memorandum of Understanding (hereinafter referred to as “MoU”) entered into on this 24th day of September, 2008 at New Delhi by and between :

NTPC Limited, a company incorporated under the Companies Act, 1956, having its registered office at NTPC Bhawan, SCOPE Complex, 7 Institutional Area, Lodhi Road, New Delhi-110003 (hereinafter referred to as ‘NTPC’) which expression shall, unless the context require otherwise, include its successors and permitted assigns, of the **First Part**

AND

Inland Waterways Authority of India, a statutory body of Government of India set up under IWAI Act 1985, with its headquarters at A-13, Sector-1, Noida, Uttar Pradesh, hereinafter referred to as ‘IWAI’, which expression shall unless the context requires otherwise, include its successors and permitted assigns of the **Second Part**.

(NTPC and IWAI are hereinafter individually referred to as ‘**The Party**’ and collectively as ‘**Parties**’)’

WHEREAS

- a) **NTPC Limited** is a premier power generation company having expertise and strength in areas such as setting up, operation & maintenance of power projects and sale of power to various state power utilities and other bulk customers. NTPC has developed comprehensive in-house expertise in various facets of power generation from concept to commissioning, efficient operation to nurturing of ecology and environment in accordance with National Power Policy of Govt. of India.
- b) **IWAI** has been set up for undertaking development and regulation of Inland waterways in the country. It has overall responsibility to carry out surveys and investigations for the development, maintenance and better utilization of the national waterways and the appurtenant land for shipping and navigation and prepare schemes in this behalf.

- c) During the meeting held under the Chairmanship of Secretary (power) on 6th -Jul-2007, the following were decided :
- i) IWAI to get a detailed feasibility study made on the development of Inland waterways covering the entire gamut of economics of transporting imported coal through water transportation to Farakka & Kahalgaon power stations of NTPC.
 - ii) NTPC may sign an MOU with IWAI for exploring the feasibility of transportation of imported coal for its Farakka Power Station as long as transportation cost is cheaper through inland waterways than other modes of transportation.
- d) IWAI has already carried out pre-feasibility for the proposed movement of coal from Haldia port to Farakka/ Kahalgaon/ Barh power stations of NTPC by Inland waterways and requirement of incidental handling facilities at both ends (here in after called 'Project")
- e) The Parties hereto are desirous and have agreed to record their understanding, agreed terms and conditions as and by way of this Memorandum of Understanding for bringing this project into a reality.

NOW THEREFORE THIS MEMORANDUM OF UNDERSTANDING (MoU) WITNESSETH AS FOLLOWS:

1. Intent

- i) To record current understanding of the Parties on the Project and commitments made based on which the Project is to be developed.
- ii) To record roles and responsibilities of Parties during the Project development stage.

2. Project Development Methodology:

2.1 The Project:

For purposes of this MoU the 'Project" will encompass several components and is described as under:

- Infrastructure for unloading ships at port/high seas.
- Infrastructure for loading barges at port/high seas.
- Infrastructure for loading and unloading barges at the Farakka /Kahalgaon/Barh end.
- Availability of Navigation channel from unloading point upto Farakka/ Kahalgaon / Barh on NW-1 (National Waterway-1) for movement of suitable barges for a draft of 2.5 meters.
- To ensure availability of sufficient number of barges for transportation of 2 to 3 MTPA of coal on sustained/ regular basis.

- Identification of operators or any other mode i.e JV, BOT etc for Fleet acquisition, management and operation for moving coal from port/Haldia end to Farakka/Kahalgaon/Barh Power stations by IWAI.
- Identification of an Operator for the barge operations
- Identification of an Operator for Terminal and/ or Handling operations
- Identification of strategic investors, as may be required

2.2 **Urrent Understanding & Premises**

IWAI has carried out preliminary investigation of various components of the Project and the same has been presented and/or shared with NTPC

In view of the above, Parties are committed to the Project and have decided to move ahead with the Project and carry out further project development subject to reliability of supplies and economic viability of coal transportation to power plant stack yard, as outlined hereafter.

2.3 **Commitment By Parties**

2.3.1 **NTPC has agreed :**

- a) To commit approximate 2 to 3 million tonnes per annum of cargo (coal) for transport by Inland Water Transport from Haldia to Farakka/ Kahalgaon/ Barh, on a long-term basis (say 10 years) for the Project
- b) To make available fly ash, being sent out from Farakka/ Kahalgaon/ Barh plants, to industries and others, for transportation as return cargo, if possible, subject to availability and on terms and conditions to be mutually agreed to separately.
- c) To extend all necessary assistance in the form of sharing information and providing necessary inputs and data during the Project development stage to Parties subject to confidentiality agreement.
- d) To attend various meetings with IWAI at their request relating to the Project including those conducted with the prospective implementing agencies.
- e) To nominate a senior level personnel to interact with IWAI, in relation to the matters concerning this MoU.
- f) The commitments of NTPC in Para 2.3.1 are subject to the condition that the delivered cost of coal at power station coal stack yard through inland Waterways is competitive/ cheaper vis-à-vis Railways and NTPC gets door delivery of its cargo at coal stack year of NTPC stations on sustained basis.

2.3.2 **IWAI has agreed :**

- a) To provide navigation infrastructure in the form of dredging and maintenance of the navigation channel and provision of night navigation infrastructure as may be needed for operationalizing the Project as contemplated in the Techno-Economic Feasibility study for the Project to be carried out by IWAI.
- b) To extend all necessary assistance in the form of sharing information and providing necessary inputs and data to Parties
- c) To assist in gaining clarity on regulatory and statutory requirements as applicable to the Project or its various components.
- d) To under take Project development either directly or through consultants appointed for this purposed.
- e) To bear total project development expense for undertaking Project Development activities including but not limited to payment of professional fees to legal, technical and other consultants, traveling expenses, marketing and promotion expenses etc.
- f) To provide oversight and be responsible in managing the entire process till the Project is successfully implemented by IWAI/ Agency to be appointed by IWAI, till the project achieves its full capacity i.e. 2 to 3 MTPA.

2.4 **Methodology**

Parties have agreed that –

- a) A detailed feasibility study shall be carried out by IWAI on turnkey basis for development of inland waterways covering the entire gamut of economics for transportation of coal through Inland Waterway in Haldia – Farakka – Kahalgaon - Barh sector.
- b) The Project Contours for movement of coal between Haldia, Farakka, Kahalgaon and Barh shall be finalized by IWAI based on the Techno-Economic Feasibility study carried out for transportation of coal between Haldia and Farakka By IWAI AND NTPC's requirements.
- c) Upon agreeing on the Project contours, the Detailed Project Report shall be prepared by IWAI for development of inland waterways covering the entire gamut of economics.
- d) NTPC would facilitate implementation of the Project by IWAI by way of meeting commitments in terms of this MoU and to this effect shall sign necessary agreements with IWAI.

3.0 **Amendment/ Waiver**

3.1 No amendment, modification or waiver of any provision of this MoU shall in any event be effective unless the same has been made in writing and signed by a duly authorized officer of each of the parties and agreed in writing by other and any waiver or consent shall be effective only in the specific instance and for the specified purpose for which it is given.

4.0 Interpretation

The various headings appearing in this MoU are only for the sake of convenience and shall not affect the interpretation of the subject matter of various clauses of this MoU.

5.0 Operation & Maintenance (O&M) Of Project

IWAI shall oversee the implementation of the project, which will be operated and maintained on PPP model in accordance with the project developed through IWAI. NTPC shall pay only the transportation charges for the coal at the mutually agreed rates, at terms and conditions to be agreed after completion of project and subject to para 2.3.1 (f) above.

6.0 Confidentiality

- a. The Parties, to the extent of their respective rights to do so, shall exchange such technical information and data as is reasonably required of each Party to perform its responsibilities under this MoU. Each party agrees to keep in confidence and to use the same degree of care as it uses with respect to its own proprietary data to prevent the disclosure to third Parties of all technical information, data and confidential business information (hereinafter referred to as "Data").
- b. Exchange, use and maintenance of confidential Data shall be mutually discussed and agreed to by the Parties.
- c. The preceding provisions of confidentiality and restriction on use of data shall not apply to :
 - Information in the public domain or information, which subsequently enters into public domain without committing breach of this clause.
 - Information in possession of the party at the time of disclosure and was not acquired, directly or indirectly, from the other party.
 - Information which a party is required to disclose under law, rules or regulations to any judicial or other authorities.
 - Consultants /advisors provided they, in turn, sign undertaking of confidentiality.

7.0 Representation and Warranties :

Neither Party shall have the right or power to bind the other Party to any agreement without the prior written consent of the Party concerned. Unless specifically agreed in writing, no Party is authorized to make commitments, representations, warranties or agreements on behalf of the other Party and each Party agrees that it will not hold itself out as having such authority. If any Party acts in violation of the foregoing the said Party agrees to indemnify, defend and hold the other Party harmless from and against any and all claims, demands, losses, damages, liabilities, law suits and other proceedings judgments and awards, the reasonable cost and expenses (including, but not limited to, reasonable attorneys' fee) arising directly or indirectly, in whole or in part, out of the breach of this Article by such Party, whether committed by the indemnifying Party, its employees, agents, successors or assigns.

8.0 Limitation of Liability

Neither Party shall be liable to each other for any financial liability or any consequential loss incurred by the Party individually in respect of the Project. It is specifically agreed between the Parties that there shall be no financial liability to NTPC whatsoever under these presents, for implementation of the project.

9.0 Settlement of Dispute and Arbitration:

In the event of any difference / dispute arising between the parties hereof under these presents, such disputes / difference shall in the first instance be resolved amicably by mutual consultations within 45 days of the reference of dispute by either Party.

In case of disputes not amicably settled by the parties by mutual discussions as aforesaid, the parties shall resolve such disputes through permanent Machinery of Arbitration with department of Public Enterprises in terms of office memorandum no. DPE/4/(10)/2001-PMA-GL1 dated 22/01/04 issued by Government of India, Ministry of Industry, Department of Public enterprises and its Govt. guidelines on the subject issued from time to time. The arbitration will be conducted at New Delhi. The court of Delhi shall have the exclusive jurisdiction in all matters under these presents.

10. Governing Laws & Jurisdiction:

This MoU shall be governed by the Laws of India and the rules framed thereunder. The Courts of Delhi shall have exclusive jurisdiction in all matters relating to or arising out of this MoU.

11. Notice

Any notice to be given under this MoU shall be in writing and shall be deemed to have been duly and properly served upon the Parties hereto if delivered against acknowledgement or by registered mail with

acknowledgment due, addressed to Parties herein at the following addresses or such changed addresses as will be duly notified by the Parties from time to time.

Address

**Chairman & Managing Director
NTPC Limited.**

NTPC Bhawan; SCOPE Complex
7, Institutional Area, Lodhi Road,
New Delhi-110003
Telephone No.011- 24363861
Fax No.: 011 – 24360759

**Chairman
Inland Waterways Authority of India**

Ministry of Shipping, RT&H (Govt. of India)
A13, Sector-1,
Noida-201301 (U.P.)
Telephone No.0120-2543972
Fax No. 0120-25443973, 2544041

12. Effective Date :

This MoU shall come into force as soon as it is signed for all purposes and intents and shall, unless earlier terminated by mutual consent, remain in force for a period of three years from the date hereof unless extended or terminated by the Parties by mutual consent.

13. Entire Understanding:

This MoU contains the entire understanding between the Parties and supersedes all prior or contemporaneous oral or written agreements, commitments, understanding or communication with respect to the subject matter hereof.

IN WITNESS WHEREOF THE PARTIES THROUGH THEIR AUTHORIZED REPRESENTATIVE HAVE SIGNED THESE PRESENTS ON THE DAY MONTH AND YEAR MENTIONED ABOVE.

1. For and on behalf of NTPC Limited (Authorised signatory) R.L. Mattoo Executive Director (FM)	2. For and on behalf of Inland Waterways Authority of India (Authorised signatory) S.C. Srivastava Member (Cargo & Finance)
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