

163/DIR (Proj)

49

Copy of Res. No. 07 (W-02)  
of  
Council's Ordinary Meeting  
dated 26/04/2016

ITEM NO. 07 (W-02)

1. Name of the Subject/Project:

Establishment of Special Purpose Vehicle (a 100% /wholly New Delhi Municipal Council owned Public Limited Company) under the provisions of section 12(z) of the New Delhi Municipal Council Act, 1994 in accordance with the provisions of the Companies Act, 2013, as required under the Smart Cities Mission of the Ministry of Urban Development, Government of India.

2. Name of the Department:

Project Department, New Delhi Municipal Council.

3. Brief history of the subject:

3.1 Government of India (GOI) Ministry of Urban Development (MoUD) launched Smart City Mission on 25<sup>th</sup> June, 2015 to develop 100 cities throughout the country as Smart Cities who will be given matching grant of Rs.500 crores each from the Government of India and same amount to be arranged by the Urban Local Body (ULB)/State. The mission is a centrally sponsored scheme lunched and steered by the MoUD, GOI. To enable the building up of the equity base of the Special Purpose Vehicle (SPV) and to enable ULBs to contribute their share of the equity capital, Gol grants will be permitted to be utilized as ULBs share of equity capital in the SPV, subject to the conditions given in the Smart Cities Mission guidelines.

3.2 New Delhi Municipal Council (NDMC) has been selected by MoUD after due recommendations by the State Level High Powered Steering Committee (HPSC), Government of NCT of Delhi (GNCTD) to participate in the second stage – City Challenge Round 1 for selection, which was announced on 27<sup>th</sup> August 2015. In total 97 cities have been selected for participation in Stage 2 of City Challenge Round 1.

3.3 The Smart City Proposal (SCP) was to be submitted by 15.12.2015 for consideration in the Stage 2 of City Challenge Round 1 for grants of fund from MoUD after approval from Council and the HPSC.

3.4 A Smart City Proposal was prepared by NDMC, which was approved by the Council vide Resolution No.24 (W-01) dated 7.12.2015. This SCP was considered and approved by HPSC on 11.12.2015 with certain suggestions. The suggestions made by the HPSC were incorporated in the SCP, and the revised SCP was considered and approved by the Council on 15.12.2015 vide Resolution No. 24(W-01). The approved SCP was submitted to the MoUD on 15.12.2015.

3.5 NDMC has been selected as one of the 20 Cities by the MoUD under City Challenge Round 1 of the Smart City Mission of the GOI on 28<sup>th</sup> January, 2016.

4. Detailed proposal on the subject:

4.1 According to the Smart Cities Mission Guidelines of MoUD, a Special Purpose Vehicle (SPV) needs to be established each by the selected 20 cities for implementation of the Mission. The SPV will plan, appraise, approve, release funds, implement, manage, operate, monitor and evaluate the Smart City development projects.

4.2 The Council vide Resolution No.24 (W-01) dated 7.12.2015 and Resolution No.24 (W-01) dated 15.12.2015 has resolved that as per the NDMC Act, 1994, there are no enabling provisions for establishment an SPV and the Council resolved to

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propose the following to the Ministry of Home Affairs to enable creation of the SPV and matters connected therewith:

- a) appropriate amendment to the NDMC Act, 1994 or
- b) directions by the Central Government under Section 395 of the NDMC Act, 1994 permitting establishment of such SPV.

Further, it was proposed that till the establishment of the SPV, the NDMC Council, being autonomous within the mandate given in the Act and financially self-sufficient, will perform the functions of the SPV. The role and functions of the CEO will be performed by the Secretary NDMC, who is an IAS officer. SPV will plan, appraise, approve, release funds, implement, manage, operate, monitor and evaluate the Smart City development projects.

- 4.3 The Ministry of Urban Development vide letter No. K-15016/61/2015-SC-I dated 28.1.2016 -**Annexure-1(See Page 65 )** has invited the attention to the Smart Cities Mission Guidelines for creation of City Level Special Purpose vehicle (SPV) as a limited company incorporated under the Companies Act, 2013. The affairs of the company will be regulated by an Article of Association (**AoA**) which shall include structure and functions of the SPV. A Model Article of Association has been provided by the MoUD to enable the States / ULBs to prepare Article of Association for such SPV, and informed that this Article of Association shall be vetted by the State Government Departments, such as Law, etc. MoUD has asked for establishment of the SPV, which is to be informed to it in order to claim the first installment under the Smart Cities Mission.
- 4.4 Further, the MOUD vide D.O. letter No. K-15016/61/2015-SC-I dated 09.03.2016 - **Annexure-2(See Pages 66 – 73)** circulated an Advisory note no. 1 on the SPV to guide the establishment of SPV in NDMC and projectivization of the modules in the SCP.
- 4.5 The matter of establishment of the SPV is reconsidered, and it is observed that establishment of a Special Purpose Vehicle (a 100%/wholly Public Limited Company fully owned by NDMC) may be considered under the provisions of section 12(z) of the New Delhi Municipal Council Act, 1994. Section 12(z) of the NDMC Act, 1994 is reproduced as follows:

*“12. Discretionary functions of the Council.- Subject to any general or special order of the Government, or the Central Government from time to time, the Council may provide either wholly or in part for all or any of the following matters, namely:-*

*...  
(z) any measure not hereinbefore specifically mentioned, likely to promote, public safety, health, convenience or general welfare.”*

An Opinion from learner Ld. Additional Solicitor General of India, Sh. Sanjay Jain has also been sought on the above matter.

The operative part of the opinion rendered vide letter dated 22.04.2016-**Annexure-3 (See on Pages 74 - 82)** is reproduced as under:

*“...  
9. First and foremost, it must be noted that NDMC is a body corporate under Section 3(2) of the NDMC Act. Section 3(2) of the NDMC Act reads as under  
“The Council Shall be a body corporate with the name of aforesaid having perpetual succession and a common seal with power...”  
A body corporate has been defined under Section 2(11) of the Companies Act, 2013 as follows:*

"2 (11) "body corporate" or "corporation" includes a company incorporated outside India, but does not include— (i) a co-operative society registered under any law relating to co-operative societies; and (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf."

10. Therefore, being a body corporate, NDMC is well within its right to incorporate a company in the form of a SPV in accordance with the provisions of the Companies Act, 2013.

11. It is, however, important to bear in mind that since NDMC is a statutory body corporate and is a creation of the legislature, NDMC owes its existence to the NDMC Act, 1994 and not to the Companies Act of 1956 or 2013.

12. It thus emerges that NDMC, being a statutory body corporate has the innate power to form a SPV, albeit such power to form an SPV needs to be exercised within the four walls of the NDMC Act, 1994.

13. Section 12(z) of the NDMC Act, 1994 gives to NDMC powers wide enough to undertake any step in furtherance of the objects of the Act and to "promote public safety, health, convenience and public welfare". Section 12(z) is reproduced hereinbelow:

"12. Discretionary functions of the Council – Subject to any general or special order of the Government, or the Central Government from time to time, the Council may provide either wholly or in part for all or any of the following matters, namely:-

(z) any measure not hereinbefore specifically mentioned, likely to promote public safety, health, convenience or general welfare."

14. The Smart City Project is an endeavour by the Government of India to create cities with enhanced communication and digital capabilities to accommodate urban development, inter alia. Any activities undertaken under this Project is not only with the intention of improving public convenience, but also put India on the global map. Thus, on a perusal of all objectives enumerated in the Memorandum of Association ("MOU") of the prospective SPV, it is extremely clear that all actions and activities endeavoured to be undertaken will fall under the definition of "public safety, health convenience or general welfare" as provided for under Section 12(z) of the NDMC Act, 1994. For the sake of convenience, the objectives from the aforementioned MOU are enumerated below for ease of reference:

"1. To plan, design, develop, implement, manage, maintain, operate, and monitor the Smart City Development projects for the area under "New Delhi Municipal Council (NDMC)" in accordance with Smart City Mission of the Government of India and State Government.

"..."

15. While there may be no direct provision in the NDMC Act 1994 granting specific powers the Council, I opine that Section 12(z) is wide enough to encompass within its ambit all activities which may ultimately lead to creation of cities where public health, convenience, safety and general welfare activities are undertaken, which is essentially the aim and object the Smart City Project endeavours to achieve.

16. At this instance, I will also like to point out that, of the other cities selected within this Project, Pune and Bhuneshwar have also incorporated SPVs towards the execution of the Project.

17. Therefore, bearing in mind the rationale of the Project as well as relevant provisions of the NDMC Act, I am of the considered opinion that there exists no embargo for the NDMC in the creation of the SPV under the Smart City Project."

4.6 A draft Article of Association Annexure-4 (See Pages 83 - 127 ) has been prepared on the basis of Model Article of Association circulated by the MoUD based on the provisions of the Companies Act, 2013. The main features of the Article of Association, *inter-alia*, are as follows:

**4.6.1 Key functions and responsibilities of the proposed SPV**

The key functions and responsibilities of the proposed SPV will include:

- i) Approve and sanction the projects including their technical appraisal.
- ii) Execute the Smart City Proposal with complete operational freedom.
- iii) Take measures to comply with the requirements of the MoUD/ other Ministries/ Departments of the Government of India/ State Government Rules and Regulations, local laws etc. for implementation of the Smart Cities Mission.
- iv) Mobilize resources within timelines and take measures necessary for the mobilization of resources.
- v) Approve and act upon the reports of a third party Review and Monitoring Agency.
- vi) Oversee Capacity Building activities.
- vii) Develop and benefit from inter-linkages of academic institutions and organizations.
- viii) Ensure timely completion of projects according to set timelines.
- ix) Undertake review of activities of the Mission including budget, implementation of projects, preparation of Smart City Proposal (SCP) and co-ordination with other missions/schemes and activities of various Ministries/Departments.
- x) Monitor and review quality control related matters and act upon issues arising thereof.
- xi) Incorporation of joint ventures and subsidiaries and enter into Public Private Partnerships including with foreign entities as may be required for the implementation of the Smart Cities Mission.
- xii) Enter into contracts, partnerships and service delivery arrangements with Indian as well as foreign entity, as may be required for the implementation of the Smart Cities Mission.
- xiii) Collect user charges as authorized by the NDMC.
- xiv) Collect taxes, surcharges etc. as authorized by the NDMC.
- xv) Own, dispose and transfer assets.
- xvi) Any other functions as delegated by the Central Government/ State Government/NDMC within the scope of Smart Cities Mission.

**4.6.2 Provisions for exercise of powers by the proposed SPV as delegated by the Council**

The proposed SPV will exercise the following powers delegated by the NDMC subject to extent and as provided under the New Delhi Municipal Council Act, 1994:

- (i) The rights and obligations of the municipal body with respect to the smart city projects;
- (ii) Decision making powers available to the NDMC under the NDMC Act, 1994 / Government Rules by the Chief Executive Officer;
- (iii) Approval or decision making powers available to the NDMC by the Board of Directors of the proposed SPV.

**4.6.3 Authorized Share Capital and minimum Paid Up Capital for the proposed SPV**

NDMC shall always be in majority in total equity of the proposed SPV. The authorized Share Capital of the proposed SPV shall be Rs. Five Hundred crore (Rs.500.0 crore) as stated in clause 5 of the Memorandum of Association of the proposed SPV including amendments thereto if any. The minimum paid up capital of the proposed SPV shall be Rs. Two Hundred and Fifty crores (Rs.250 crore). The authorized Share Capital may be divided into several classes attaching

thereto any preferential rights, privileges or conditions, which could be altered, reclassified or increased from time to time, in accordance with the terms mentioned in the Article of Association and legislative provisions for the time being in force in this behalf.

#### 4.6.4 Raising and utilization of funds by the proposed SPV

The proposed SPV may raise additional finance to the extent permitted by law including but not limited to by means of (a) loans and subsidies, (b) by way of deposits; (c) User Charges (d) Grants by Central Government, State Government, Central/State Government Undertaking, NDMC (e) Grants by any other agency, (f) debentures and bonds, (g) Taxes and/or Surcharges as authorised by the NDMC. Such additional funds may be utilized by the proposed SPV for such purpose that the Board of Directors deems fit. Funds given by Central Government to the proposed SPV will be in the shape of tied grants. These funds given by the Central Government as "Tied Grants" will be kept in a separate Grant Fund. The Grant Fund will be utilized only for the purposes given in the Mission Statement and Guidelines of the Smart Cities Mission of the MoUD and subject to conditions laid down by the Central Government in this regard. The NDMC may request MoUD to permit utilization of Government of India grants as NDMC's equity contribution in the proposed SPV subject to the following conditions:

- (a) NDMC has made adequate contribution to the SPV out of its own funds.
- (b) The approval will be limited to the initial GOI grants that have already been released. Since future installments of Smart City grants are subject to performance and are not guaranteed, the NDMC will not be permitted to earmark future installments to meet its equity contribution.
- (c) The GOI contribution to Smart Cities is strictly in the form of grant and the NDMC is exercising its own discretion in utilizing these funds as its equity contribution to the proposed SPV.

#### 4.6.5 Increase, Reduction and Alteration of Capital

The proposed SPV in General Meeting may, from time to time by an Ordinary Resolution alter the conditions of its Memorandum of Association as follows that is to say, it may increase its share capital by such amount as it thinks expedient by issuing new shares to private and other investors. Even in case private and other equity shareholders are inducted into the proposed SPV, the NDMC will always maintain a majority equity shareholding in the proposed SPV.

#### 4.6.6 Constitution of the Board of Directors for proposed SPV

##### 4.6.6.1 Number of Director

- i) The Board of Directors will comprise of minimum 3 (Three) Directors and maximum 15 (Fifteen) as per provisions of Section 149 of Companies Act, 2013 with at least 1/3 (One – Third) of the Board, being Independent Directors. Following persons shall act as Directors of the Company:
  - a) Chairperson, New Delhi Municipal Council (NDMC) ...Chairperson
  - b) Two members from amongst the officers of the Central Government or its undertakings, to be nominated by the Central Government ...Director
  - c) Two members from amongst the officers of the Government of NCT of Delhi or its undertakings, to be nominated by the Central Government ...Director
  - d) Secretary, New Delhi Municipal Council ...Director

- e) Financial Advisor, New Delhi Municipal Council ...Director
- f) Chief Executive Officer of the Company ...Director
- g) Independent Directors (five nos. of which atleast one will be women) ...Director

[Note:- The Board composition/board committee/appointment of directors has to be in compliance with Companies Act 2013 read with Companies (Appointment and Qualification of Directors) Rules 2014, depending on its paid up capital and other criteria prescribed]

ii) In addition to the Chief Executive Officer (CEO) and Functional Directors, Additional Directors may be taken on the Board if considered necessary.

iii) In case the NDMC modifies the composition of directors of the company by issuing new or fresh order(s), the composition of the Board shall be amended accordingly subject to retaining the representation of the Central Government and proportionate representation of Independent Directors.

iv) Except the Chairperson, one third of the director shall retire every year in accordance to the provisions of section 152 of the Act.

#### 4.6.6.2 First Directors:

1. Shri Naresh Kumar, Chairperson, New Delhi Municipal Council
2. Ms. Chanchal Yadav, Secretary, New Delhi Municipal Council
3. Ms. Geetali Tare, Financial Advisor, New Delhi Municipal Council

#### 4.6.6.3 Company may increase or reduce the number of Directors.

#### 4.6.7 Appointment of Representatives of Central Government as Directors and Independent Directors

##### a) Representatives of the Central Government:

- (i) Notwithstanding anything to the contrary contained in these Articles, the representative of the Central Government will be a Director in the Board of the Company and nominated by the Central Government. He will hold office for the period as decided by the Central Government subject to the provisions of the Act.
- (ii) The Board of Directors of the Company shall have no power to remove from office the Representative of the Central Government. Representative of the Central Government shall not be required to hold any share qualification in the Company. Also Representative of the Central Government shall not be liable to retirement by rotation of Directors. Subject as aforesaid, the Representative of the Central Government shall be entitled to the same rights and privileges and be subject to the same obligations as any other Director of the Company.
- (iii) The Representative of the Central Government so appointed shall hold the said office for the period as decided by the Central Government.
- (iv) The Representative of the Central Government appointed under this Article shall be entitled to receive all notices of and attend all General Meetings, Board Meetings and all the Meetings of the Committee of which the Representative of Central Government is member as also the minutes of such meetings.

