INDIAN INSTITUTE OF MANAGEMENT
AHMEDABAD • INDIA

Research and Publications

Effect of Legal Issues in Infrastructure Development: The Case of Container Terminal Bids in Jawaharlal Nehru Port Trust

G. Raghuram
Prashanth Devakumar Udayakumar
Richa Prajapati

W.P. No. 2015-10-03
October 2015

INDIAN INSTITUTE OF MANAGEMENT
AHMEDABAD-380 015
INDIA

Effect of Legal Issues in Infrastructure Development: The Case of Container Terminal Bids in Jawaharlal Nehru Port Trust

G Raghuram, Prashanth Devakumar Udayakumar, Richa Prajapati [@]

Abstract

The Jawaharlal Nehru Port Trust (JNPT) is the largest container port in India, handling about 40% of India's container traffic in 2014-15. JNPT has five container terminals (CT) out of which three have already been operationalised, a standalone CT of 330 metres (m) is partially operationalised and a fourth CT is under construction. While the first CT, Jawaharlal Nehru Port Container Terminal, is operated by JNPT, the other four CTs have been licensed to private operators under public-private partnership mode. The development of the CTs is a case study to understand how various conflicts have been addressed or accentuated by policy makers, legal and regulatory authorities, and the mechanisms used to resolve them. Following a case-based analytical approach, case studies, court judgements, published and unpublished papers, media reports, primary data from discussions, and secondary data have been examined to construct a chronological story of the bids for the five CTs during the twenty five years since the commissioning of the port in 1989. The concessioning of each CT to a private stakeholder involved contentious issues which prompted the authorities to revise policy guidelines periodically to address them. Consequent and prolonged litigation resulted in time and cost overruns. Various issues, like policy formulation, contractual rights versus policy guidelines, strategic risks, monopoly prevention versus scale economies, market risks, effect of elections, leadership changes, security clearances, mutuality and clarity in documentation, that emerged during the bidding processes, have been crystallised as lessons learnt.

Keywords: Jawaharlal Nehru Port; litigation; legal issues, public-private partnership; container terminal; bidding process; monopoly; non-mutuality; code of conduct

[@] G..Raghuram, Professor, Prashanth Devakumar Udayakumar, Research Associate, Indian Institute of Management Ahmedabad respectively; Richa Prajapati, student at University of California, Berkeley. Email contact: graghu@iimahd.ernet.in

Effect of Legal Issues in Infrastructure Development: The Case of Container Terminal Bids in Jawaharlal Nehru Port Trust

1. Introduction

The Jawaharlal Nehru Port is the largest container port in India. Having reached its peak market share of 58% in container traffic in 2003-04, it handled 4.47 million (m) twenty foot equivalent units (TEU) of container traffic in 2014-15, with a market share of under 40%. It was ranked 30 among the world's container ports in 2014. It is located in a total area of 2987 hectares (ha) in the south of Maharashtra on the Arabian Sea, on the mainland just across Mumbai. The port is run by the Jawaharlal Nehru Port Trust (JNPT), an autonomous body constituted under the Major Port Trusts Act (MPTA), 1963 (Salhotra 2007). Containers constituted 89.24% of the total cargo handled by JNPT in tonnage during 2014-15.

JNPT has five CTs out of which three have already been operationalised, one is partially operationalised and one is under construction. The first CT called Jawaharlal Nehru Port Container Terminal (JNPCT) was commissioned on May 26, 1989 and run by JNPT. JNPT, apart from its self-operated JNPCT, developed and commissioned its Shallow Draught Berth (SDB) in September 2002. The SDB handles feeder container vessels, dry bulk cargo vessels and other general cargo vessels. The second CT, Nhava Sheva International Container Terminal (NSICT), awarded to P&O Ports Australia Private Limited in February 1997, was operationalised in April 1999. P&O was later purchased by DP World in 2006. The third CT called Gateway Terminals of India Private Limited (GTIPL), awarded to the APM Terminals-Container Corporation of India (CONCOR) consortium in August 2004, has been operating since March 2006. A standalone project of a 330 metres (m) CT was awarded to DP World in July 2013 and was partially operationalised in April 2015. The fourth CT was awarded to PSA in February 2014. Appendix A gives brief details of the various CTs and a schematic layout.

This paper analyses the various legal issues that JNPT has faced over the twenty five years since its commissioning in the context of its CTs. Using a case-based approach, we have examined case studies, court judgements, published and unpublished papers, media reports, primary data from discussions, and secondary data.

2. Conception of JNPT

JNPT was initially conceptualised as a 'satellite port' to decongest the Mumbai Port, from where evacuation through the city of Mumbai was increasingly a problem. It was also expected that with a modern CT and reasonable draught, container traffic would come calling directly, rather than through feeder vessels before/after transshipment in neighbouring country ports like Colombo, Singapore and Dubai. In a related matter, "the then Prime Minister Indira Gandhi had directed that the Mumbai Port Trust's (MbPT) land be opened up for public amenities as a pre-condition"(Bharucha 2011) for setting up JNPT. This, however, never materialised.

Land from two villages called Nhava and Sheva in Navi Mumbai were used for the construction of the JNPT. The port was notified in the official gazette on May 28, 1982 under the MPTA, 1963 and called Nhava Sheva Port (Jawaharlal Nehru Port Trust 2013). It was constructed as an all-weather tidal port in the mid-1980s (Ministry of

Shipping 2015), at an initial cost of Rs 11.09 billion (bn) (Ray 2004, p.12). At the time of inception, the land area was 2584 ha, which was later increased to 2987 ha during computerisation of records in January 2015.*

At the time of its completion, the facility was a high technology port ahead of its times. It was "equipped with modern container and bulk handling facilities, with a separate terminal dedicated to each type of cargo" (Ray 2004). In particular, the CT of 680 m quay length and three berths was "designed and equipped to handle large container vessels" (p. 14). Its rated annual capacity was 500,000 TEU containers. The port also had an SDB (often used for handling smaller container vessels), liquid cargo berth, a bulk terminal (used for fertiliser imports) and multipurpose berths (which were also used for automobile exports) (Ray 2004).

The recruitment of personnel was from the project affected persons of Nhava and Sheva villages who required extensive training. Since it was an election year, the commissioning of the port had been advanced to May 29, 1989, before training of the personnel was completed. The port was inaugurated by the then Prime Minister Rajiv Gandhi and the name was changed to Jawaharlal Nehru Port.

JNPCT showed sluggish growth of traffic in the initial years (Table 1). The service infrastructure around JNPT had not yet evolved, especially as compared to the Mumbai Port. The original intent of decongesting the Mumbai Port did not play out until after 1998-99. Consequently, the port performed below its capacity, compromising on its efficiency, competitiveness and quality of service.

Table 1: Container traffic (1989-90 to 1996-97) (000 TEU)

Year	JNPCT	Mumbai	Mumbai Area Total	India Total
1989-90	34	310	344	633
1990-91	55	324	379	681
1991-92	109	280	389	683
1992-93	143	315	458	798
1993-94	173	428	601	1052
1994-95	244	487	731	1257
1995-96	339	518	857	1449
1996-97	423	583	1006	1698

(Indian Ports Association n.d.)

In 1992, P&O Australia, along with their Indian partner, the RPG group, "openly expressed their interest in managing" the JNPCT (Shashikumar 1999, p.552). Since this was not a tender-based proposal, it was felt that the offer price was low. Being a government project, the process was expected to go through open tendering.

* According to a JNPT official, "As per directions of Ministry, all the Ports were asked to check their land titles and computerise the land records. Accordingly, JNPT also carried out the exercise in which all the titles of lands were checked and it was found that the actual area of the land is 2987 Ha."

3. Second CT: Moving towards privatization

In 1993, the Government of India (GoI) requested a Group of Experts appointed by the World Bank to do the groundwork for the tendering for operation of the JNPCT (Shashikumar 1999, p. 552). The recommendations were submitted to the then Ministry of Surface Transport (hereafter referred to as the 'Ministry'[†]) and the Ministry of Law and Justice in January 1994 (p. 6). The tenure of the license was to be for ten years (p. 552). The licensee had to "guarantee minimum performance levels and bill terminal users at rates not exceeding the tariff schedule set" by the Ministry for JNPCT (p. 552). According to the case study by Shashikumar (1999, p. 552), "the labour issue was to be dealt by giving an option to existing JNPT employees to join the new firm at terms and conditions not inferior to what was available with their JNPT employment."

Shashikumar (1999) further describes how, anticipating an increase in container traffic, and keeping in view the original master plan, it was decided to increase the scope of privatization to include the building and operating of a new CT. The global tender was initially planned for early 1994, but kept getting postponed several times, partly due to labour resistance and partly due to political distrust of the privatisation concept (p. 553). There was a ministerial change and the new Minister Rajasekara Murthy did not favour privatizing the existing CT fearing it could "jeopardise the fate of [the] existing JNPT labour" (p .553). However, it was decided to privatize the new CT. JNPT Port Planning and Development Department prepared an "extensive final bid document" p. 553). In December 1995, JNPT issued a global tender for a new CT on BOT basis for 30 years. (Shashikumar 1999, p. 553)

The project would include construction of a two-berth CT, reclamation of 20 hectares of area for container yards and installation of requisite container handling equipment along with other related facilities, with a projected annual capacity of 0.5 m TEU (Ministry of Finance n.d.). The bids for the terminal of 600 m quay length were open between December 26, 1995 and February 15, 1996 (Shashikumar 1999, p. 553). During March 14-15, 1996, a pre bid conference was held for clarification of bid terms (p. 555). The bidder with the highest net present value (NPV) of its cumulative royalty payments (annual payment would be the product of royalty and minimum guaranteed traffic, both of which could be quoted for that year) would win the bid.

According to the bid document, JNPT would be responsible for, inter alia, scheduling entry and berthing of the vessels in consultation with the licensee, and pilotage and towing (Shashikumar 1999, p. 552). P&O, initially wanted to organize these services by themselves for better control. However, when there was no option, they wanted a service-level agreement with JNPT, which also was not agreed to.

Some of the other bid terms, that Shashikumar (1999) points out, were:

- The licensee had to achieve "gross average productivity of quay cranes of not less than 20 moves per hour per crane every month."
- The licensee would bill users of the CT for "services, including terminal charges, container handling and cargo related charges."

[†] The then Ministry of Surface Transport is today the Ministry of Shipping. In the interim, it has also been called as the Ministry of Shipping, Road Transport and Highways.

- The licensee was "liable to pay a royalty for the guaranteed traffic in the event of not achieving the minimum traffic" indicated unless the failure was attributed to factors outside the licensee's control.
- A 20-25% increase in tariff was anticipated every three years, "with the next revision expected in early 1997."

However, the originally scheduled date of April 19, 1996 for submission of bids got extended to August 16, 1996 due to elections (Shashikumar 1999, p. 555).

Ray (2004) highlights how in June 1996, the Rakesh Mohan Committee Report on Infrastructure drew attention to the inefficiency of the Major Ports of India. It also suggested private partnership as a possible reform in infrastructure projects. Subsequently, on October 26, 1996, the Ministry issued guidelines for all Major Port Trusts regarding private sector participation (Salhotra 2007, p.2). The objective of the guidelines was to improve efficiency, productivity and quality of service and bring competitiveness in the port sector (p. 2). The salient aspects of the guidelines, as delineated by Salhotra (2007, p.2), were as follows.

- "Open tenders to be invited for private participation on . . . BOT basis."
- "Period of license not to exceed 30 years."
- "At the end of concession period, all assets to revert . . . to the Port Trust, free of cost."
- "Two-bid system (technical and financial bids) to be followed. Financial bids of only the technically qualified bidders to be opened."
- Financial bid to indicate an upfront license fee, royalty per ton cargo to be handled and minimum guaranteed cargo.
- "Royalty for the purpose of analysis to be based on the minimum traffic which the entrepreneur guarantees."

The policy guideline also stated that ports will have to ensure that private investment did not result in the creation of private monopolies and that private facilities were available to all users on equal and competitive terms (Supreme Court of India 2011).

4. P&O awarded second CT: Creation of NSICT

"Thirty firms from India and abroad purchased the bid document, of which five consortia submitted their proposals" (Ministry of Finance n.d.).

Shashikumar (1999) details thus about the events post the opening of bids. The Evaluation Committee found one of the five consortia, Stevedoring Services of America International, non-responsive because of the inclusion of a conditional financial proposal in violation of bid guidelines. On December 10, 1996, after it was informed about the non-responsiveness of the bid, the rejected consortium filed a writ petition against the JNPT decision in the Bombay High Court (HC). He observes that JNPT received a court order to not finalise the outcome of the bid process until hearings could be held. After hearings on December 11, 18 and 19, 1996, the HC rendered a final decision in favour of JNPT. On January 1 and 6, 1997, JNPT held negotiations with the highest-bidding consortium led by P&O Ports Australia Private Limited, where the latter agreed to raise the minimum guaranteed throughput from 550,000 in the 6th year to 600,000 TEU per annum in the 15th year of awarding the license. Shashikumar also notes that as a result, the NPV of the consortium's bid went up from Rs 2.25 bn ($74 million) to Rs 2.35 bn ($78 million) and JNPT's gross revenue during the 30 year license period would exceed Rs 40 bn. The consortium also agreed to construct an additional approach bridge on the southern extension at a cost of $1.5 m to $2 m. On February 3, 1997, the bid for the second CT was awarded to the consortium of P&O Australia Ports, Konsortium Perkapalan Behrad and DBC Group of Companies, based on the highest NPV of royalty offered. (Shashikumar 1999)

P&O's financial offer had royalty payments increasing from Rs 47 per TEU in the first year of operation to Rs 5,610 per TEU in the last year of operation (Salhotra 2007).

NSICT was incorporated on March 27, 1997 (Zauba Corp n.d.). On July 3, 1997, a License Agreement was signed between JNPT and P&O Consortium to run the second CT as NSICT. Clause 2.3 of the License Agreement said, "The License will not bar the Licensee from participating in any subsequent bids invited by the Licensor for operation of Container Terminal" (Supreme Court of India 2011). Construction work started in October 1997 (Ministry of Finance n.d.). During this time, a tariff regulator called the Tariff Authority for Major Ports (TAMP) was put in place under the MPTA, 1963 to regulate tariffs.

NSICT was constructed at a cost of Rs 7.33 bn in about two years. Though it was officially expected to be operationalised only by July 2000, NSICT was commissioned and became partially operational by April 1999 (Jawaharlal Nehru Port Trust 2015c). This was part of NSICT's strategy of reaching out to the market early, when no royalty payments were yet due.

5. Growth of NSICT

NSICT hit 600,000 TEU of container traffic in the supposed-to-be first year of operation, though it had agreed to this negotiated figure to happen by only the 15^{th} year (Table 2).

Table 2: Container Traffic (1997-98 to 2004-05) (000 TEU)

Year	JNPT			Mumbai	Mumbai Area Total	India Total
	JNPCT	NSICT	Total			
1997-98	504	-	504	601	1105	1892
1998-99	669	-	669	509	1178	1932
1999-00	546	343	889	430	1319	2185
2000-01	494	695	1189	321	1510	2470
2001-02	630	944	1574	254	1828	2887
2002-03	729	1201	1930	213	2143	3366
2003-04	1038	1231	2269	197	2466	3900
2004-05	1138	1232	2370	219	2589	4502

(Indian Ports Association n.d.; Jawaharlal Nehru Port Trust 2015d)

As Ray (2004) points out in his paper,

> "By offering better customer services and faster turnaround, NSICT started diverting traffic away from the JNPCT that consequently led to a decline in the latter's performance, both in terms of volume of traffic as well as efficiency. This made the JNPT authority realise the importance of further capacity augmentation . . . . NSICT's better performance had a "demonstration effect" on JNPCT." (Ray 2004)

JNPCT had worked on their capacity augmentation, modernisation of facilities, capacity restructuring, financial restructuring and enhancing labour productivity (Ray 2004). Table 2 shows JNPCT's traffic picking up and going well beyond its original annual capacity of 500,000 TEU.

However, working over the original capacity led to issues with NSICT's customers. Ray (2004) mentions that,

> "NSICT norms were rather strict with regard to last moment cargo loading, which the shipping lines often failed to meet due to logistic problems. JNPCT is [was] much more flexible in this regard. . . . In July 2003, IndAmex Shipping Line switched operational base from NSICT to JNPCT, citing congestion problems and inadequate attention of the NSICT authority towards their business." (Ray 2004)

There was a serious congestion issue from April to October 2004 at JNPT due to a variety of reasons like the holiday season in April/May resulting in increased passenger trains at the cost of freight trains, maintenance works of Railways that caused a mega block between May 21 and 28, monsoons, shortage of container rakes and the inability of ICD Ludhiana to handle the required rate of incoming traffic (Raghuram 2006). All of this resulted in reduced container movement by CONCOR, which was the sole provider of rail-borne container transportation between the port and the hinterland (Port of Rotterdam Authority 2007).

The congestion was exacerbated due to insufficient backup land for NSICT. The land provided was a consequence of an absolute number written into the concession agreement (CA), for the originally anticipated traffic levels. Apart from the already proposed expansion in the master plan, this gave rise to the idea of a standalone CT adjacent to NSICT.

6. Third CT: Exclusion of P&O

With the bulk traffic dwindling, the container traffic increasing and the Central Government finding it economically unviable to maintain the bulk terminal, it was decided to convert the bulk terminal into a CT (Pandey 2004). The proposal included widening of the then existing bulk berths, widening of the approaches, developing container yards in the back up area and provision of state-of-the-art facilities and equipment (Pandey 2004). This bid was supposed to be on a revenue share basis, a departure from the earlier royalty per container model. This was expected to be more incentive-compatible with tariff regulation, though the prevailing 1996 guidelines had prescribed a royalty payment model. The bidder willing to share the highest share from its annual revenue with JNPT would get the contract.

In November 2001, JNPT invited Expressions of Interest (EOI) from prospective bidders with the extant government policy stating, ''Private participation will be on the basis of open competitive bidding'' (Chidambaram 2003). Several leading port operators including P&O, APM Terminals (the terminal management arm of AP Maersk Moller, a Danish shipping and oil conglomerate), PSA Singapore, Stevedoring Services Inc, Sea King Infrastructure Limited and Larsen & Toubro (L&T) submitted EOIs (Manoj 2003).

The following are based on submissions to the Bombay High Court (2003) in the Indian Kanoon judgement copy. On July 19, 2002, JNPT Board passed a resolution proposing the conversion of the bulk terminal, subject to government approval. They also resolved that at both RFQ and RFP stages, advertisements should make clear that P&O and their associates were disentitled to bid. Representations had been received from the Mumbai and Nava Sheva Steamer Agents Association (MANSA) that the government should not allow monopoly to develop at any port/terminal and that it should ensure that there were minimum two operators. It was also contended that the rates charged by P&O were excessive compared to the rates at other international ports. The Central Government approved JNPT's proposal. (High Court of Bombay 2003)

Through a letter dated November 25, 2002, JNPT informed P&O of the Board's decision to exclude them to avoid concentration of control with one private party and to increase competition and efficiency and to prevent monopoly in public interest (High Court of Bombay 2003). It was incorporated in Clause 1.3 of the tender documents that:

> "The port is desirous of entrusting the Project of redevelopment of the bulk terminal to a container terminal, on BOT basis, to another licensee other than the existing Private Terminal Operator (Licensee) at JNPT i.e. Nhava Sheva International Container Terminal (NSICT) Limited or their associates, P&O or the associates, interconnected or sister companies or either of them." (Supreme Court of India 2011)

This was in accordance with the 1996 Guidelines that empowered JNPT to prevent monopolies. However, in Clause 2.3 of the License Agreement between JNPT and NSICT, the latter had been given liberty to participate in any subsequent bid. (Supreme Court of India 2011)

On December 7, 2002, P&O challenged this decision in Bombay HC through a writ petition. It sought direction or order in the nature of mandamus[‡] directing JNPT to delete Clause 1.3 of the bid invitation, and permission for P&O and their associates to bid (High Court of Bombay 2003). They argued that there was no established or declared policy that holding of one concession shall exclude a private operator from the grant of any more concessions in the future and that JNPT had simply adopted an ad hoc rule to exclude P&O for extraneous reasons (High Court of Bombay 2003). It felt it was denied the right to equality and not allowed to exploit the "first mover advantage" (Business Line 2003). It also alleged bias on the part of the Secretary of the Ministry who was earlier Chairman of JNPT and had faced criticism for JNPT's inefficiency compared to NSICT (High Court of Bombay 2003).

In the HC (High Court of Bombay 2003), JNPT claimed that the 1996 Policy and guidelines would prevail over clause 2.3 of the License Agreement. The following are based on their submissions and the court's observations in the Indian Kanoon judgement copy (High Court of Bombay 2003). JNPT said that the decision to exclude P&O was taken at the level of the Ministry in consultation with the Ministry of Law and Justice. It also submitted that it was in public interest to ensure that there is spread of risk brought about by having more than one operator, pointing to the fact that P&O was controlling 48% of the container business in India and was handling the two then biggest CTs in the country at JNPT and Chennai Port. P&O also handled terminals at Karachi and Sri Lanka. The HC took note that certain shipping agents had expressed concern about the increased tariff. By its order on January 28, 2003, the HC upheld the JNPT decision, satisfied that the decision to exclude P&O was taken in public interest. Also, in their

[‡] A (writ of) mandamus is an order from a court to an inferior government official ordering the government official to properly fulfill their official duties or correct an abuse of discretion. (Source: Legal Information Institute, Cornell University Law School)

view, the tender notice did not offend Article 14 of the Constitution that guarantees equality before law. (High Court of Bombay 2003)

P&O challenged this decision at the SC. Through a hearing on May 5, 2003, the SC decided not to interfere with the HC order and P&O lost the case.

A week after the SC judgement, the Ministry issued a new policy for bidding. The features of this policy were: (Raghuram & Shukla 2014)

- There should be at least two operators across the terminals
- One operator cannot have more than two terminals at the same port
- Awardee cannot bid for the next terminal ('next project exclusion')

7. APM Terminals and CONCOR awarded third CT: Creation of GTIPL

Five parties submitted bid offers for the third CT of 712 m in December 2003 and the technical bids were evaluated in February 2004. In March 2004, the 74:26 Joint Venture consortium of APM Terminals and CONCOR emerged the bid winner, with a revenue share of 35.5%. The award, however, was not formally declared since the elections had been announced and the code of conduct was in place from February 29, 2004. Even though the Ministry appealed to the Election Commission, saying that all formalities had been completed short of the declaration, they were asked to wait until after the elections. The bid was valid for a period of 30 weeks from March 25 till December 1, 2004 (Bavadam 2004).

Frontline (Bavadam 2004), a few months later, reported that in an election meeting on April 14, 2004, Sharad Pawar of the Nationalist Congress Party, in regards to the APM Terminals-CONCOR consortium winning the bid, accused the then ruling government of compromising on national security. He referred to the "presence of high security establishments…like the Bhabha Atomic Research Centre (BARC), Nhava Sheva –…the Navy's biggest missile, torpedo and ammunition storage, preparation and supply depot on the western seaboard and the Mazagaon Docks - where warships and submarines were built", in the vicinity of JNPT. The article also noted that retired former Chief of the Naval Staff, Admiral Vishnu Bhagwat alleged that often, foreign firms acted as fronts for certain "agencies" and that it was a security risk to permit them into sensitive areas. During his tenure at the naval headquarters, the recommendation had been to "extend the scope of the facilities around and at the Jawaharlal Nehru port for "national enterprises only"". (Bavadam 2004)

Less than a month after the elections, three public interest petitions (PIL) were filed in the Bombay HC with regards to the third CT. The same Frontline article also read:

> "The petition filed by Bhushan Patil, JNPT trustee and leader of Nhava Sheva Karmachari Sanghatana [on April 1, 2004], was dismissed by the court [on the same day] on the grounds that the petitioner was extending himself into areas of policy that did not concern him. Patil's PIL had submitted that the port should itself take up the work of developing the third terminal in the economic interest of the country without leaving it to a third party. The other two petitions were filed by Tarun Tripathi, a Chartered Accountant from Navi Mumbai [on April 22, 2004], and Arun Pal Singh Behl [on May 14, 2004] from Nagpur. The PIL filed by Tripathi argues that JNPT was making losses owing to the revenue-sharing arrangement[, and was dismissed on August 6, 2004], while Behl's

petition [dismissed of much later on July 12, 2006] raises security concerns that were earlier raised by Union Minister for Agriculture Sharad Pawar and Vishnu Bhagwat during the election campaign." (Bavadam 2004)

The second PIL was also related to the "monopoly of CONCOR over inland movement of containers" (Manoj 2004). (Appendix B).

After the new Government took over in May 2004 and after understanding the background, the declaration was made and the license agreement signed on August 10, 2004. GTIPL had been incorporated in July 2004. Clause 8.3.1 of the license agreement executed between JNPT and GTIPL read as follows:

> "The Licensee acknowledges and agrees that it shall forego the right to bid for either directly or indirectly, including being a Management Contractor through any associate company, whether such company is registered in India or any other country, or any company in which the Licensee has a shareholding for the Additional Facilities or existing facilities during the term of this Agreement. . . . The Licensee acknowledges, agrees and accepts the above as essence of this Agreement and the Licence granted to the Licensee." (Supreme Court of India 2011)

The project cost was estimated to be around Rs 9 bn (Tariff Authority of India 2006). Required to be commissioned by February 2007 under the license agreement, GTIPL commenced partial operations on March 15, 2006 and became fully operational from October 2006 (Tariff Authority of India 2006; Jawaharlal Nehru Port Trust 2015b).

8. Growth of GTIPL and conception of fourth CT

Table 3 shows GTIPL's container traffic growing rapidly, surpassing that of even NSICT within three years of operationalization. They continued to grow even during the recession years from 2008 to 2011, when JNPCT took the primary hit.

Table 3: Container Traffic (2005-06 to 2014-15) (000 TEU)

Year	JNPT				Mumbai	Total Mumbai Area	India Total[§]
	JNPCT	NSICT	GTIPL	Total			
2005-06	1340	1324	4	2668	156	2824	4998
2006-07	1310	1360	630	3300	138	3438	5964
2007-08	1261	1508	1291	4060	118	4178	7512
2008-09	1060	1430	1460	3950	92	4042	7671
2009-10	776	1532	1753	4061	58	4119	8019
2010-11	877	1537	1856	4270	72	4342	8620
2011-12	1028	1402	1891	4321	58	4379	9937
2012-13	1208	1044	2007	4259	58	4317	10004
2013-14	1313	969	1880	4162	41	4203	10225
2014-15	1294	1160	2013	4467	45	4512	11216

[§] This includes Mundra and Pipavav ports that were operationalized in October 2001 and April 2002 respectively

(Indian Ports Association n.d.; Jawaharlal Nehru Port Trust 2015d; Mumbai Port Trust n.d.; Exim India n.d.)

JNPT crossed 4 m TEU in container throughput in 2007-08. The Ministry had wanted the overall container handling capacity at Indian ports to be scaled up to 21 m standard containers by 2014, up from 9.1 m in 2008, to meet demand, driven by expansion of manufacturing activities and international demand to containerize commodities (Manoj 2009). In October 2007, the project structuring for the fourth terminal was approved by the JNPT Board. In March 2008, the costing approval was carried out by the JNPT Board.

In view of expected growth in container traffic, need for faster turnaround time, accommodating larger-size container vessels and optimum utilisation of feasible waterfront area, JNPT planned to increase the container capacity. JNPT was planning to raise a tender for its 2 km long fourth CT even in 2004-05, before the operations of the third CT had started. Touted to become India's largest CT by capacity and cost, the terminal would accommodate seven ships at a time, compared with two to three vessels at other terminals in India (Manoj 2011). In November 2006, 40 EOIs were received for the fourth CT of 4.4 m TEU annual capacity.

9. Standalone CT

9.1. Exclusion of APM Terminals and CONCOR

In September 2007, the Central Government issued a circular to JNPT asking them to proceed to invite global competitive bidding for an independent, standalone CT for a 330 m extension of container berth towards the north of NSICT, which was already being operated by DP World (Supreme Court of India 2011). The circular read:

> "As a rational and logical consequence of the stand taken earlier, it has been decided that the successful bidder of the previous container terminal on BOT basis (Maersk A/S-CONCOR Consortium) and/or their subsidiaries/allied organizations should be excluded from bidding for the 330 metre extension project. This would mean that for the next BOT container terminal in JN Port in future, the successful bidder of the 330 metre extension project would be excluded as so on." (Supreme Court of India 2011)

It also added that "the above convention shall be followed in all Ports in its true spirit with a view to avoid monopoly and promote competition till such time a formal Policy is finalized and notified." (Supreme Court of India 2011)

In June 2008, JNPT floated a tender inviting RFQs for selection of a developer for the standalone CT, while saying "JNPT is desirous of entrusting this project to a Licensee other than Maersk A/S-Concor Consortium and/or their subsidiaries/allied organisations including GTIPL", in accordance with the September 2007 circular (Supreme Court of India 2011). GTIPL's plea to allow it to participate was rejected. According to the port, GTIPL was excluded from bidding for any future/existing facilities at JNPT as per Clause 8.3.1 of the CA. JNPT officials also conveyed that the selected developer of this standalone berth will not be allowed to participate in the fourth CT that was awaiting government clearance (Pillai 2008). The techno-economic feasibility report (TEFR) was already prepared and environmental clearances were in place (Pillai 2008). There were two shortlisted firms: DP World Limited and a consortium comprising Essar Group companies (Vadinar Oil Terminal Limited, and Essar Ports and Terminals Limited) (Pillai 2008).

9.2. Challenge by ABG

There was a delay when one of the aspirants - ABG Infralogistics – moved court on September 2, 2008, contesting against an eligibility clause regarding Clause 2.2.3 of the RFQ document:

> "O&M experience: The Applicant shall (in the case of a Consortium) include a member having at least 26%...equity participation in the Project company/SPV, who has experience of five years or more in operation and maintenance (O&M) of Category I projects specified in Clause 3.2.1, with an aggregate capital cost equal to Rs 600 cr [Rs 6 bn]….In case the Applicant is not a Consortium, it shall be eligible only if it has equivalent experience on its own. In the absence of such experience, the Applicant shall, for a period of at least 5 (five) years from the date of commercial operation of the project, undertake to enter into an operations and maintenance (O&M) agreement with an entity having equivalent experience, failing which the Concession Agreement shall be liable to termination." (High Court of Bombay 2008)

As reported in a judgement copy of the Bombay High Court (2008), JNPT maintained that ABG wasn't qualified for bidding. JNPT claimed the concession given in the "absence of such experience" condition applied only to the second category – individuals – and not consortiums. They argued: "Since a consortium is made of several persons or several entities, it is expected to have at least one member with an equity participation not less than 26 % having the requisite experience. An individual on the other hand has to rely on himself" (High Court of Bombay 2008). The court went with the interpretation of the clause by other port trusts and on first principles, decided that the benefit in the third part applied to both individuals and consortiums (High Court of Bombay 2008). On October 8, 2008, it directed JNPT to consider ABG's bid, subject to other conditions and considerations being satisfied. (High Court of Bombay 2008)

A judgement copy of another Bombay HC case (High Court of Bombay 2009) records that JNPT, on scrutinizing the RFQ submissions, later requested for clarifications on ABG's submission. One clarification, among others, was: "As per clause 2.2.6(g)(iv) of RFQ, the Joint Bidding Agreement should clearly indicate that "the Consortium till the occurrence of the [Appointed Date/Financial Close] under the Concession Agreement be liable jointly and severally for all obligations of the Concessionaire in relation to project" . Kindly indicate in your application where the same has been clearly stated" (High Court of Bombay 2009). On January 27, 2009, ABG was informed that the time for giving clarifications had been extended from January 28, 2009 to February 2, 2009 (High Court of Bombay 2009). By January 31, 2009, ABG had given the reply. (High Court of Bombay 2009)

On March 12, 2009, JNPT informed ABG that they had not been shortlisted for participation in the bid stage of the 330 m project (High Court of Bombay 2009). On March 20, 2009, ABG Infralogistics again filed a writ petition against JNPT. Though ABG alleged arbitrary exercise of power, it was observed that ABG had not replied specifically to the question, and hence had not been 'responsive' on the date of filing the application (High Court of Bombay 2009). On April 8, 2009, the court dismissed ABG's petition in regards to the standalone CT.

In October 2009, JNPT scrapped the tender for the standalone CT, apparently due to poor response from the bidders and court cases (Manoj 2009).

10. The Fourth CT: Exclusion of APM Terminals and CONCOR

As per submissions in a later SC case (Supreme Court of India 2011), on March 2, 2009, JNPT issued a global invitation for bids for the fourth CT. On March 5, 2009, APM Terminals wrote a letter addressed to JNPT, forwarding a demand draft for Rs 10,000, towards purchase of RFQ document for participation in the bidding process. At this point, the RFQ document issued to APM Terminals had only precluded the successful bidder of the 330 m CT from participating for the fourth CT. (Supreme Court of India 2011)

In a letter dated March 27, 2009, APM Terminals wrote to JNPT requesting for further information/ clarification on the RFQ document of the fourth CT and also forwarded their list of queries. (High Court of Bombay 2010)

On April 8, 2009, the same day when the court dismissed ABG's petition for the standalone CT, JNPT also issued a clarification in regard to the fourth CT:

> "To avoid private monopoly and to promote competition, the successful bidder/consortium members and/or their subsidiaries/allied organisations in the project for the 'Development of a standalone container handling facility with a key (quay) length of 330 m towards North at JNPT' shall be excluded from the bidding for development of Fourth Container Terminal either as a single applicant or as a consortium. Further, for the next BOT container terminal in JN Port in future, the successful bidder/consortium members in the development of fourth container terminal project would be excluded and so on." (High Court of Bombay 2012)

Clause 2.10 of the RFQ document was accordingly amended. APM was allowed to attend the pre-application conference to be held on April 15, 2009. (High Court of Bombay 2012)

On June 18, 2009, the Ministry conveyed to the Chairman of JNPT that GTIPL or its associates may not be allowed to bid, in view of Clause 8.3.1 of the license agreement. On June 29, 2009, JNPT informed GTIPL of the same. (High Court of Bombay 2010)

The following are based on submissions in a later case at the Bombay HC (High Court of Bombay 2010). On July 7, 2009, APM Terminals wrote to the Ministry asking it to intervene and allow them to bid for the fourth CT since, in accordance with the 2007 circular, APM was already barred from bidding for the standalone CT. With no response yet from the Ministry, APM Terminals filed a petition before Bombay HC on July 29, 2009. It challenged the validity and propriety of JNPT to exclude APM from participating in the tender. APM terminals also prayed that it be released from the restrictions contained in Clause 8.3.1 of the License Agreement. It contended that the clause was being misconstrued to bar GTIPL from bidding for any subsequent CT at JNPT till the end of its concession period in 2034 and that its fundamental right under Article 19 (1)(g) of the Constitution of India to "to practise any profession, or to carry on any occupation, trade or business" was being restrained. (High Court of Bombay 2010)

Meanwhile, the Ministry advised JNPT to extend the date of submitting RFQs from July 31, 2009 to August 31, 2009. As consultation with the Ministry of Law and Justice took more time, the dates got extended twice - firstly to December 30 and then to December 31, 2009. (High Court of Bombay 2010)

In August 2009, a consortium led by PSA (including ABG) submitted an application for the fourth CT (High Court of Bombay 2012).

The Ministry, after consultation with the Ministry of Law and Justice, informed JNPT that its decision on June 18, 2009 regarding APM Terminals prevailed (High Court of Bombay 2010). On December 1, 2009, JNPT conveyed the same to APM Terminals and CONCOR. (High Court of Bombay 2010)

The Bombay HC dismissed APM's petition to participate in the fourth CT on March 10, 2010, relying solely on the provisions of Clause 8.3.1 of the License Agreement (High Court of Bombay 2010). The Ministry's response to APM's case had been that the 2007 policy applied prospectively and it referred to an SC case where it was ruled that courts had "no jurisdiction to judge as to how tender terms" were required to be framed (High Court of Bombay 2010). Also, it contended that GTIPL had signed the agreement "with their free will and taking into consideration all the relevant aspects relating to their right to carry on their trade and business." (High Court of Bombay 2010).

11. Standalone CT: Re-bid and clarifications on 'next project exclusion'

On November 11, 2009, RFQ was re-issued for the standalone CT. Post queries from applicants in relation to the standalone CT, JNPT amended the RFQ document on December 24, 2009 (High Court of Bombay 2012). Clause 2.2.1(e) stated: "Further, for the next BOT container terminal in JN Port in future the successful bidder of the 330 m extension project would be excluded" (High Court of Bombay 2012).

Since there were invitations for RFQs for both projects, clarifications were sought by applicants (High Court of Bombay 2012). Table 4 shows some queries from the bidders and replies by JNPT.

Table 4: Bidding Queries and Clarifications for Standalone and Fourth CTs

Query to JNPT	Clarification by JNPT
a) Please clarify whether the 4th Container Terminal is the "next BOT container terminal in JN Port" with reference to the exclusion of the successful bidder of the 330m extension project. In case the 4th Container Terminal is the "next BOT container terminal in JN Port" with reference to the exclusion of the successful bidder of the 330m extension project, it is requested that JNPT may extend the Due Date for submission of RFQ bids for the 4th Container Terminal project till such time that the successful bidder for the 330m extension project is decided.	The RFQ for 330 m extension project was initially invited before RFQ of 4th Container Terminal and now RFQ for 330m extension project is re-invited. The Fourth Container terminal is likely to be the next BOT container terminal. The request for extension of deadline for Fourth Container Terminal is irrelevant in this forum.
b) Please clarify whether Applicants (including Applicants who are Consortiums) can participate in both the projects (330m and 4th CT) simultaneously (basically betting on two horses at a time)	Applicants are allowed to participate in both the Projects simultaneously, subject to the conditions of the RFQ.
c) In case an Applicant becomes the successful bidder for the 330m extension project, such Applicant/Member(s) of Consortium should be allowed to withdraw from another Consortium in the 4th Container Terminal RFQ bid and vice-versa in case	In case an Applicant becomes the successful bidder, then such Applicant shall be allowed to withdraw from another consortium in the 4th container terminal within a specified period of time. If such a withdrawal is not communicated to the Authority within the specified

JNPT decides award of License for the 4th Container Terminal prior to the 330m extension project	period, then such Consortium may be disqualified for the Bidding process. The withdrawal/replacement of such applicant shall be governed by the provisions of RFQ.

(High Court of Bombay 2012)

On February 26, 2010, ABG submitted an application in pursuance of RFQ documents for the 330 m CT project (High Court of Bombay 2012). On January 24, 2011, JNPT informed ABG that it had been shortlisted as a bidder for the RFP stage of the bidding process for the 330 m extension project and accordingly, an RFP was issued to ABG on January 31, 2011. (High Court of Bombay 2012)

In the meantime, on August 2, 2010, the Ministry issued a new policy, overriding the 2003 policy and the 2007 circular, under Section 111 of the Major Ports Trusts Act 1963, which was to the following effect: (High Court of Bombay 2012)

> *"If there is only one private terminal/berth operator in a port for a specific cargo, the operator of that berth or his associates shall not be allowed to bid for the next terminal/berth for handling the same cargo in the same port."*

'Cargo' meant (i) containers (ii) liquid bulk, (iii) dry bulk or (iv) multipurpose/other general cargo. (High Court of Bombay 2012) *The policy was to be applicable with immediate effect and apply to RFQs issued on or after August 2, 2010.* (Raghuram & Shukla 2014) *This effectively did away with the 'next project exclusion' clause of the earlier policy and would be applicable for future projects.*

On August 6, 2010, JNPT issued clarifications to the RFP in respect to the fourth CT that the 330 m extension project and the fourth CT project were independent projects and the schedule for bidding for one project should not affect the bidding for the other projects (High Court of Bombay 2012).

On May 23, 2011, JNPT issued an amendment to the RFP document of the 330 m project, which read: "However, the successful bidder/consortium members and/or their subsidiaries/allied organizations of the terminal, which may be awarded of either 330 m container project or 4th container terminal project, shall be automatically excluded from bidding for the subsequent container terminal." (High Court of Bombay 2012).

12. Continuation of fourth CT bidding

In June 2010, an RFP document was issued to the PSA-ABG consortium for the fourth CT. On October 15, 2010, the PSA-ABG consortium submitted the RFP bids for the fourth CT. (High Court of Bombay 2012)

12.1. Challenge by APM

APM moved the Supreme Court (SC), presenting the case that though the government had relied on the 1996 guidelines in P&O's case in 2003, it subsequently changed its stand on the strength of the 2007 policy (Supreme Court of India 2011). APM also submitted that due to the fourth CT's tender being floated even before the tender process for the 330 m CT, they were suffering 'double prejudice' for no fault of their own (Supreme Court of India 2011).

On May 11, 2011, the SC quashed the HC decision and directed JNPT to allow APM Terminals to participate in the tender process for the fourth CT. The following are based on the Indian Kanoon judgement copy of the SC case (Supreme Court of India 2011). In response to the applicability of Clause 8.3.1, the court drew legitimacy from the 2007 government circular which only emphasised 'the next project exclusion', stating that this exclusion was in greater public interest than not allowing bidding during the entire license period as per Clause 8.3.1, since it would increase competition. According to the SC judgement, if the tender process for standalone CT had been concluded before the fourth CT, various complications could have been avoided. It observed that APM had got excluded because of 'fortuitous' circumstances and so was entitled to participate in the alternate bids. The SC said that APM Terminals, "having been excluded from one bid on the basis of an existing policy, cannot be debarred from participating in the next bid by taking recourse to a different yardstick." The court, however, acknowledged the preclusion of APM Terminals from participating in the "third" (standalone) CT due to 'the next project exclusion' policy, as being in the larger public interest. (Supreme Court of India 2011)

However, after the long legal battle, APM Terminals decided not to participate in the tender, citing financial unviability. The last day for submitting the tender, which was extended following the SC order, was June 21, 2011 (Kurup 2011a). APM stated various reasons such as the project's cost escalation, lack of approach road, and the requirement of additional dredging work among the factors that forced them to back out of the tender. (Kurup 2011a)

In a conversation with Business Line (Kurup 2011b), Hans-Ole Madsen, Vice-President at APM (responsible for the groups' business developments in India, Middle East and Africa) claimed the tender documents had been released to them only after the court ruling in their favour. After studying the documents, reading the terms and conditions and after looking at the financial modelling, they had concluded that the terms and conditions did not appear to be financially viable. He further added that the tender document did not allow for an upward revision of the starting tariff. (Kurup 2011b)

12.2. Security clearance for MPSEZ

Mundra Port and Special Economic Zone Limited (MPSEZ), one of the bidders, had moved the Bombay High Court on April 29, 2011, challenging the Central Government's decision to deny it security clearance (Business Line 2011). Of the five bidders, it was the only one to be denied security clearance, though it was not clear on what grounds. Existing norms required "companies to get security clearance from the Ministries of Home, Defence and External Affairs before building a port or an import terminal" (Raghuram & Shukla 2014).

The hearing at the HC for MPSEZ was initially adjourned to June 20 for admission of the petition (Business Line 2011). The court did not stay the auction process and the writ was adjourned for July 4. JNPT however had assured the Bombay HC that it would not open the bids before July (Das 2011). But with the validity of the bids submitted by the five groups expiring on June 30, the management of JNPT moved an urgent application before the Bombay High Court on June 22, seeking its permission to open the price bids (Business Line 2011; Manoj 2011). The court agreed to the request and directed the port to open the price bids, including the one submitted by MPSEZ, but said the award of the contract would be subject to the outcome of the petition (Manoj 2011). MPSEZ claimed to manage the biggest private port in India at Mundra, in the sensitive Kutch region, close to the Pakistan border for more than a decade and that it was an Indian company listed on the stock exchanges with all its directors being Indian citizens (Das 2011). Also, the company had, at around that time, won the bid to manage Abbot Point Coal Terminal in Australia for close to Rs 90 bn (Das 2011).

12.3. Award of bid to PSA-ABG

A Live Mint article (Manoj 2011) detailed that there were five bids for the fourth CT project: (i) DP World Private Limited, (ii) MPSEZ-Isolux Corsan Concessions SA, (iii) GVK Developmental Projects Private Limited-Samsung C&T Corporation, (iv) PSA Interntional Ports Private Limited–ABG Ports Private Limited and (v) Sterlite Industries (India) Limited-Leighton Contractors (India) Private Limited. On June 28, 2011, the bids were opened. In what seemed to be the highest revenue share offered in any PPP project in the country till then, the PSA-ABG consortium (76:24) won with a bid of 50.82%. (Manoj 2011) The Sterlite Industries consortium came second with a revenue share of 35.51%.

JNPT Board finally approved the project for PSA-ABG and on September 26, 2011, the Letter of Award (LoA) was awarded (High Court of Bombay 2012). MPSEZ withdrew the petition on July 14, 2011.

In January 2012, PSA-ABG did not sign the CA. ABG claimed that they were not informed earlier and not communicated clearly about them having to bear the stamp duty expenses, asking JNPT to cover the expenses (Port Technology 2012a). ABG, that was expected to contribute Rs 10 bn, wanted to pull out of the project, citing financial issues.

In February 2012, the Ministry requested that the final authority for all clearances to be vested with it – to "be allowed to take a final call after receiving inputs from the three ministries and intelligence agencies". (Balachandran 2012)

The following are as per submissions in a later PIL at the Bombay HC (High Court of Bombay 2014). In April 2012, PSA agreed to pay Rs 59.5 million towards stamp duty for the fourth CT project but informed JNPT that it wanted to drop ABG from the consortium. ABG had also wanted to pull out of the project, citing financial issues. In August 2012, JNPT informed PSA that the government had decided that there could not be any change in the consortium at that stage. In September 2012, PSA stated that it was "willing to sign the concession agreement subject to it being allowed to execute the contract on its own without any partition." The above condition was not acceptable to the government. On October 10, 2012, JNPT withdrew the LoA and encashed the bid security of Rs 670 million and "reserved its right to invoke tender conditions for recovery of further loss caused to it by PSA." (High Court of Bombay 2014)

This round of bidding was then scrapped.

13. Continuation of standalone CT bidding

On November 15, 2011, JNPT informed ABG and other qualified bidders that the date for submission of RFP for the 330 m project had been extended to December 30, 2011 (High Court of Bombay 2012).

On February 21, 2012, ABG wrote to JNPT to confirm if they would be allowed to participate in the bidding process for the 330 m CT project (High Court of Bombay 2012).

13.1. Challenge by ABG

On March 7, 2012, ABG filed a writ petition in the Bombay HC against JNPT, seeking that they be allowed, under Article 226 of the Constitution, to submit the RFP documents for the 330 m project (High Court of Bombay 2012). The following are as per submissions recorded in the Indian Kanoon judgement copy. They asked for the Central Government's August 2010 policy to be held applicable to enable them to bid. ABG argued that even after awarding them the fourth CT project in September 2011 (Appendix C), JNPT had informed ABG that the due date for submission of bids for the 330 m project had been extended, "thereby implicitly accepting that they were still in the frame in respect to the second tender enquiry as well." In response, the Additional Solicitor General of India submitted that the 2010 policy applied only to RFQs issued after August 2, 2010. He also pointed out that the plain consequence of the award of the fourth CT contract was that ABG would stand automatically excluded from bidding for the 330 m project, as seen from the 2007 government circular and the clarification issued on May 23, 2011. The Additional Solicitor General also submitted that the clarification issued on December 24, 2009 only provided that, while bidders were at liberty to bid for both the tenders, on the award of contract to the successful bidder, that bidder would be at liberty to withdraw from the bid for the other contract and not from the contract which already stood awarded. (High Court of Bombay 2012)

On October 4, 2012, the Bombay HC rejected ABG's appeal to participate in bidding process for the standalone CT (High Court of Bombay 2012). The following are based on the observations of the court as delineated in the Indian Kanoon judgement copy. Since ABG was already member of the consortium that was awarded the fourth CT project, they were not eligible to bid for the 330 m project, as per the 2007 policy guidelines. Since the RFQ bids for both projects were issued before August 2, 2010, the 2010 policy would have no application. The court also observed that the clarification provided by JNPT (as seen in reply to point (c) in Table 4) made it abundantly clear to bidders that the contract for the fourth CT was likely to be awarded immediately next in point of time. Neither the query nor the clarification issued by JNPT envisaged that a successful bidder would be permitted to withdraw from the first contract pertaining to the successful bid. The bidders too did not take into account the possibility that the fourth CT would be awarded prior to the 330m extension project. (High Court of Bombay 2012)

13.2. Finalisation of award with DP World

On the same day, the price bids were opened with DP World being the only bidder for the standalone CT (Port Technology 2012b). On November 2, 2012, the LoA was issued to DP World. It had offered JNPT a 27.5% revenue share (Port Technology 2012b). DP World decided to execute the project through its Indian subsidiary - Hindustan Ports Private Limited (HPPL) - the holding company for DP World's assets in India (Chattopadhyay 2013). Foreign Investment Promotion Board in its meeting on December 21, 2012, approved HPPL's proposal "to act as an investing company and receive foreign investment for making downstream investment in other Indian companies" (Foreign Investment Promotion Board 2014). HPPL was to make an equity investment of Rs 44 million (Business Line 2013a). The project cost, which was earlier estimated at Rs 6,000 million, was expected to exceed Rs 9,000 million (Business Line 2013a).

As a June 2013 CMIE article (Chattopadhyay 2013) described, JNPT refused to sign the agreement for the standalone CT over a question whether 'HPPL' could sign the CA. It had wanted the same legal entity to sign the CA as the model CA did not allow substituting the original bidder with a new entity. According to the article, DP World's contention was that both DP World India Private Limited and HPPL were Indian subsidiaries of DP World, Dubai. The matter was referred to the Ministry, which sought the views of the Ministry of Law and Justice. The matter was later resolved, with DP World forming a Special Purpose Vehicle (SPV) called Nhava Sheva (India) Gateway Terminal Private Limited (NSIGTPL) to implement the project. (Chattopadhyay 2013)

On June 19, 2013, the CA was signed and on July 3, 2013, DP World was awarded the concession for the standalone project - its second CT in JNPT - after agreeing to share 28.09% of its revenues (Business Line 2013b). The standalone CT facility was to be developed on a 27 ha plot, on Develop, Build, Finance, Operate and Transfer (DBFOT) basis for a concession period of 17 years (Business Line 2013b). Berth construction commenced on December 4, 2013 with early permission from the JNPT Board (Jawaharlal Nehru Port Trust 2015a). The CT was partially operationalised in April 2015. The berth would have an annual capacity of 0.8 m TEU (Chattopadhyay 2013).

14. Fourth CT: Re-bid

For the re-bid, the fourth CT project was being considered to be split into two projects of 1000 m quay lengths each and equal capacity. The then Chairman of JNPT felt that the risks for a 1000 m project were much lower for a 2000 m one. "To make up for the delay" in the fourth CT project, the Ministry, in January 2013, announced the revised plan under which two successful bidders would simultaneously start the construction to save time and money (Press Trust of India 2013). The move would also allow existing CT operators DP World and APM Terminals to bid for the projects under the 2010 policy (Balachandran 2013). In May 2013, the Board of JNPT was expected to finalise on splitting the project into two.

However, with a new Chairman assuming office on May 16, 2013 at JNPT, the 2000 m project was reverted to a single CT, on the premise that revised documentation would take a long time. On June 5, 2013, there was a fresh bid. The pre-RFQ meeting was attended by big players in the port sector like APM Terminals, PSA, DP World, Port of Hamburg, MSC and Adani Ports (Chitravanshi 2013). The RFQs were to be submitted by August 19, 2013 (Chitravanshi 2013). Eight bidders submitted their RFQs.

Even though seven bidders qualified and were issued RFPs in December 2013, only PSA International and APSEZ's consortium submitted price bids for the fourth CT on February 20, 2014 (Mandavia 2014). United Liner Agencies (ULA) and International Container Terminal Services Inc (ICTSI) were said to have had issues with security clearances while APM Terminals and DP World were seeking more time (Fonseca 2014). There were also concerns regarding "last-minute changes to the project design" (Fonseca 2014). The bids were opened on the same day.

PSA International was the winning bidder, offering a revenue share of 35.79%. Even though there were reservations against PSA being allowed to bid again after the pull-out from the previous successful bid, JNPT went ahead with the same. The LoA was issued on February 26, 2014 (Fonseca 2014). The other bidder, Adani Ports and SEZ (APSEZ, earlier MPSEZ) – Terminal Investments Limited, SA consortium, had offered 29% (Mandavia 2014). Since the code of conduct for the elections would come into play on March 5, 2014 at 1030 hours, the Ministry scrambled to announce the award of the project in time, at a press meeting held at 1000 hours (Sanjai 2014). On

April 1, 2014, Bharat Mumbai Container Terminals Private Limited (BMCTPL), a wholly-owned subsidiary of PSA Bharat Investments Private Limited – an extension of PSA International was incorporated (Zauba Corp n.d.). The CA was signed later on May 6, 2014.

On May 8, 2014, a journalist filed a PIL at the Bombay HC challenging the decision of JNPT to award the contract to PSA for the fourth CT project. He prayed for blacklisting of PSA from submitting any government bids and for the court to direct JNPT to initiate legal proceedings against PSA - to recover losses incurred by JNPT due to the PSA-led consortium not fulfilling their obligation under the tender in the first bid. The petitioner's counsel also submitted, inter alia, that (a) PSA caused a delay of almost four years to the project and by the reduced revenue share in the rebid, caused a loss of Rs 98.5 bn over the concession period, and (b) in case the highest bidder withdrew, clauses 3.3.3 and 3.3.4 of the RFQ had allowed JNPT to go for a second round of bidding with other bidders where the bidder who matched the highest bidder's bid would win. (High Court of Bombay 2014)

On July 15, 2014, the PIL was dismissed. According to JNPT, it had informed the Bombay HC that "it was preparing to seek liquidated damages against PSA for business loss arising from its failure to sign the concession agreement" in the earlier bid. (Manoj 2015)

On December 22, 2014, after fulfillment of the conditions precedent, the concession for the fourth CT was awarded to PSA. The concession was for 30 years, to be implemented on DBFOT basis with a revised project estimate of Rs 79.15 bn.

A Live Mint article (Manoj 2015) reported that JNPT went for arbitration with PSA, seeking a damages claim of Rs 4 bn towards the first bid of the fourth CT. According to Manoj, the project cost had gone up by as much as Rs 12.15 bn in the re-bid and pushed back the construction of the new facility by at least four years, "resulting in loss of business and opportunity costs for JNPT." PSA also had quoted a lower revenue share price bid of 35.79% compared to the 50.82% in the previous bid. PSA, due to the second chance at bidding, got the flexibility to set rates based on norms finalised by the Ministry notified in September 2013, which was considered more favourable to port operators than the earlier regime (Manoj 2015). This was reportedly the first instance of a state-controlled port seeking liquidated damages from a successful bidder of a contract for failure to sign a CA within the stipulated time (Manoj 2015).

15. Conclusion: Lessons from the case

In this section, the significant lessons derived in the CT bids of JNPT are discussed.

15.1. Policy formulation

The government has been conscious of developing CTs by involving private players on a BOT basis. Guidelines and policies have been issued in 1996, 2003, 2007 and 2010. A tariff regulatory institution was set up in 1997.

The policies have not always been consistent with a strategic perspective. Some have even been a knee-jerk reaction like the 'next project exclusion' clause in the 2003 policy which was then set right in 2010. This caused a lot of uncertainty in bidding and consequent litigation. The simultaneous tendering for two projects before one could be finalised, the ‘next projection exclusion policy,’ and the scrapping of bids, together helped create a web of issues that entrapped the two projects of 330 m and 2000 m for several years (Appendix C).

The bid criteria changed from royalty payment to revenue share after the bid for the second CT, which was the first private bid. The revenue share criteria has been well-accepted. Though not discussed in the paper, the tariff regime under which the terminals operate are different for the first three CTs, the standalone CT and the fourth CT.

The litigations have delayed each of the bids, causing a significant opportunity cost to the nation and driving traffic away to competing ports.

In spite of the above and the extensive litigation faced, it is creditworthy that the government has been patient in modifying the framework for bidding based on lessons learnt. The fact that after a tortuous set of litigations, the promoter of NSICT (which suffers from a set of financial and operational constraints) has also won the bid for the adjacent standalone CT, almost seems fortuitous. It would be interesting to watch how the activities in these two terminals pan out.

15.2. Contractual rights versus policy guidelines

We observe that contravening clauses in contracts and policy guidelines often lead to litigation. This is all the more worsened by frequent policy changes and apparent ’cast-in-stone’ CAs.

Clause 2.3 (permitting subsequent bids), which was in the CA for the second CT, was subsequently overridden by the 1996 policy guidelines. Clause 8.3.1 (disallowing future bids during the concession period) which was in the CA for the third CT, was subsequently overridden by the 2003 policy guidelines of just the next project exclusion.

Often, subsequent policy guidelines have been a result of litigation. Sometimes, different courts have viewed the same issue differently.

It was observed in the proceedings of the writ petition filed by APM Terminals at the Bombay HC (case J) that:

> “A subsequent change in the public policy will not exonerate the petitioner from the covenant, that the same will continue to operate during the continuance of the contract and there is no provision in the contract that in such a contingency the covenant [,] imposing restraint on the right of the petitioner to bid for future contract [,] will not be applicable nor [,] the circular of 2007 provides for discharging [removal of] the covenant of restraint in the contract entered into between the parties as per the policy of 1996.” (High Court of Bombay 2010)

However, the SC (case K) held that:

> “Government has the discretion to adopt a different policy, alter or change its policy to make it more effective. The only qualifying condition is that such change in policy must be free from arbitrariness, irrationality, bias and malice. . . . . Although, it has been urged . . . that such change in policy could be effected only by way of legislation, such a submission, if accepted, could stultify the powers of the Central Government to alter its policies with changing circumstances for the benefit of the public at large. It is not as if the right of a licensee to bid for a further container terminal berth has been excluded for the entire period of the Licence Agreement but in

order to ensure proper competition and participation by all intending tenderers, the said policy has also been altered to enable such licensees to bid for the next but one tender as and when invited." (Supreme Court of India 2011)

It is also interesting that courts have, in general, observed that "except for the limited purpose of testing a public policy in the context of illegality and unconstitutionality, courts should avoid "embarking on uncharted ocean of public policy."" (High Court of Bombay 2003)

15.3. Strategic risks

APM Terminals engaged in litigation for over one and a half years over rights to bid for the fourth CT, and then later opted out of the bid process. PSA-ABG had an unexpectedly high revenue share bid, and later pulled out after being awarded the project. This raises questions of how to ensure (i) genuinely interested bidders, and (ii) viable bids into the process.

In the case of the APM Terminals-CONCOR bid, there is a potential conflict of interest that as a terminal operator, they could give undue advantage to their own ships, and similarly container trains. In the airports sector, government did not permit airlines to have more than 10% share in the bidding consortium.
There is the risk of a possible monopoly across ports with the major CT operators seeking to increase their footprint. Further, both DP World and PSA are government-owned companies of Dubai and Singapore respectively, with a proclivity to influence trade patterns.

Risk mitigation approaches would involve better homework and anticipation, apart from imposing restrictions on bidders, if required, and by maintaining a balance in ensuring competitive bids.

15.4. Monopoly prevention versus scale economies

15.4.1. Project Structuring

In light of JNPT's expressed intention to avoid monopoly as stipulated in the policy guidelines, we need to revisit the definition of a CT in this context. We see a distortion in that both the 330 m and 2000 m projects are called CTs. PSA would have one CT of 2000 m of container berths, whereas DP World would have two CTs with a combined length of 930 m and GTIPL would have a CT of 712 m (Appendix A).

There was a concern whether it was fair to give the capacity of the country's would-be-biggest 2000 m CT of more than Rs 67 bn to a single player. There was a move to make it two 1000 m projects. The two-project plan "would have brought down the time of project completion from eight to four years" (Chitravanshi 2013) though it would have increased the revised documentation time. While a single 2000 m project would offer advantages of economies of scale, the two-project model could have brought in more competition.

15.4.2. Qualification Criteria

JNPT, referring to its duty to prevent monopoly under the 1996 guidelines, had excluded P&O from bidding for the third CT. Both the Bombay HC and the SC (cases B and C) stood by JNPT's decision. The courts agreed with the public authorities on the significance of monopoly prevention and enabling more competition. However, the Ministry's policy in 2003 appears to be a knee-jerk reaction to the SC judgement in the P&O case (case C) and therefore is a case of over-regulation with redundant conditions as qualification criteria. The 2010 policy guidelines, however, succeeded in implying that there needed to be at least two 'private' operators for the same type of cargo.

15.5. Market risks

15.5.1. Poor Market Assessment

Since the early years, the latent demand for container trade in the Mumbai area has never been properly assessed. The assessment for the second terminal, which expected a traffic of 550,000 TEUs by the sixth year and 600,000 TEUs by the fifteenth year of the concession period, achieved 695,000 TEUs in the first year of the concession period. This raises issues on whether the authority has failed (i) to extract maximum returns for the government, and (ii) in overall planning and execution of successive CTs to keep up with the demand.

15.5.2. Unsustainable Royalty Payments

The skewed increase in royalty payments of the second CT towards the latter half of the concession period and the tariff regulation which does not permit royalty as a cost in tariff calculation, has resulted in NSICT facing losses and consciously cutting down handling volumes since 2011-12 (Table 3). This conscious act of reducing capacity does not augur well, especially in a capacity-constrained context.

15.6. Effect of elections

We see that the commissioning of JNPCT was advanced due to elections and that the adequate training of port personnel was compromised in this process. This had a bearing on the performance of JNPCT in the initial years and underutilisation of its then state-of-the-art infrastructure.

NSICT's date for submission of bids for the second CT got extended due to elections. GTIPL's award of contract for the third CT got extended by about five months due to the election code of conduct. A similar impending imposition of the code of conduct got the announcement of the award for the fourth CT hastened, thus saving time.

15.7. Leadership changes

Leadership changes, both at the ministerial and port management level can adversely affect infrastructure projects due to ideological or ego-based conflicts. In the case of JNPT, we see this 'necessary evil' at work during crucial and critical stages of the bidding process.

The ministerial change paved the way for privatisation of the second CT in 1995. The change of Chairman had the fourth CT modified back to its original structure to avoid delays in documentation and bidding.

Though not discussed in the paper, changes in the top management at JNPT have caused delays due to lack of ownership during the changes.

15.8. Security clearances

While many clearances were the responsibility of the concessioning authority, security clearances were the responsibility of the concessionaire. This had to be obtained from the Ministry of Home Affairs, Ministry of Defence, and Ministry of External Affairs. Prior clearances were not always valid. MPSEZ was affected in the first round bid for the fourth CT since they did not get their security clearance in time.

In December 2012, the Central Government issued guidelines for the procedure to be followed for security clearance for bidders in respect of port projects and dredging projects, to be followed with immediate effect (Ministry of Shipping 2012). According to the guidelines for port projects, the Ministry would share the list of companies/bidders with the Ministry of Home Affairs, Ministry of Defence, Intelligence Bureau, Cabinet Secretariat and Ministry of External Affairs on a case-to-case basis for seeking security inputs. The security agencies would provide the inputs within 12 weeks and price bids would not be opened till the security clearance was accorded by the Ministry, which would be valid for three years (Ministry of Shipping 2012). Any change of more than 10% in shareholding in the company by any stakeholder or change in the management control of the company had to be informed within two weeks, failing which the security clearance could be withdrawn (Ministry of Shipping 2012).

The new guidelines mitigate the risk for the private operators while ensuring lower possibilities of projects getting delayed due to litigation over security clearance. They bring in more transparency to the bidding process. These guidelines are applicable to the non-major ports too, where the state maritime boards have to apply to the Ministry of Home Affairs for security clearance of bidders.

15.9. Mutuality and clarity in documentation

Apart from the already discussed conflicts vis-à-vis policy guidelines, issues of non-mutuality and procedural matters also need consideration. These have a significant impact on creating opportunities for litigation.

15.9.1. Non-mutuality

This is a consequence of the power imbalance, which is generally in favour of the authority over the concessionaire. For example, the bid document for NSICT stated that the Port Trust would supply electrical power as available subject to payment by the licensee at rates to be prescribed by JNPT from time to time (Shashikumar 1999). There was no mention of any recourse for the private operator if the port authority failed to supply power and port operations were hampered (Shashikumar 1999). On the same lines, the control for pilotage and security was with JNPT, with no service level agreement and consequentially no recourse for ‘poor’ service. NSICT had wanted to have its own pilots for its CT. Though not discussed in the case, the issue of whether NSICT would pay for security and to what extent has gone into arbitration.

15.9.2. Procedural matters

Bid deadlines, terms of payment, trigger-based conditions rather than being cast-in-stone, post-bid negotiations, condition of asset at the time of transfer at the end of the concession period, etc are matters that need to be clearly specified.

The issue of lack of clarity on stamp duty payments was used by the PSA-ABG consortium to seek withdrawal from the award of the fourth CT. The substantive issues for seeking withdrawal could have been very different like a concern on having overbid, and/or the partners falling apart.

Backup yard land requirements have been hardcoded in the contract with no relationship to the traffic, which has more than doubled compared to the originally anticipated traffic.

It is, however, possible that with bidding processes not yet being fully mature in India, private players often are okay with ambiguity and lacunae in documentation, since it could give them an opportunity to use it to their advantage through a more sophisticated legal recourse.

15.10. Time and cost overruns

From the time of notification in 1982, the JNPCT started operations in 1989-90, the second CT in 1999-00, the third CT in 2005-06, the standalone CT in 2015-16, and the fourth CT expected to start operations in 2017-18. The fifth CT is just under conception.

Given the latent demand in the country and in the Mumbai area (which has doubled traffic every five years since starting at 0.35 m TEUs in 1989-90 until capacity constraints choked them), the potential traffic demand in 2014-15 would be over 11 m TEUs, and by the end of the decade, at over 22 m TEUs. The stretch capacity in 2014-15 was 4.5 m TEUs. The Mumbai area has been falling short of this trend since 2008-09 when throughput reached 4 m TEUs. So, the delays in capacity creation, especially through the standalone CT and fourth CT have had a significant opportunity cost to the economy.

For the standalone CT, the first bid was affected by close to two months of litigation by ABG, with the bidding process, starting from the RFQ to scrapping of the tender, taking a total time of about 16 months. Litigation by ABG delayed the second bid by close to seven months (Appendices A and B). The entire second bid, from the RFQ to award of concession, took about three years and eight months.

For the fourth CT, there was a delay of about 21 months due to litigation by APM Terminals and MPSEZ in the first round. The winning bidder - PSA-ABG consortium - delayed in signing the CA for the fourth CT project by another 10 months, taking the total time spent for the first bid from the RFQ to termination of award, to more than three and half years (Appendices A and B). With the industry taking time to deal with this, including the interim consideration of the two-project plan, the second round took another one and half years from the RFQ to the award of concession. In all, the project, having been conceived in as early as 2004, has taken more than ten years to reach the construction stage.

We see that time overruns also translate into cost overruns. In the case of the fourth CT, the initial cost estimate of Rs 62 bn increased to Rs 79.15 bn in the second bid. In the case of the standalone CT, the cost increased from Rs 6 bn to Rs 9 bn.

Acknowledgements

We are thankful to the JNPT for giving us an opportunity to study the port at different points of time in its evolution. We also thank the executives of JNPT, the private terminals and the Ministry for providing us clarifications as and when required.

We appreciate the data collection support provided by Tanay Mahindru, Bachelors student of Netaji Subhas Institute of Technology, Delhi.

Appendix A.

Table 5: Details of CTs and their operators

CT #	SPV/CT	Operator	Quay (m)	Signing of CA	Bid criterion	PPP mode	Duration from first RFQ to operationalisation
1	JNPCT	JNPT	680	Commissioned on May 26, 1989			
2	NSICT	DP World (P&O)	600	July 3, 1997	Highest NPV of royalty (Rs 2.35 bn)	BOT	40 months
3	GTIPL	APM Terminals	712	August 10, 2004	Revenue sharing (35.5%)	BOT	52 months
330 m	NSIGTPL	DP World	330	June 19, 2013	Revenue sharing (28.09%)	DBFOT	82 months
4	BMCTPL	PSA	2000	May 6, 2014	Revenue sharing (35.79%)	DBFOT	133 months (expected)

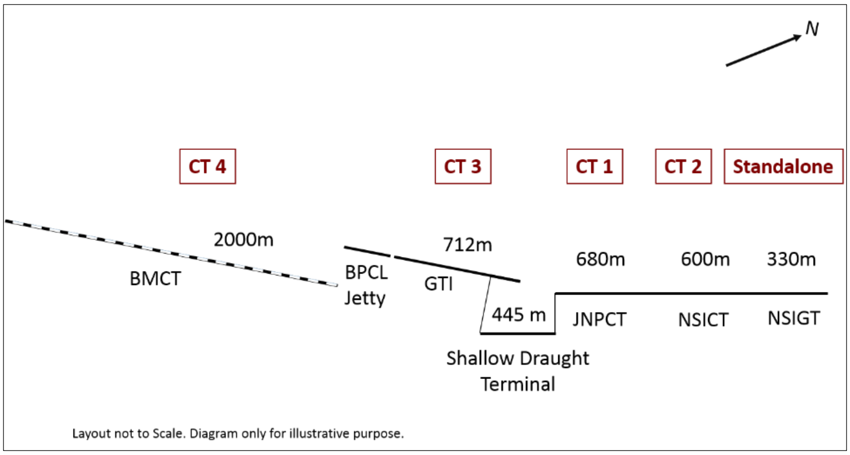

Fig. 1. Schematic diagram of CTs at JNPT

Appendix B.

List of some court cases involving JNPT, Union of India and bidders

Terminal Involved		Case Label[**]	Petitioner	Court	Date of Filing Petition	Date of Judgement	Judgement	Time
Second		A	Stevedoring Services of America International	Bombay HC	December 10, 1996	December 19, 1996	Petition dismissed	10 days
Third		B	P&O Australia Ports	Bombay HC	December 7, 2002	January 28, 2003	Petition dismissed	150 days
		C	P&O Australia Ports	SC	-	May 5, 2003	Petition dismissed	
		D	Bhushan Patil (PIL)	Bombay HC	April 1, 2004	April 1, 2004	Petition dismissed	1 day
		E	Tarun Tripathi (PIL)	Bombay HC	April 22, 2004	August 6, 2004	Petition dismissed	107 days
		F	Arun Pal Singh Behl (PIL)	Bombay HC	May 14, 2004	July 12, 2006	Petition dismissed	790 days[††]
Standalone	First bid	G	ABG Infralogistics	Bombay HC	September 2, 2008	October 8, 2008	In favour of ABG Infralogistics	37 days
		H	ABG Infralogistics	Bombay HC	March 20, 2009	April 8, 2009	Petition dismissed	20 days
	Second bid	I	ABG Ports Private Limited	Bombay HC	March 7, 2012	October 4, 2012	Petition Dismissed, Stay refused	212 days
Fourth	First bid	J	APM Terminals BV	Bombay HC	July 29, 2009	March 10, 2010	Petition Dismissed	652 days
		K	APM Terminals BV	SC	-	May 11, 2011	In favour of APM Terminals	
		L	Mundra Port & SEZ	Bombay HC	April 29, 2011	July 14, 2011	Petition withdrawn	77 days
	Second bid	M	Mandar Narhari Parab (PIL)	Bombay HC	May 8, 2014	July 15, 2014	Petition dismissed	69 days

[**] Cases have been labelled with capital alphabets for ease of references

[††] The number of days here does not necessarily reflect delays in the third terminal project as the Election Commission had disallowed award during the model code of conduct and the agreement was later signed on August 10, 2004

Appendix C.

Timeline of the major events during the bidding process for the 330 m CT and fourth CT projects

330 m Standalone CT	Fourth CT
	November 2006: JNPT invites EOI
	November 2006: 40 EOIs received
September 2007: Central Government issues circular asking JNPT to go ahead with bidding; Interim policy issued as part of the circular	
	October 2007: JNPT Board approves project structuring
	March 2008: JNPT Board carries out costing approval
June 2008: JNPT floats tender	
September 2, 2008: ABG Infralogistics moves Bombay HC (G)[‡‡]	
October 8, 2008: Bombay HC asks JNPT to consider ABG's bid (G)	
January 27, 2009: JNPT extends deadline for clarifications on ABG's application from January 28 to February 2, 2009	
January 31, 2009: ABG submits reply to request for clarifications	
	March 2, 2009: JNPT issues global invitation for bids
	March 5, 2009: ABG writes to JNPT, with DD for purchase of RFQ (which it is issued)
March 12, 2009: JNPT informs ABG that it is not shortlisted for the bidding stage	
March 20, 2009: ABG files petition (H)	
	March 27, 2009: APM requests clarification on RFQ
April 8, 2009: Bombay HC dismisses ABG's petition (H)	**April 8, 2009:** JNPT issues clarification in RFQ document that successful bidder for 330 m CT cannot bid for the fourth CT and so on.
	April 15, 2009: APM allowed to attend pre-application conference
	June 18, 2009: Ministry informs JNPT that GTIPL may not bid
	June 29, 2009: JNPT informs GTIPL it is disqualified for bidding;
	July 7, 2009: APM writes to Ministry; Dates for submission of RFQ get extended thrice and finally to December 31

[‡‡] The alphabets in parenthesis refer to the case labels defined in Appendix B

	July 29: 2009: APM Terminals files petition in Bombay HC (J)
	August 2009: PSA-ABG consortium files application for RFQ
October 2009: Ministry scraps tender	
November 11, 2009: RFQ reissued	
	December 1, 2009: JNPT informs GTIPL that Ministry stands by June 18 decision
December 24, 2009: RFQ amended to clarify that successful bidder will not be allowed to bid for next CT	
February 26, 2010: ABG submits application for RFQ documents	
	March 10, 2010: Bombay HC dismisses APM's petition (J)
	June 2010: RFP document issued to the PSA-ABG consortium
August 2, 2010: Central Government issues new policy guidelines	
August 6, 2010: JNPT issues clarifications that the two projects are independent…..	
	October 15, 2010: PSA–ABG consortium submits RFP bids
January 24, 2011: ABG informed about being shortlisted for bidding stage	
January 31, 2011: RFP issued to ABG for the 330 m CT	
	April 29, 2011: MPSEZ moves Bombay HC over security clearance (L)
	May 11, 2011: SC directs JNPT to allow APM Terminals to bid (K)
May 23, 2011: JNPT amends RFP document, excluding the successful bidder of either project from bidding for the other subsequent CT.	
	July 14, 2011: MPSEZ withdraws petition (L)
	June 21, 2011: Last day to submit tender; APM does not bid
	June 28, 2011: Bids opened
	September 26, 2011: LOA issued to PSA-ABG consortium
November 15, 2011: ABG informed that date for submission of RFP has been extended to December 30, 2011	
	January 2012: PSA-ABG consortium fails to sign CA
February 21, 2012: ABG asks JNPT for confirmation of eligibility	

March 7, 2012: ABG files petition in Bombay HC to be allowed to submit RFP (I)	
	August-September 2012: JNPT and PSA-ABG fail to reach agreement
October 4, 2012: Bombay HC rejects ABG's appeal (I); DP World emerges lone bidder	
	October 10, 2012: JNPT withdraws the LoA to PSA-ABG and encashes bank guarantee
November 2, 2012: LoA issued to DP World	
	January 2013: JNPT announces revised plan for fourth CT as two projects of 1000 m each
	May 2013: Fourth CT reverted to single project
	June 2013: Fresh bids again
June 19, 2013: DP World signs CA	
July 3, 2013: DP World awarded concession	
	August 2013: Eight bidders submit RFQs
December 4, 2013: Berth construction commences early	**December 2013:** RFP issued to 7 qualified bidders
	February 20, 2014: Two bidders submit RFPs; PSA wins bid
	February 26, 2014: LoA issued to PSA
	April 1, 2014: BMCTPL incorporated
	May 6, 2014: PSA signs CA
	May 8, 2014: Mandar files PIL against contract (M)
	July 15, 2014: Bombay HC dismisses PIL (M)
	December 22, 2014: PSA International awarded concession
April 2015: CT partially operationalised	
	August 2015: JNPT seeks damages from PSA

References

Balachandran, M., 2012. Home ministry bars Adani Port, Lanco and Punj Lloyd from participating in port projects on security grounds. *The Economic Times*. Available at: http://articles.economictimes.indiatimes.com/2012-08-27/news/33425063_1_security-clearance-port-projects-rajeeva-sinha.

Balachandran, M., 2013. JNPT to spend Rs 1k Cr on road, rail infrastructure. *The Economic Times*. Available at: http://articles.economictimes.indiatimes.com/2013-03-14/news/37713574_1_port-sector-port-projects-singapore-and-abg-ports.

Bavadam, L., 2004. A Contract Controversy. *Frontline*. Available at: http://www.frontline.in/static/html/fl2113/stories/20040702003603900.htm.

Bharucha, N.K., 2011. "Build JNPT, but first release MbPT land for public amenities." *The Times of India*. Available at: http://timesofindia.indiatimes.com/city/mumbai/Build-JNPT-but-first-release-MbPT-land-for-public-amenities/articleshow/8869548.cms.

Business Line, 2003. A tale of two terminals. *Business Line*. Available at: http://www.thehindubusinessline.com/bline/2003/05/26/stories/2003052600020100.htm.

Business Line, 2011. Bidding for fourth terminal at JNPT may be delayed. *Business Line*. Available at: http://www.thehindubusinessline.com/economy/logistics/article2085332.ece.

Business Line, 2013a. JNPT box terminal project to get Rs. 440 crore FDI. *Business Line*. Available at: http://www.thehindubusinessline.com/economy/logistics/jnpt-box-terminal-project-to-get-rs-440-crore-fdi/article4336563.ece.

Business Line, 2013b. JNPT signs pact with DP World arm. *Business Line*. Available at: http://www.thehindu.com/business/Industry/jnpt-signs-pact-with-dp-world-arm/article4830847.ece.

Chattopadhyay, S., 2013. Dubai based DP World signs concession agreement with JNPT. *CMIE*. Available at: http://www.cmie.com/kommon/bin/sr.php?kall=wclrdhtm&nvdt=20130620155217940&nvpc=099000000000&nvtype=TIDINGS.

Chidambaram, P., 2003. If nothing works, "whitelist" competition. *The Indian Express*. Available at: http://archive.indianexpress.com/oldStory/26236/.

Chitravanshi, R., 2013. JNPT puts fourth container terminal for bid again with stricter criteria. *Business Standard*. Available at: http://www.business-standard.com/article/companies/jnpt-puts-fourth-container-terminal-for-bid-again-with-stricter-criteria-113073100730_1.html.

Das, M., 2011. Adani arm's port projects flounder on security issue. *Business Line*. Available at: http://www.thehindubusinessline.com/economy/logistics/adani-arms-port-projects-flounder-on-security-issue/article2051924.ece.

Exim India, Exim News. Available at: http://www.eximin.net/.

Fonseca, J., 2014. PSA awarded JNPT's 4th Container Terminal project. *Maritime Professional*. Available at: http://www.maritimeprofessional.com/blogs/post/psa-awarded-jnpts-4th-container-terminal-project-13159 [Accessed September 14, 2015].

Foreign Investment Promotion Board, 2014. Review 2011-13. , p.74. Available at: http://fipb.gov.in/Forms/FIPBREVIEW2011-13.pdf.

High Court of Bombay, 2008. *ABG Infralogistics Limited v. The Trustees of Jawaharlal Nehru Port*, Available at: http://bombayhighcourt.nic.in/generatenewauth.php?auth=cGF0aD0uL2RhdGEvY2l2aWwvMjAwOC8mZm5hbWU9V1AyMDY3MzA4MDgxMDA4LnBkZiZzbWZsYWc9TiZyanVkZGF0ZT0mdXBsb2FkZHQ9JnNwYXNzcGhyYXNlPTMwMDkxNTIwNTU1NQ==.

High Court of Bombay, 2009. *ABG Infralogistics Limited v. The Trustees of Jawaharlal Nehru Port*, Available at: http://bombayhighcourt.nic.in/generatenewauth.php?auth=cGF0aD0uL2RhdGEvanVkZ2VtZW50cy8yMDA5LyZmbmFtZT1DV1A3MzUyMDkucGRmJnNtZmxhZz1OJnJqdWRkYXRlPSZ1cGxvYWRkdD0mc3Bhc3NwaHJhc2U9MzAwOTE1MjA1NzE5.

High Court of Bombay, 2012. *Abg Ports Pvt. Ltd. v. Board Of Trustees Of The Jawaharlal Nehru Port Trust*, Available at: http://indiankanoon.org/doc/165534064/.

High Court of Bombay, 2010. *APM Terminals BV v. Union of India and Anr*, Available at: http://bombayhighcourt.nic.in/generatenewauth.php?auth=cGF0aD0uL2RhdGEvY2l2aWwvMjAxNC8mZm5hbWU9Q0FXMjMyNzEwODA5MDYxNC5wZGYmc21mbGFnPU4mcmp1ZGRhdGU9JnVwbG9hZGR0PSZzcGFzc3BocmFzZT0zMDA5MTUyMDU4Mjk=.

High Court of Bombay, 2014. *Mandar Narhari Parab v. Union of India*, Available at: http://www.the-laws.com/Encyclopedia/Browse/Case?CaseId=314102772100.

High Court of Bombay, 2003. *P and O Australia Ports Private Limited v Board of Trustees, JNPT and Anr*, Bombay. Available at: http://indiankanoon.org/doc/1217869/.

Indian Ports Association, Operational Details. *Indian Ports Association*. Available at: http://ipa.nic.in/oper.htm.

Jawaharlal Nehru Port Trust, 2015a. Future Plans/Ongoing Projects. Available at: http://jnport.gov.in/future_plan.aspx [Accessed September 25, 2015].

Jawaharlal Nehru Port Trust, 2015b. GTI. Available at: http://164.100.157.202/GTI.aspx [Accessed July 19, 2015].

Jawaharlal Nehru Port Trust, 2015c. NSICT. Available at: http://164.100.157.202/NSICT.aspx [Accessed July 20, 2015].

Jawaharlal Nehru Port Trust, 2015d. Performance Profile. Available at: http://jnport.gov.in/performance_profile.aspx.

Jawaharlal Nehru Port Trust, 2013. Prospectus March 6, 2013. Available at: https://www.bigshareonline.com/word and pdf/Jawaharlal Nehru Port Trust - Prospectus.pdf.

Kurup, N.K., 2011a. APM Terminals not to bid for JNPT's fourth terminal. *Business Line*. Available at: http://www.thehindubusinessline.com/todays-paper/tp-logistics/article2124251.ece.

Kurup, N.K., 2011b. JN Port 4th terminal is unviable, says APM official. *Business Line*. Available at: http://www.thehindubusinessline.com/todays-paper/tp-logistics/article2140034.ece.

Mandavia, M., 2014. Singapore's PSA International wins bid to build Rs 8,000-crore JNPT terminal. *The Economic Times*. Available at: http://articles.economictimes.indiatimes.com/2014-02-21/news/47559667_1_abg-ports-nn-kumar-fourth-container-terminal.

Manoj, P., 2003. Bidding for container terminal — P&O Ports loses legal battle on JNPT ban. *Business Line*. Available at: http://www.thehindubusinessline.com/bline/2003/05/15/stories/2003051500370900.htm.

Manoj, P., 2009. Govt scraps auction for Rs600 cr container terminal at JN Port. *Live Mint*. Available at: http://www.livemint.com/Companies/bI6QQnolmQagSBDaYUjv8K/Govt-scraps-auction-for-Rs600-cr-container-terminal-at-JN-Po.html.

Manoj, P., 2015. JNPT seeks damages from Singapore's PSA. *Live Mint*. Available at: http://www.livemint.com/Companies/D2NFBPTeFhbs8alQOBSZQI/JNPT-seeks-damages-from-Singapores-PSA.html.

Manoj, P., 2004. PILs filed against JNPT terminal contract for Maersk-Concor. *Business Line*. Available at: http://www.thehindubusinessline.com/2004/05/30/stories/2004053001770300.htm.

Manoj, P., 2011. PSA-ABG team set to get India's biggest container terminal deal. *Live Mint*. Available at: http://www.livemint.com/Companies/hjSEXXjqtgY8X1tdoBmo0K/PSAABG-team-set-to-get-India8217s-biggest-container-term.html.

Ministry of Finance, Nhava Sheva International Container Terminal: Process Analysis. *Department of Economic Affairs, Ministry of Finance*. Available at: http://toolkit.pppinindia.com/ports/module3-rocs-nsict5.php?links=nsict5 [Accessed August 7, 2015a].

Ministry of Finance, Nhava Sheva International Container Terminal: Project Description. *Department of Economic Affairs, Ministry of Finance*. Available at: http://toolkit.pppinindia.com/ports/module3-rocs-nsict1.php?links=nsict1 [Accessed August 7, 2015b].

Ministry of Shipping, 2015. *Annual Report 2014-15*, Available at: http://www.thehindubusinessline.com/bline/2003/05/26/stories/2003052600020100.htm.

Ministry of Shipping, 2012. Guidelines for processing the security clearance of bidders in respect of port projects including dredging projects. Available at: http://shipping.nic.in/writereaddata/l892s/guideppp-97575766.pdf.

Mumbai Port Trust, Annual Reports. Available at: http://mumbaiport.gov.in/index2.asp?slid=900&sublinkid=553&langid=1.

Pandey, P., 2004. JNPT to commission 4th container terminal. *Business Standard*. Available at: http://www.business-standard.com/article/economy-policy/jnpt-to-commission-4th-container-terminal-104091601106_1.html.

Pillai, V., 2008. 8 in fray for JNP container berth. *Project Monitor*. Available at: http://old.projectsmonitor.com/detailnews.asp?newsid=17423.

Port of Rotterdam Authority, 2007. *Coordination of business plans for major ports in India: Consolidated Port Development Plan,* Port of Rotterdam. Available at: http://ipa.nic.in/Definitief Volume 2.pdf.

Port Technology, 2012a. Delays to JNPT's fourth terminal could prove costly. *Port Technology*. Available at: http://www.porttechnology.org/news/delays_to_jnpts_fourth_terminal_could_prove_costly.

Port Technology, 2012b. DP World emerge as lone bidder for JNPT's fourth container terminal. *Port Technology*. Available at: http://www.porttechnology.org/news/dp_world_emerge_as_lone_bidder_for_jnpts_fourth_container_terminal.

Press Trust of India, 2013. JNPT to invite fresh bids for 4th terminal next month. *Business Line*. Available at: http://www.thehindubusinessline.com/economy/logistics/jnpt-to-invite-fresh-bids-for-4th-terminal-next-month/article4407694.ece.

Raghuram, G., 2006. *A Diagnostic Study of Jawaharlal Nehru Port Trust*, Ahmedabad. Available at: http://vslir.iimahd.ernet.in:8080/xmlui/bitstream/handle/123456789/408/2006-04-09graghuram.pdf?sequence=1&isAllowed=y.

Raghuram, G. & Shukla, N., 2014. *Issues in PPPs in Ports in India*, Ahmedabad. Available at: http://www.iimahd.ernet.in/assets/snippets/workingpaperpdf/15518989842014-01-06.pdf.

Ray, A.S., 2004. *MANAGING PORT REFORMS IN INDIA: Case Study of Jawaharlal Nehru Port Trust (JNPT) Mumbai*, Available at: http://siteresources.worldbank.org/INTWDR2005/Resources/477407-1096581040435/wdr2005_india_port_reform2.pdf.

Salhotra, B., 2007. Concession for Nhava Sheva International Container Terminal. *Planning Commission, Government of India*. Available at: http://planningcommission.nic.in/sectors/ppp_report/4.Case Studies/7.Concession for port terminal JNPT.pdf.

Sanjai, P.R., 2014. At shipping ministry, a last minute rush to beat model code of conduct. *Live Mint*. Available at: http://www.livemint.com/Politics/ZLKXMLI5OrW39aH7KaP8MK/At-shipping-ministry-a-last-minute-rush-to-beat-model-code.html.

Shashikumar, N., 1999. Privatisation at India's Premier Container Port: Jawaharlal Nehru Port Trust – A Case Study. In G. Raghuram et al., eds. *Infrastructure Development and Financing: Towards a Public-Private Partnership*. New Delhi: Macmillan India Limited.

Supreme Court of India, 2011. *APM Terminals B.V v. Union of India & Anr*, Available at: http://indiankanoon.org/doc/1802783/.

Tariff Authority of India, 2006. TAMP Order. , p.21. Available at: http://www.tariffauthority.gov.in/htmldocs/ORDERS/JNPT/GTIPL/GTIPL - general revision -g-138-13-9-06.pdf.

Zauba Corp, Bharat Mumbai Container Terminals Private Limited. Available at: https://www.zaubacorp.com/company/Bharat-Mumbai-Container-Terminals-Private-Limited/U74999MH2014FTC255169 [Accessed September 12, 2015a].

Zauba Corp, NHAVA SHEVA INTERNATIONAL CONTAINER TERMINAL PRIVATE LIMITED. Available at: https://www.zaubacorp.com/company/NHAVA-SHEVA-INTERNATIONAL-CONTAINER-TERMINAL-PRIVATE-LIMITED/U45203MH1997PTC106790 [Accessed September 12, 2015b].