

Unlock the Tourism Potential of Punjab

**Establishment
of
Institute of Hotel Management
at
Mohali**



March 26, 2008

Presentation by:



Presentation Structure

- ❏ **Background**
- ❏ **Project Features**
- ❏ **Scope of Work for PSP**
- ❏ **Bidding Process and Project Structure**
- ❏ **Key Features of Joint Development Agreement**
- ❏ **Queries & Clarifications**

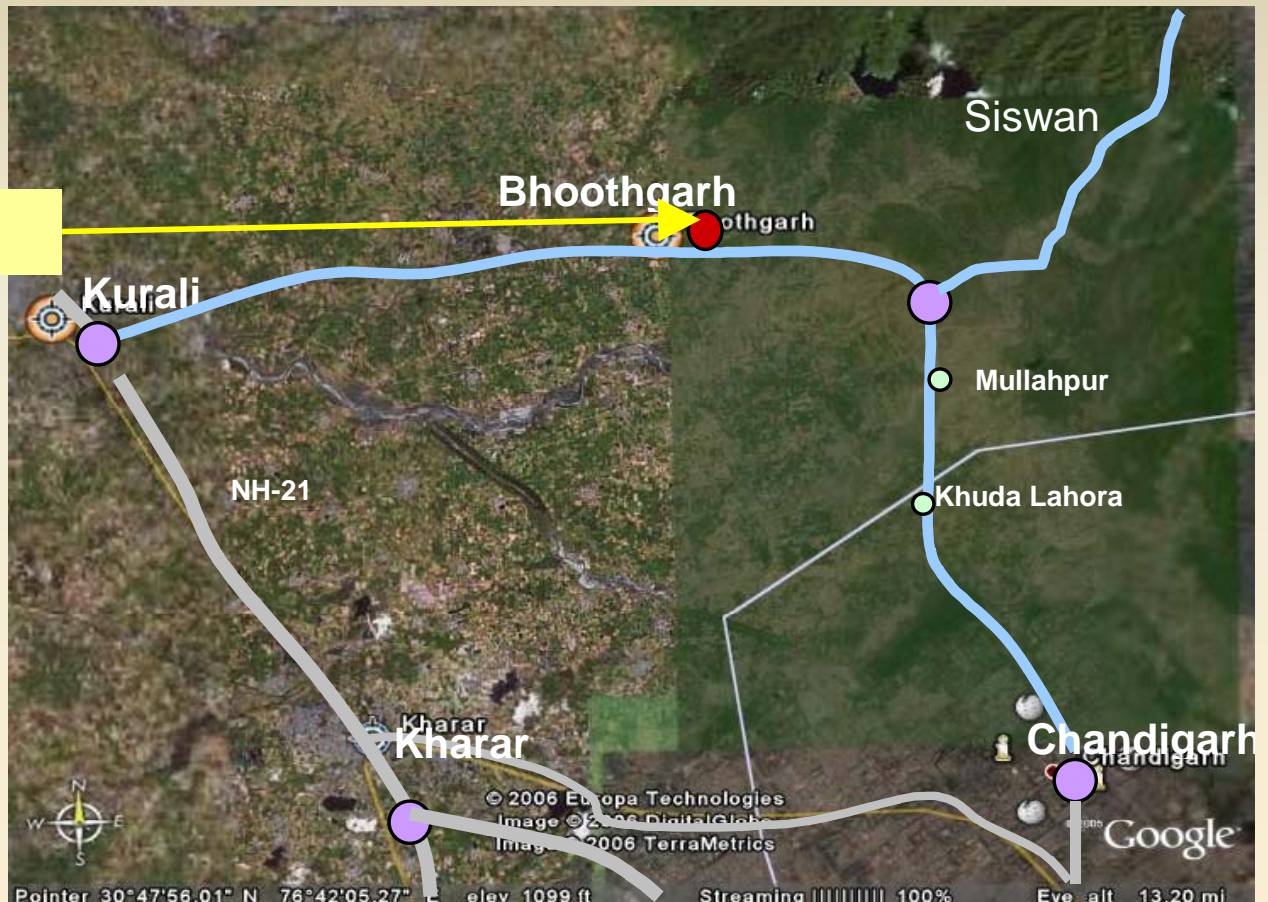
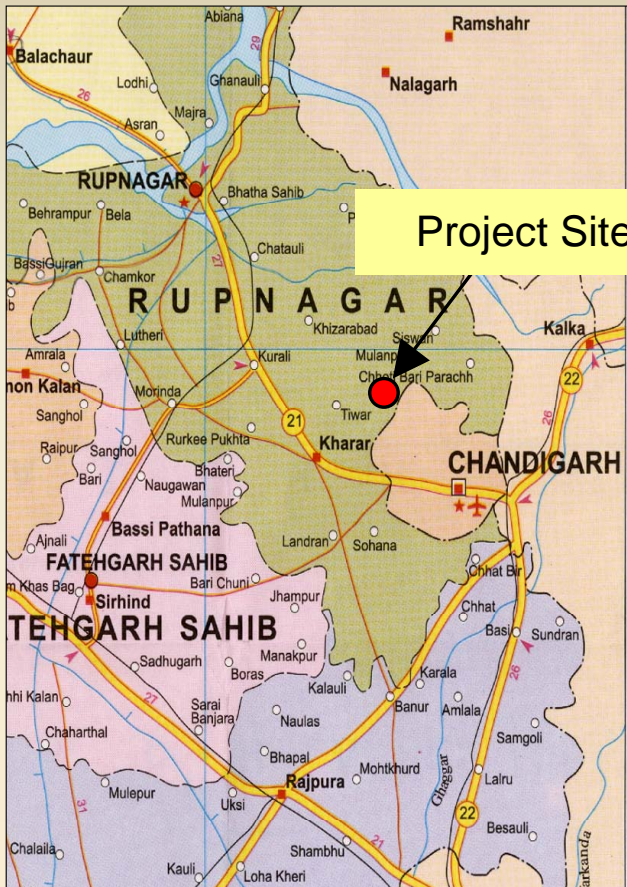
- ❑ **Department of Tourism, Government of Punjab through Punjab Infrastructure Development Board has embarked upon a major initiative to boost tourism and higher education in the expanding field of hospitality in the State**
- ❑ **IL&FS Infrastructure Development Corporation Ltd (IL&FS IDC) has been engaged to undertake Project Development activities for successful implementation of the respective projects, including selection of private sector partner for each project**

Project Features - Location

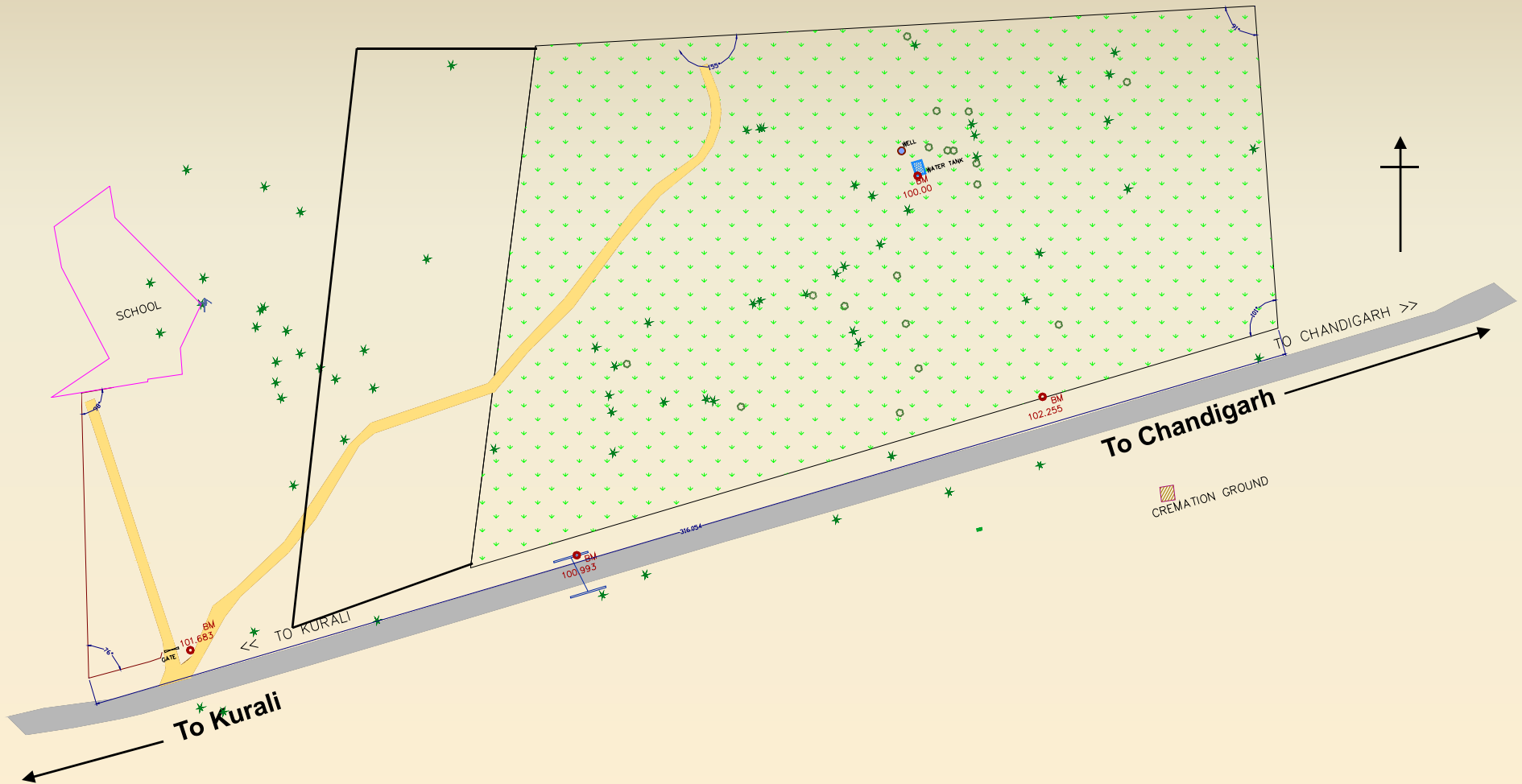
- About 6 acres of Prime Land at Bhoothgarh, Mohali on lease by Society for Institute of Hotel Management, Boothgarh, Mohali (Concessioneing Authority).
- The Project Site is on the Kurali Siswan in Mohali District
- About 8 Km from Kurali & 14 Km from Chandigarh
- Topography of the Site: Comparatively at a low level to the adjoining road



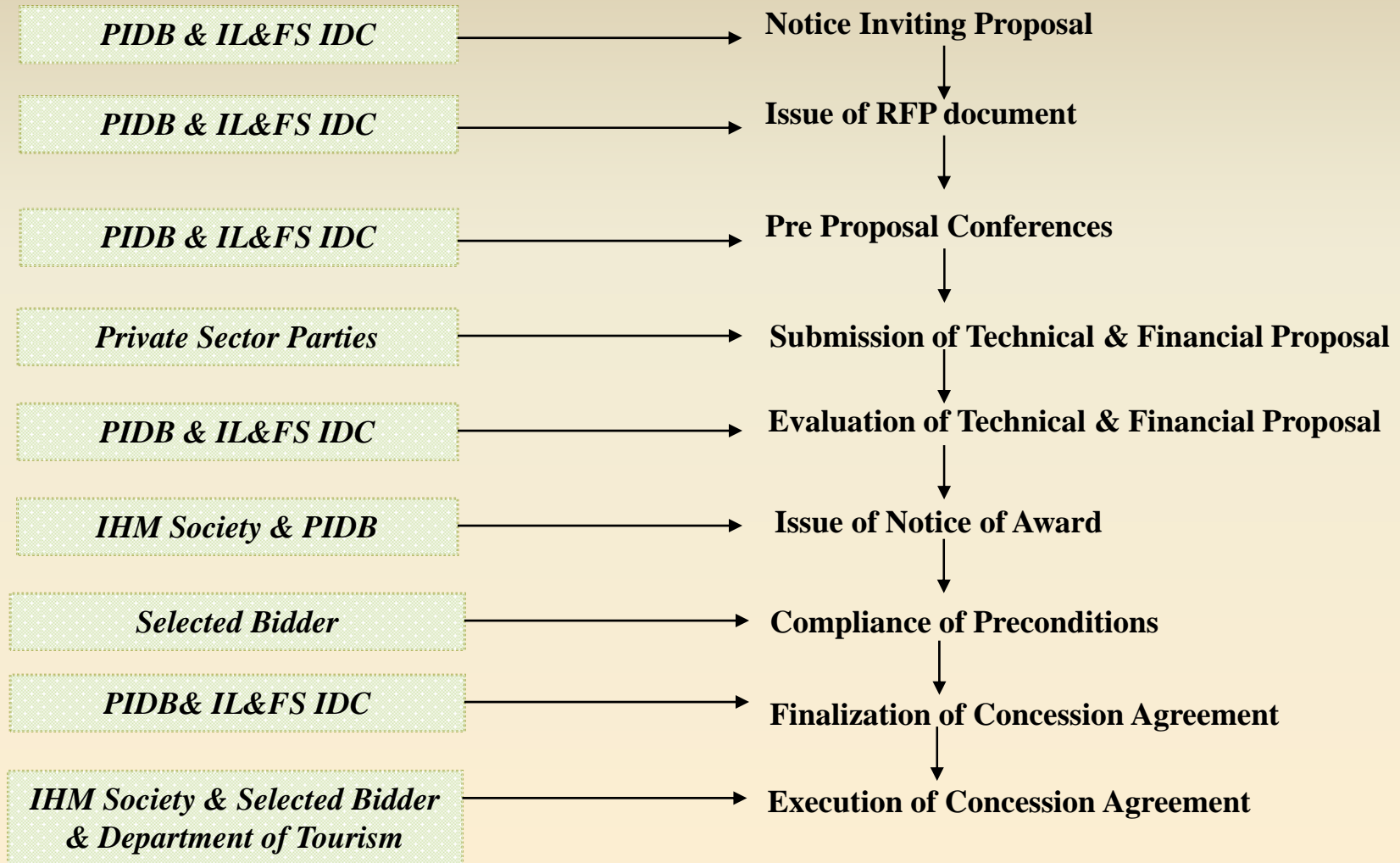
Project Features - Location



Project Site



Bidding Process



Cancellation of Earlier Expression of Interest

- The earlier invitation for Expression of Interest (EOIs) published on September 28, 2006; September 29, 2006; and October 10, 2006 in respect of “Establishment of Institute of Hotel Management of International Standards at Mohali (SAS Nagar)” stands cancelled.

Interested National or International Firms, Joint Ventures, Consortium, Hoteliers or Professional Educational Institutions, complying with the following qualitative requirement, are invited to submit their proposals:

(a) Experience in operating or managing atleast one recognized three star hotel in India or its equivalent abroad or a hospitality education institute or service industry training institute in India or abroad;

(b) Individual Firm (if bidding alone) or the Firms in the Joint Venture or Consortium (either individually or cumulatively), shall meet the following financial criteria:

- **A Firm or Consortium of Firms taken together must have an aggregate tangible networth of Rs. 15 crores as per the last two years available audited results, excluding re-evaluation reserve, goodwill and other intangible assets to be certified by a chartered accountant**
- **Individual reputed firms or corporate houses having a networth of Rs 150 Crores or more ending March 31, 2007, will be exempted from the experience criteria stated in (a) above .**

- ❑ **Each Bidder shall submit only one proposal**
- ❑ **Maximum number of members/partners in consortium, partnership or joint venture allowed is limited to 3**
- ❑ **Formation of Special Purpose Company necessary in case of Joint Venture, Consortium or Partnership firm**
- ❑ **Lead Member liable for execution of the Project holding all members jointly and severally liable for all obligations to the Developer under the Joint Development Agreement**
- ❑ **The aggregate equity share holding of the members of the consortium in the issued and paid up equity share capital of the Developer shall not be less than**
 - ❑ **51% until 5 years (including construction period)**
 - ❑ **26% for rest of the Term of Agreement**

Proposal Requirement

Period of Proposal Validity:	180 days from Proposal Due Date
Amount of Proposal Security:	Rupees Ten Lakh Only Lakh in form of Bank Guarantee from a schedule bank (not being cooperative bank)
Amount of Project Development Fees:	Rupees Thirty Lakh only
Proposal	Three Envelops Envelop A : Technical Proposal Envelop B : Financial Proposal Envelop C: Proposal Security
No of Copies of Proposal:	Along with original PROPOSAL (marked "ORIGINAL", two copies of proposal (marked "COPY 1" AND COPY 2")) shall be submitted
Concession Period:	45 years; inclusive of construction period of 2 years
Lease Rental	Rupees 10,000 per acre per annum

Substantially Responsive Proposal

- i. is received by the Proposal Due Date including any extension thereof**
- ii. is signed sealed and marked**
- iii. is accompanied by the Power of Attorney**
- iv. is accompanied by Proposal Security**
- v. contains all the information as requested in the RFP format same as those specified in this RFP**
- vi. mentions the validity period**
- vii. is accompanied by MoU (for Consortium)**

Evaluation of Technical Proposal

- i. Overall, completeness and compliance with the requirements;**
- ii. Construction Requirements;**
- iii. O&M Requirements;**
- iv. Quality Management Systems;**
- v. Suitability of the works offered in relation to the conditions prevailing at the Project Site;**
- vi. Working methods and Work Schedule; and**
- vii. Reporting and Co-ordination Requirements**

Evaluation of Technical Proposal

- i. Adherence to the Scope of the Works of the Project, prescribed design, standards and features, operation, maintenance and transfer requirements, specifications and other technical parameters as provided in the Project Information Memorandum
- ii. Feasibility of the project scheduling plan and deviations from Schedule Project Completion Date, if any and
- iii. Any deviation

Bidding Parameter

(i) Upfront Concession Fee: Non refundable and Irrevocable amount

Rs _____(set forth in the Bidder's financial proposal)

(amount payable by the Developer to the IHM Society prior to the execution of the Joint Development Agreement.)

(ii) The bidder quoting the highest Upfront Concession Fee shall be selected.

Annual Concession Fee

payable to the IHM Society for any year during the Operation Period shall be computed on the basis as mentioned below:

(I) 5% of the Upfront Concession Fee (amount quoted by the Bidder in its financial proposal), which amount shall be increased every year at the rate of 5% per annum.

Or

(ii) 5% of gross annual revenue/sum total of User Charges from the Project,

whichever is higher.

Proposal Requirement – Contents of Envelops

Envelop A: Technical Proposal

- **Covering Letter**
- **Power of Attorney by each Member of the Bidder, In the favor of the Lead Member**
- **Power of Attorney by Lead Member/Partner in favor of Designated Person (s)**
- **Anti Collusion Certificate**
- **Information about the Bidder**
- **Experience in Institute of Hotel Management, Conference Facility, Exhibition Facility & Hotel Projects**
- **Financial Capability Statement**
- **Financial Default Information by Bidder**
- **Current Litigation Status**
- **Project Undertaking**
- **Broad Features of Technical Proposal (along with RFP document with each page initialised)**

Envelop B: Financial Proposal

- **Price Proposal**
- **Financing Plan including soft copy of financial model**

Envelop C

- **Bid Security in form of Bank Guarantee**

Scope of Work for Developer

- **The private sector participant will be expected to:**
 - **Plan, design, finance and establish the facility, including construction, provision of relevant assets, equipment, faculty, ancillary services and amenities related to the Institute of Hotel Management; and**
 - **Operate, maintain and manage the facility during the Concession Period**

- **Conduct academic courses as per affiliation sought from NCHMCT / AICTE / National & International University**

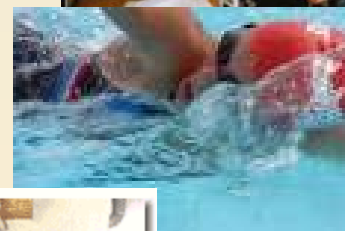
- **Carry out Minimum Development Works**

- **Routine and periodic maintenance of the project components**

Minimum Developmental Obligations

Project Components: Minimum Developmental Obligations

Project Component	Floor Area (Sq Ft)
Administration Block	2880
Teaching Block	39660
Support Service Area	9190
Principal & Essential Staff only	15500
Hostel for 50% (Boys & Girls)	51012
Real Time Internship Facility	25000
Total	143242



Other Project Components

- ❏ The Developer will be free to decide other components that would form part of the Project, subject to the use of the Project Site for Hospitality Education related activities and training for service industry
- ❏ All the project components as envisaged by the Developer shall be detailed in the Technical Proposal & cost of the same should be reflected in its financial proposal



Key Features of Joint Development Agreement

PARTIES TO THE AGREEMENT

- Concessioneing Authority** : **Society for Institute of Hotel Management, Punjab, Boothgarh, Mohali**
- Developer** : **Private Sector Participant to be selected through bidding process**
- Confirming party** : **Department of Tourism**

IMPLEMENTATION STRUCTURE

Build, Operate and Transfer (BOT)

Key Features of Joint Development Agreement



CONDITIONS PRECEDENT FOR DEVELOPER

- (a) Prepared and finalized the concept Design and Drawings for the Institute of Hotel Management with approval of IHM Society and other agencies.**
- (b) Made arrangement for financing the Project**
- (c) procured at its cost the Applicable Permits, including environmental permits, required for the commencement of the Construction Works**
- (d) provided the IHM Society notarised true copies of its constitutional documents and board resolutions authorising the execution, delivery and performance of this Agreement by the Developer;**
- (e) Nominate the Developer's representative for Steering Committee and permanent invitee to the Board of the IHM Society**
- (f) all the representations and warranties of the Selected Bidder/Developer set forth herein are true and correct as on the date of execution of this Agreement and the Compliance Date.**
- (g) Shortlisting three firms from a set of five firms provided by the IHM Society and followed by appointment of the one firm as the Independent Engineer/Expert/Quality Control Consultant, if any**

Key Features of Joint Development Agreement



CONDITIONS PRECEDENT FOR IHM Society

- (a) Handover vacant possession of site free of all encumbrances to the Developer along with the confirmation of land use classification from concerned agencies.**
- (b) By notification, empower the Developer to collect and appropriate the fees (fee structure as per affiliation/recognition) from students of the Institute of the Hotel Management and appropriate user charges from relevant users of other Project Facilities.**
- (c) Nominate its representative to the Steering Committee**
- (d) passed the requisite board resolutions authorizing the implementation of the Project by the 'Developer' in accordance with this Agreement;**
- (e) appointed 'Steering committee' of the IHM Society comprising it's nominees and of the Developer and representative of GOP for implementing the Project**
- (f) submit to the Developer, a panel of five reputed engineering firms shortlisted through limited selection process**
- (g) Upon written request from the Developer, taken appropriate steps towards procuring, provisional affiliation (if any) from NCHMCT/AICTE or its equivalent national or international body and provisional recognition from a national university or international university**

Key Features of Joint Development Agreement



COMPLIANCE CONDITIONS PRECEDENT

- (i) **Compliance Date:** within a period of 90 (ninety) days from the date of execution of this Agreement or date on which both the parties have achieved Conditions Precedent, whichever is earlier.
- (ii) **The Parties** may by mutual agreement extend the time for fulfilling the Conditions Precedent.
- (iii) **Terminated** due to non- fulfillment of the Developer's Conditions Precedent, the IHM Society shall forfeit the Construction Performance Security.
- (iv) **Terminated** due to non fulfillment of the IHM Society's Conditions Precedent, the IHM Society shall return/refund the Construction Performance Security;

Key Features of Joint Development Agreement



PERFORMANCE SECURITY

1. Construction Performance Security

- a. Amount – Rs. 2.5 Crore
- b. Validity – 24 months (construction period)
- c. Step down – to Rs 1 Crore when 15% of the project cost is expended

2. Operations Performance Security

- a. Amount – Rs. 1 Crore
- b. Validity – 45 years (for the term of the agreement)
- c. Enhancement: every two years by a % equivalent to increase in quarterly average WPI of the previous two years on an compounding basis



JOINT DEVELOPMENT RIGHTS

1. Term of Agreement

- a. period of 45 (forty five) years from Compliance Date (includes construction period)
- b. At the end of concession period of 45 years, IHM society shall again go for a transparent bidding process
 - a. In case Developer is again selected as successful bidders – the concession period shall be extended
 - b. In case, any proposal from person other than the Developer is selected, the Developer shall have right to match the same and such proposal shall be accepted



JOINT DEVELOPMENT RIGHTS

2. No Lease / Sub Lease of Project Site

- a. The Developer shall not lease, sub-lease, transfer, assign or part possession of the whole or any part of the land comprising the Project Site, to any person in any form or under any arrangement, device or method. This is an essential condition of this Agreement, the breach of which shall constitute a Developer Event of Default that shall entitle the IHM Society to terminate this Agreement

Key Features of Joint Development Agreement



OBLIGATION OF PARTIES

1. Obligations of Developer

- a. Take over possession of the Project Site and develop, design, finance, construct, operate and maintain the Project Components
- b. Construction of buildings and other required minimum infrastructure as indicated in Annexure II for Institute of Hotel Management for conducting academic courses, as per AICTE / NCHMCT / Universities (National/International).
- c. Construction of Project Components as listed in Annexure I
- d. Ensure safety /remedies of all during construction and operations period
- e. Arrange and access at its cost and expense all infrastructural facilities like water, power, technologies, goods, materials, consumables, things, and services etc.

Key Features of Joint Development Agreement



OBLIGATION OF PARTIES

1. Obligations of Developer

- f. **Achieve Substantial Construction Completion within 24 months of the Compliance Date**
- g. **Render all the assistance and provide all information as may be required by the IHM Society while seeking the affiliation from NCHMCT, AICTE or an equivalent national or international body**
- h. **Minimum 10% Seats shall be reserved for the candidates possessing resident domiciled certificate from Punjab subject to the approval of the affiliating agency.**
- i. **Minimum Discount of 25% of the tuition fee shall be discounted to all the students possessing resident domiciled certificate from Punjab subject to the approval of the affiliating agency.**

Key Features of Joint Development Agreement



OBLIGATION OF PARTIES

1. Obligations of Developer

- j. Conduct academic courses (as per guidelines specified by the affiliating / recognizing council) at the Institute of Hotel Management by employing adequate teachers / administrative staff / lab technicians / helpers sufficiently as required.**
- k. Setup necessary laboratory facilities and training facilities courses (as per guidelines specified by the affiliating / recognizing council)**
- l. Payment of Annual Concession Fee to the Concession Authority**
- m. Comply minimum operational standards**
- n. 5% of the Upfront Concession Fee or 5% of the Annual Gross Income/Revenue from the Project which ever is higher**

Key Features of Joint Development Agreement



OBLIGATION OF PARTIES

2. Obligations of IHM Society and GOP

- a. Grant within its authority all clearance which are necessary for implementation of the project and to facilitate other clearances
- b. Provide the land (approximately 6 acres) on long term lease to the Developer for the Project at rate of Rs 10000 per acre per annum of leased land
- c. Upon written request from the Developer, SIHM shall file the necessary application with the concerned authorities such as NCHMCT, AICTE or any equivalent National or International recognized body, for seeking affiliation/accreditation of the Institute of Hotel Management within Twelve Months from compliance Date and obtain the same before completion of Construction Work of the Project and disclose to the concerned authorities regarding the model being adopted for development and implementation of the Institute of Hotel Management.
- d. IHM Society acknowledges that the Internship Facility (minimum 3 Star Hotel) shall be a necessary asset to be created as part of project to facilitate the students to have hands on experience of real time situations

Key Features of Joint Development Agreement



ENGINEERING, PROCUREMENT & DRAWINGS

1. Review and Approval of Designs and Drawings

- a. **Developer shall prepare and submit within 90 days at its cost Design and Drawings in accordance with Specifications and Standard**
- b. **Review and approval of Design and Drawings by Independent Engineer in consultation with Steering Committee within 30 days of receipt**
- c. **Independent Engineer to notify within 14 days his objections, seek clarifications or suggestions**
- d. **Resubmit the Clarifications or revised Design and Drawings within 14 days thereafter**
- e. **IE does not object within 30days; Design and Drawings shall be considered deemed approved by IE**
- f. **Developer solely responsible for any defects and deficiency is Design**



ENGINEERING, PROCUREMENT & DRAWINGS

2. Construction and Commencement of Works

- a. **Developer shall mobilize resources within 30 days of the Compliance Date**
- b. **Developer shall commence the Construction Works within 60 days from the Compliance Date**
- c. **Developer shall construct, install and establish the Project after obtaining sanction to the building plans etc with necessary designs, plans and specifications from the proper municipal or other authority, at its own expenses.**
- d. **The Developer shall prepare and submit to the Independent Engineer and the IHM Society a monthly progress report, for the previous month, in the form and manner prescribed by the Independent Engineer.**
- e. **The Developer shall promptly carry out at its cost such further works as may be necessary to remove the defects and deficiencies observed by the Independent Engineer and ensure completion of construction of the Project in all respects in accordance with the provisions of this Agreement.**

Key Features of Joint Development Agreement



TESTING & COMMISSIONING

1. Project Completion

- a. Developer shall issue notice to Independent Engineer/IHM Society at least 30 (thirty) days before the likely completion of the construction of Project Facilities and within 30 days, the Independent Engineer shall issue a Provisional Certificate on successful completion of the Tests
- b. The Developer shall achieve Project Completion within 24 (twenty four) months from the Compliance Date
- c. If Project Completion is not achieved by the Scheduled Project Completion Date for any reason, the Developer shall, pay to the IHM Society damages for delay @ Rs 1,25,000 only per day for every day of delay or part thereof until such completion is achieved and the maximum period for such extension shall be six months.
- d. In the event that Project Completion does not occur within six months from the Scheduled Project Completion Date, the IHM Society shall be entitled to terminate this Agreement for a Developer Event of Default.

Key Features of Joint Development Agreement



TESTING & COMMISSIONING

2. Project Commissioning

- a. The Developer shall commence Operations of the Project Facilities only upon issuance of the Provisional Certificate or the Completion Certificate, as the case may be; provided also that the requisite affiliation/accreditation/recognition as necessary for starting courses at the hotel management institute have been granted by the concerned agencies and applicable permits for commencing operations of the Hotel are in place.
- b. It shall be mandatory for the Developer to commission and commence the Operations of the Project Facilities upon issuance of such certificate, affiliation/accreditation/recognition and applicable permits.
- c. Provided further the Operation of the Hotel can be commenced only after six months from date of start of the first academic session of the Institute of Hotel Management with prior written consent of the IHM Society.

Key Features of Joint Development Agreement



OPERATION AND MAINTENANCE

1. O&M Works

- a. **Developer shall undertake at its cost and risk the Operation & Maintenance of Project / Project Facilities either by itself or through O&M Contractors**
- b. **Incase, the Developer fails to meet operating performance as per guidelines of the affiliating/recognizing council, it shall be liable to pay liquidated damages @ Rs 1,25,000 Only per day for every day of delay till the time of achieving the standards or curing of breach, subject to maximum of Rs 2,50,00,000 only**
- c. **The IHM Society shall not be liable in any manner whatsoever to any Contractor/Person/Student/Administrative Staff/Lab Technicians relating to the Contractual Arrangements between the Developer and such Contractor/Person Student/Administrative Staff/Lab Technicians. The Developer shall indemnify and keep indemnified the IHM Society in this behalf.**



PROJECT MONITORING

1. Independent Engineer

- a. **Concession Authority shall appoint the Independent Engineer/Expert within 90 days of the signing of the Concession Agreement**
- b. **The Independent Engineer shall monitor the implementation of the Project, review and approve the Designs and Drawings, conduct on behalf of the IHM Society, the periodic verification of the progress in the construction, issue the Provisional and/or the Completion Certificate**
- c. **The Independent Engineer/Expert shall have no authority to relieve the Developer of any of its obligations or responsibilities during the Construction Period**
- d. **The tenure of Independent Engineer shall be from the date of appointment to the date of issuance of the construction completion Certificate.**

Key Features of Joint Development Agreement



PROJECT MONITORING

1. Independent Engineer

- e. **IHM Society may, after the end of the term of appointment of the Independent Engineer, from time to time, appoint Experts to assist it in monitoring the implementation of the Project and running of the Institute by the Developer and other persons for compliance with the provisions of this Agreement.**
- f. **The remuneration, cost and expenses of the Independent Engineer and the Experts shall be borne entirely by the Developer.**

Key Features of Joint Development Agreement



PROJECT MONITORING

2. Steering Committee

- a. **The steering committee shall be constituted by the IHM society which shall comprise of one representative from the IHM Society, one from the Department of Tourism, and one representative from the Developer. The representative of the Steering Committee shall be the Chairman of the Steering Committee.**
- b. **Similarly, the Chairman of the Steering Committee thus constituted shall automatically be the permanent invitee to the Board meeting of the Developer. The term of the permanent invitee shall be 3 years and shall be reappointed every three years.**



PROJECT MONITORING

3. Function of Steering Committee

- a. shall during the implementation period, review and monitor the implementation of the Project during the Term of Agreement, review Audit report, O&M report, Academic reports, etc and all all reports submitted by the Developer/Independent Engineer/Expert/other entity to the IHM Society or any Competent Authority
- b. review and verify the implementation of variations from the original approved Concept Design
- c. shall during the Term of Agreement, review Audit report, O&M report, Academic reports, etc and all reports submitted by the Developer upon request form IHM Society or the Steering Committee,
- d. To address any matter in relation with the development, implementation and operation of the Project Components.



FINANCING

3. Forms of Finances

- a. The Developer, agrees and undertakes to obtain financing for the Project in the form of equity, debt and other sources as it may deem necessary for implementing the Project.
- b. Developer shall not, without the prior written consent of the IHM Society, the grant or assign its rights, title or interest or create a Security Interest in favor of any person in respect of the Developer's rights in full or part.
- c. IHM Society shall assist the Developer as necessary and mutually agreeable, to enable the Developer to achieve Financial Closure.
- d. The Developer shall appoint, as its statutory auditors, a reputed firm of chartered accountants duly licensed to practice in India.
- e. All fees and expenses of the statutory auditors shall be borne by the Developer.
- f. Any claim or document provided by the Developer to the IHM Society shall be valid and effective only if certified by the Developer's statutory auditors.

Key Features of Joint Development Agreement



PAYMENTS TO IHM SOCIETY

1. Upfront Concession Fee

- a. **Upfront Concession Fee: Non refundable and Irrevocable amount Rs_____ (set forth in the Bidder's financial proposal) (amount payable by the Developer to the IHM Society prior to the execution of the Joint Development Agreement.)**

2. Annual Concession Fee

payable to the IHM Society for any year during the Operation Period shall be computed on the basis as mentioned below:

- (I) **5% of the Upfront Concession Fee (amount quoted by the Bidder in its financial proposal), which amount shall be increased every year at the rate of 5% per annum.**

Or

- (ii) **5% of gross annual revenue/sum total of User Charges from the Project, whichever is higher.**

Key Features of Joint Development Agreement



PAYMENTS TO IHM SOCIETY

3. Lease Rental

- a. In consideration of the lease of the Site and the rights appurtenant thereto in favour of the Developer, the Developer shall, pay Lease Rental to the IHM Society at the rate of Rs. 10,000/- (Rs. Ten Thousand) per acre per annum “on or prior to the execution of Project Site Lease Deed”
- b. One time advance payment for the term of the agreement on or before the signing of the Project Site Lease Deed



INSURANCES

1. Insurance Cover

- a. **Construction/builders'/contractors' all risk insurance during the Construction Period;**
- b. **Erection all risk policy during the Construction Period;**
- c. **comprehensive third party liability insurance including injury or death to personnel of the IHM Society and others who may enter the Project Site during the Term of Agreement;**
- d. **workmen's compensation insurance during the Term of Agreement;**
- e. **public liability insurance during the Term of Agreement;**
- f. **loss, damage or destruction of the Project Facilities/Project at replacement value or full market value (including fire, burglary, standard and special peril) during the Term of Agreement;**
- g. **the Developer's general liability arising under this Agreement during the Term of Agreement;**
- h. **any other insurance that may be necessary to protect the Developer, its employees and its assets (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (vii) during the Term of Agreement.**



FORCE MAJEURE

1. Non Political Events

- a. Acts of God or natural disasters.
- b. Radio active contamination, ionizing radiation.
- c. Epidemic, famine.
- d. An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, military action, nuclear blast.
- e. Any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Developer in any proceedings
- f. Strikes or boycotts or industrial action or any public agitation of any kind.
- g. Any event or circumstances of a nature analogous to any of the foregoing.



FORCE MAJEURE

2. Political Events

- a. Change in Law, other than any Tax laws.
- b. expropriation or compulsory acquisition by any Competent Authority of the Project or part thereof or any material assets or rights of the Developer; provided the same has not resulted from an act or default of the Developer or such person.
- c. Any unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause any Applicable Permit required by the Developer or any Contractor to perform their respective obligations.



FORCE MAJEURE

3. Notice, Period and Termination

- a. The Affected Party shall give notice to the other Party in writing of the occurrence of any of the Force Majeure Event ("the Notice") within 7 (seven) days after the Affected Party knew it
- b. Each Party shall bear its costs, if any, incurred as a consequence of the Force Majeure Event.
- c. If the Period of Force Majeure continues or is in the reasonable judgement of the Parties is likely to continue beyond a period of six months, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms.
- d. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the period of 120 days, be entitled to terminate the Agreement



EVENTS OF DEFAULT

3. Parties Rights, Consultation Notice and Remedial Process

- a. Upon the occurrence of the IHM Society's or Developer's Event of Default, the other party shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement.
- b. Either Party shall issue to the other Party a notice in writing specifying in reasonable detail the underlying Event of Default(s) and proposing consultation amongst the Parties and the Lenders to consider possible measures of curing or otherwise dealing with the underlying Event of Default (the "Consultation Notice").
- c. Within 90 days of issue of Consultation Notice by either Party, (the "Remedial Period") the Parties shall, in consultation with the Lenders, endeavour to arrive at an agreement as to the manner of rectifying or remedying the underlying Event of Default.



EVENTS OF DEFAULT

3. Remedial Process

- a. If the underlying event is a Developer's Event of Default, the Parties shall in consultation with the Lenders endeavour to arrive at an agreement as to one or more of the following measures and/or such other measures as may be considered appropriate by them in the attendant circumstances;
 - i. the change of management or control/ownership of the Developer;
 - ii. the replacement of the Developer by a new Developer ("Substitute Entity") on terms no less favorable than those contained in this Agreement, proposed by either of them or the Lenders and the specific terms and conditions of such replacement

Key Features of Joint Development Agreement



TERMINATION OF AGREEMENT

1. Termination Procedure.

- a. Either party can issue "Termination Notice" to the other party on account of a Force Majeure Event or on account of an Event of Default
- b. Termination Notice period is not less than 90 days and not more than 180 days
- c. Condition survey of the Project and Project assets by an Expert under IHM Society's supervision
- d. Transfer of Assets, Rights, Applicable Permits by the Developer at its cost to IHM Society

Key Features of Joint Development Agreement



COMPENSATION ON TERMINATION

1. Termination due to Force Majeure Events – Non Political Event.

- a. An amount equal to 90% of the Debt Due shall be payable to the Developer by the IHM Society and/or by the GOP for and on behalf of the IHM Society in the event of the termination of this Agreement is due to a Non-Political Force Majeure Event set forth in Section 18.1 (A) above. The IHM Society shall return the Performance Security provided there are no outstanding claims of the IHM Society on the Developer / Selected Bidder under this Agreement.

Key Features of Joint Development Agreement



COMPENSATION ON TERMINATION

1. Termination due to Force Majeure Events – Political Event.

- a. If the termination is due to a Political Force Majeure Event, set forth in Section 18.1 (B) above, the compensation payable by the GOP (for and on behalf of the IHM Society) to the Developer shall be,
 - i. After Operations Date: Debt Due plus 125% of the Equity subscribed and paid in cash and actually spend on the project
 - ii. During Construction Period: Debt Due plus 100% of the Equity subscribed and paid in cash and actually spend on the project

Key Features of Joint Development Agreement



COMPENSATION ON TERMINATION

2. Termination due to Developer Event of Default.

- a. during the Operations Period, the compensation payable by the GOP for and on behalf of the IHM Society to the Developer shall be 90% of Debt Due.
- b. The IHM Society shall forfeit, encash and appropriate the Performance Security as damages.

Key Features of Joint Development Agreement



COMPENSATION ON TERMINATION

3. Termination due to IHM Society Event of Default.

- a. During the construction period: shall be the aggregate of the Debt Due and 100% of the Equity subscribed and paid in cash and actually spend on the project LESS amounts if any due to the IHM Society from the Developer
- b. After Operations Date: shall be the aggregate of the Debt Due and 125% of the Equity subscribed and paid in cash and actually spend on the project LESS amounts if any due to the IHM Society from the Developer.
- c. The IHM Society shall return the Performance Security provided there are no outstanding claims of the IHM Society on the Developer/Selected Bidder under this Agreement

Key Features of Joint Development Agreement



LIABILITIES AND INDEMNIFICATION

1. Liability of the Developer

- a. the Developer shall be solely responsible for any loss of or damage to the Project/Project Facilities and the Project Assets, damage to environment, death or injury to person, and any other liabilities, damages, losses and reasonable cost and expenses (including legal costs) suffered by the IHM Society
- b. Developer shall be fully and solely liable for all works, contracts, dealings, and activities in relation to the development, design, financing, construction, maintenance and implementation of the Project
- c. Concessionaire shall indemnify IHM Society its members, managers, officers, employees, advisors and consultants against all claims and losses
- d. The provisions of Liabilities and Indemnification clause in the Concession Agreement shall survive the expiry or prior termination of the Concession Agreement

Key Features of Joint Development Agreement



INTELLECTUAL PROPERTY RIGHTS

- a. The developer accepts and agrees that the IHM Society shall be the absolute and exclusive owner and proprietor of "Proprietary Material"
- b. All Proprietary Material shall be clearly marked as such in capital letters and in bold face print.
- c. The IHM Society shall have the exclusive right to apply for/procure registration of the intellectual property rights at its cost with relevant competent authorities in India and abroad.
- d. The Developer and the IHM Society hereby grant to each other royalty-free, non-exclusive license to use all proprietary material owned by any of them or any of their respective employees, contractors, consultants or agents in connection with this Agreement

Key Features of Joint Development Agreement



DISPUTE RESOLUTION

1. Amicable Settlement

- a. Resolve within 30 days of receipt of notice or such longer period as may be mutually agreed by the Parties in writing from either of parties to other party

2. Arbitration

- a. the Dispute shall be settled by arbitration under the Arbitration and Conciliation Act, 1996.
- b. Panel of Three Members
- c. Place of Arbitration- Chandigarh
- d. The fees and expenses of arbitration shall be initially borne by respective Parties subject to determination by the arbitrators

Queries & Clarifications

Open House