

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF INDIA
AND
THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA ON THE REHABILITATION OF THE HARBOUR AT
KANKESANTHURAI, SRI LANKA**

The Government of the Republic of India and the Government of the Democratic Socialist Republic of Sri Lanka (hereinafter jointly referred to as the 'Parties'),

RECALLING the close, friendly and cooperative relations that have existed historically between the two Parties,

DESIRING to enhance and strengthen the existing bilateral relationship and to promote cooperative activities between the two Parties based on the principles of equality and mutual benefit,

WELCOMING the opportunities available for cooperative development that are afforded especially after the conclusion of the armed conflict in northern Sri Lanka in 2009,

NOTING the acute need for the restoration of economic infrastructure in the Northern Province, which would support domestic as well as regional commerce and connectivity,

RESPONDING to a request from the Government of Sri Lanka for assistance in the rehabilitation of the Kankesanthurai Harbour in the Jaffna Peninsula (hereinafter referred to as the 'Project'), which was severely damaged during the Tsunami in 2004 and by Cyclone 'Nisha' in 2008; and

RECOGNIZING that the Kankesanthurai Harbour is designated as a "specified port" and is administered by the Sri Lanka Ports Authority ("the SLPA") in terms of the Sri Lanka Ports Authority Act No. 51 of 1979 (as amended),

Have agreed to enter into a Memorandum of Understanding (MoU) as follows:

ARTICLE I

- 1.1 The Parties shall, under the terms of this MoU, undertake cooperative development of the Project.
- 1.2 Management of the Project, including quality control and its timely execution, based on an agreed time-line, shall be ensured by the Government of India in partnership with the Government of Sri Lanka as represented by the SLPA.
- 1.3 The Government of India shall fund the preparation of a Detailed Project Report (DPR) for the entire project, as well as works related to geotechnical studies, hydrographic survey, wreck removal and disposal and dredging. The Government of India will accordingly engage appropriate contractors for the various works.
- 1.4 The Government of India will provide a Line of Credit to the Government of Sri Lanka for undertaking works relating to the rehabilitation of the breakwater, additional pier/s for commercial cargo handling and installation of port infrastructure facilities. Aspects of the Detailed Project Report relating to these works will be mutually agreed between the Parties while taking into account the requirements of the SLPA.

ARTICLE II

- 2.1 The project shall cover the following phases:-
 - (a) **Phase I** - Preliminary Hydrographic Survey by the Indian Navy; (The survey has already been completed by an Indian Naval Ship from 29 June to 13 July 2010);
 - (b) **Phase II** - Geotechnical investigations and preparation of DPR; (to be taken up by RITES, India);
 - (c) **Phase III** - Wreck removal and disposal; (to be taken up by Shipping Corporation of India);
 - (d) **Phase IV**- Dredging work; (to be undertaken by Dredging Corporation of India);

(e) Phase V - Rehabilitation of breakwater/pier and construction of new pier with attendant port facilities as agreed; (RITES to prepare DPR and float tenders for award of works);

(f) Phase VI - Detailed hydrographic survey and preparation of Harbour Chart; (to be taken up by the Indian Navy).

ARTICLE III

3.1 The Project will be completed as stipulated in the contracts signed by the Government of India or by the Government of Sri Lanka as represented by the SLPA (as applicable) with the agencies or prime contractors. On the completion of the Project, a joint acceptance board will be constituted between the Parties to certify that the Project has been completed in accordance with the contracts. The maintenance of the Harbour thereafter will be the responsibility of the SLPA for and on behalf of the Government of Sri Lanka.

3.2 The Government of India will depute project experts/officials of the executing agencies of India as required for the Project with the prior written concurrence of the Government of Sri Lanka.

ARTICLE IV

4.1 The Government of Sri Lanka will be responsible for the provision and facilitation of the following to various Indian contractors and executing agencies in the run up to the commencement of the Project and during the period of its execution in accordance with the laws of Sri Lanka:

- (i) Identification of a Nodal Agency from Sri Lanka and deputation of appropriate technical officials and coordinating officers at the Project site to liaise with various local government authorities and agencies within Sri Lanka;
- (ii) Demarcation of KKS Harbour layout;
- (iii) Grant of exemption from pilotage and other port formalities, including any customs duty or other taxes applicable, as also those on disposal of wrecks;

- (iv) Grant of exemption from taxes like general sales tax, work contract tax and all other applicable taxes on equipment, personnel and currencies;
- (v) Facilitation of visa, immigration and customs clearance formalities for personnel and equipment at various entry points in Sri Lanka;
- (vi) Permission for appointing agents in Sri Lanka to assist in import and export of material and other activities;
- (vii) Facilitation of travel permissions for shore-based and floating personnel from Colombo to KKS harbour;
- (viii) Work permits and necessary clearances, including security clearances, for officials/experts working in the KKS harbour;
- (ix) Boat services during site visits of experts and to dredger from shore;
- (x) Fuel through barges on payment basis;
- (xi) Repair facility at Sri Lanka Navy workshop on payment basis;
- (xii) Shore office and residential accommodation, including boarding, on payment basis;
- (xiii) Medical facilities and potable water on payment basis;
- (xiv) Services of shore crane facility (about 20 ton capacity) as and when required on payment basis;
- (xv) Barge and pontoon services on payment basis;
- (xvi) Assistance in arranging local skilled and unskilled workers on payment basis;
- (xvii) Necessary security arrangements for officials, worksite and equipment deployed by the Indian agencies/prime contractor(s)/sub contractor(s);
- (xviii) Necessary approvals for movement in the high security zone in the Northern Area as required for the Project;

- (xix) Travel facilitation for experts and associates to the work site from Colombo, Trincomalee, or any other suitable entry ports/points of Sri Lanka for work connected with the Project;
- (xx) Extension of immunity to Indian personnel, papers and their premises from judicial process to the extent permitted under laws of Sri Lanka; and
- (xxi) Expeditious resolution of any local issue which may come up during work to ensure that work progresses smoothly.

4.2 The Government of Sri Lanka also agrees to provide the following arrangements during the phase-wise execution of the Project in accordance with the laws of Sri Lanka:-

Phase II

- (i) Repair and Maintenance of drilling rigs on payment basis;
- (ii) One leveling instrument along with known local bench-mark values;
- (iii) Nomination of one port engineer/civil engineer from Sri Lanka Ports Authority for interaction with Indian experts from time to time during the period of preparation of detailed project report and whenever necessary during the period of project execution.

Phase III

- (iv) Information on the total number of wrecks, including their brief history and account of sinking, light displacement tonnage, name of the owner at the time of sinking, year built, yard name and classification society under which the ship was registered;
- (v) Certificates of ownership and No Objection Certificate from the owners of the wrecks for wreck removal and disposal to avoid legal proceedings against Indian parties;
- (vi) Ordnance-free certificate for the entire operating area in and around KKS port and ordnance-free certificate for the wrecks;

- (vii) Disposal of the removed pieces of wrecks as finalized by the Shipping Corporation of India;
- (viii) Provision of certificates from local authorities and permission from the Director of Merchant Shipping of Sri Lanka or his representative and the customs for wreck removal and disposal by Government of India;
- (ix) Provision of no encumbrances certificates for all wrecks;
- (x) Storage space (about 5000 square metres) outside KKS harbour for temporary storage of wreck pieces, and arrangements for their safety prior to final disposal;
- (xi) Indemnification of the Government of India, the Shipping Corporation of India and the wreck removal contractor and disposal contractor by the Government of Sri Lanka against any and all losses, claims, damages, liabilities, costs, litigation, proceedings, actions, demands, charges and expenses of any nature whatsoever, to which they may become subject, insofar as these losses arise out of or relate to or result from any activity carried out in the furtherance of the wreck-removal and disposal work to be carried out in Kankesanthurai Harbour.

Phase IV

- (xii) Identification of offshore disposal area as close to the coastline as feasible;
- (xiii) Identification of on-shore disposal areas for pumping hard material with minimum distance;
- (xiv) Provision of necessary bunds to retain the dredged material, including maintenance.

Phase V

- (xv) Provision of requisite support as mutually agreed between the Parties for rehabilitation of breakwater/pier and construction of new pier with attendant port facilities.

Phase VI

- (xvi) Necessary assistance to Indian Navy in preparation of Harbour chart; and
- (xvii) Accommodation, transportation, Mess and communication facilities for Indian Navy personnel.

ARTICLE V

- 5. All construction material and consumables, stores, testing equipment, field equipment, machinery, vehicles, etc., brought in from India or elsewhere by the Government of India/Project officials of India or by the contractors engaged by the Government of India for the exclusive use and due implementation of the Project will be exempt from customs duties, taxes or other levies. Such waiver or exemption of such duties, taxes or other levies will be granted in writing by the relevant authorities in accordance with the applicable Laws.

ARTICLE VI

- 6. The two Parties shall establish a Joint Working Group (JWG), which would meet as often as required at senior levels to monitor and review all matters regarding the implementation of this MoU.

ARTICLE VII

- 7. All payments for the work executed in accordance with the Project as agreed to in Article I, Clause 1.3 and the payment terms incorporated in the contracts signed with the contractors of India by the Government of India shall be made by the Government of India.

ARTICLE VIII

- 8. Proceeding from their desire for continued cooperation, the Parties agree to maintain close and regular consultations on matters of mutual interest, including future development works at the Kankesanthurai Harbour. In the event of any future works at the said Harbour, the Government of Sri Lanka would make available the opportunity for the Government of India to make an offer for the execution of the said works.

ARTICLE IX

9. Each Party waives all claims against the other Party for damage to any property, or injury or death suffered by any member of its military or civilian personnel in the performance of activities in the context of this MoU.

ARTICLE X

10. The Parties undertake to protect classified information obtained pursuant to this MoU and to not transfer or disclose such information to third parties without the previous consent of the providing Party.

ARTICLE XI

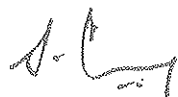
11. Any dispute arising from the interpretation of implementation of this MoU shall be resolved via diplomatic channels through mutual consultation and negotiation.

ARTICLE XII

12. This Memorandum of Understanding shall enter into force on signature.

Signed at Colombo on this...21...day of July 2011, in two originals in the English language only.


FOR THE GOVERNMENT OF
THE REPUBLIC OF INDIA


FOR THE GOVERNMENT OF
THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA