Samsung, LADOL Feud: Mounting Concerns Threaten Nigeria's FDI

By Mohammed Yusuf

Background

In 2013, global shipbuilding giant, Samsung Heavy Industries Nigeria Limited (SHIN), was awarded a contract by Total Upstream Nigeria Limited (TUPNI) for the engineering, procurement, construction (EPC) and installation of $3.3 billion Floating Production Storage Offloading (FPSO) unit for the Egina oilfield in Oil Mining Lease (OML) 130 located at about 130 kilometres offshore.

Samsung set a new record in Nigerian content development when it locally fabricated six modules, or about 60,000 tonnes of equipment, out of the 18 modules, representing over 30 per cent of the main packages of the FPSO project.

However, as soon as SHIN won the contract to build the Egina FPSO and resolved its initial dispute with LADOL out-of-court, other oil industry operators expressed concerns about LADOL's capacity to host the Egina FPSO.

They began to expose the company's weaknesses, citing the absence of facilities to handle a project of such magnitude at the free zone.

A full-page advertorial carried by Sweet Crude Reports on page 45 of September 11, 2013 edition of The Guardian Newspaper was one of the bold attempts to expose the lack of infrastructure at the LADOL free zone and discouraged SHIN and Total from building the facility at the zone.

The advert, sponsored by the Nigerian Local Content Group (NLCG), and titled: "Calculated Attempt to Mislead The World over Egina FPSO Project: A Rejoinder," was in response to a previous advertorial published on the Tuesday, August 20 edition of BusinessDay Newspaper and few other national dailies by a group, which identified itself as Nigerian Content Advocacy Group (NCAG).

NCAG, which was promoted by a popular maritime journalist, had claimed that LADOL was a $500 million facility that was well-equipped to host the fabrication and integration yard.

But, NLCG faulted this claim in The Guardian advert and supported its position with the picture of LADOL zone, where it portrayed the zone as an empty land mass without visible investment.

The NLCG advertorial listed its alleged inadequacies of LADOL and followed with some posers.

“(1) LADOL is a $500 million company?

“Would the NCAG be kind enough to furnish the public with what facilities LADOL owns that constitute this amount? Pictures don’t lie. If hundreds of millions have been spent expanding facilities at LADOL, let us have a breakdown.”

“2. It is not true that LADOL is the largest rig repair facility in Nigeria. We are aware that there are other facilities in Port Harcourt, Warri, Lagos and Calabar, with more up-to-date equipment.

Perhaps, the NCAG and LADOL may wish to furnish the public with details of the equipment, personnel, rig repairs undertaken and dates of same.

“3. Claims that LADOL has created over 1,000 jobs are rather far-fetched. We, therefore, urge NCAG to enlighten the public better – where and how did LADOL create these jobs?

For a company without a fabrication yard, it stands to reason that there is a deliberate attempt to mislead the public,” NLCG explained in The Guardian advertorial.

Also another group, which identified itself as Professional Integrity Group, placed a full-page advert on page 55 of Wednesday, November 27, 2013 edition of The Guardian newspaper, where it made mind-boggling revelations about the apparent incompetence of LADOL to host the Egina FPSO fabrication yard due to lack of facilities at the zone.

Birth of SHI-MCI FZE JV

Despite the attempts to discourage SHIN from making the investment at LADOL, the global giant remained undaunted and kept faith with its local partner.

Even the last-minute attempt by the past administration to relocate the yard to Bayelsa State immediately after the 2015 presidential election was successfully resisted by SHIN.

To construct a fabrication and integration facility where the FPSO would be integrated on arrival to Nigeria from Samsung’s Goeje Shipyard in South Korea, SHIN and LADOL entered into an agreement to form a joint venture entity called SHI-MCI FZE.

This new entity built a fabrication and integration yard in a virgin land mass at LADOL free zone in Lagos.

SHIN owns 70 per cent of the entity, while LADOL owns 30 per cent, according to the shareholding structure.

Global Resources Management Limited (GRML), a subsidiary of LADOL, granted SHI-MCI FZE, the sub-lease of the virgin land where the integration facility was built.

After the $3.3 billion FPSO arrived at the SHI-MCI FZE quayside in LADOL free zone in Lagos in January 2018, it was integrated locally by SHIN Limited before it sailed away on Egina on Sunday, August 26, 2018 to the deep-water oil field.

Unprecedented achievement tainted with controversy

But the celebration of this unprecedented achievement in Nigeria's oil and gas industry has been tainted by needless controversy, which could scare foreign investors who may fear about the safety of their investments in Nigeria.

Indeed, the ownership of the fabrication and integration yard built by SHI-MCI FZE at the LADOL free zone has become subject of controversy between SHI and LADOL.

Apparently angered by the refusal of SHI to pay one per cent levy amounting to $33 million imposed as Free-on-Board (FOB) charge by GRML, the latter, which is a subsidiary of LADOL, terminated the sub-lease granted to SHI-MCI FZE in a letter dated September 4, 2018.

The letter also directed SHI to remove all the company's fixed assets in the yard within three months, which was an indication that LADOL recognized SHI's ownership of the yard.

SHI was contending with how to contest LADOL's decision in court in view of the difficult challenges associated with the evacuation of the fixed assets.

The evacuation would require the dredging of Lagos lagoon and spending millions of dollars.

But, the Nigerian company apparently reversed itself by sacking SHI workers from the yard, instead of allowing the company to remove the assets within three months as directed in the termination letter.

It is however, interesting to note that LADOL is not laying claim to the ownership of the facility, but is insisting it is part of the Nigerian Content commitment by Total and its OML 130 partners.

LADOL was said to have relied on a statement by the Managing Director of Total Upstream Nigeria Limited (TUPNI), Nicolaz Terraz, on February 14, 2018 before the Senate's Ad-Hoc Committee investigating the local content elements of Egina project.

Mr Terraz had told the committee: "We would like to clarify that TUPNI's contract with SHIN is a lump sum contract for the engineering, procurement, construction, supply, construction and commissioning of a FPSO.

"The said lump sum is split into work packages solely for progress weighing and effective project management purposes. A portion of the lump sum was assigned for the development and upgrade of the yard facilities for in-country fabrication and integration solely for the aforesaid purposes."

With this letter, LADOL concluded the upgrade of the facilities at LADOL was included in the Egina FPSO contract and that Total paid $214 million for that purpose.

For this reason, LADOL concluded SHI should not lay claim to a facility for which it was paid to build.

But most oil and gas industry operators have argued, if LADOL's claim is true, it is the Nigerian government, through the various agencies - Nigerian Ports Authority (NPA), Nigerian National Petroleum Corporation (NNPC), Department of Petroleum Resources (DPR) and the Nigerian Content Development and Monitoring Board (NCDMB) - that should lay claim to the yard and secure the asset of the federal government.

These operators also insisted no facilities had even existed in LADOL to be upgraded as claimed by the parties as the zone was a virgin land mass before the disputed yard was built.

SHI has also disputed LADOL's claim, saying it is untrue Total paid it for the upgrade of any facilities.

"LADOL keeps misleading the public based on its own allegations about the EPC contract terms and conditions of Egina FPSO project, where LADOL has no authority to access the details," SHI said.

Indeed, it is difficult for LADOL to have the details of the contracts between Total and SHI, because it was not the contractor to the French oil giant, but merely served as a base for the execution of certain scopes of the contract.

SHI has insisted Total did not make any investment.

Interestingly, since the controversy started, Total has not disputed SHI's claim.

SHIN has acknowledged Total's managing director made the February 14, 2018 statement which LADOL relies on, but has also added the French oil major has since clarified its position on the ownership of the disputed asset.

According to SHI, during the second Senate hearing, Total issued a letter dated February 21, 2018, clarifying it (Total) did not make any investment in the development of the fabrication yard.

Part of Total's letter reads: "In this regards, company hereby confirms that the said amount assigned for the above work unit in the contract, has been apportioned from the contract lump sum for the sole purpose of progress measurement for effective project management.

"Further to the above, this amount shall not be construed as an investment by the company in the development of SHI-MCI worksite, given that this development was to be undertaken by a joint venture and the entire investment in the new fabrication yard will be financed in the ratio of equity and loan from local and international bank to 50 per cent and 50 per cent, respectively," as contained in the contractor's Nigerian Content plan.

LADOL's Grouse and mounting concerns

LADOL has said it was angered by the fact that its equity was reduced to 30 per cent from 50 per cent when it could not provide its 50 per cent share of the $300 million used in building the yard.

So, when Total issued the February 14 statement, LADOL concluded SHI should not have asked it to contribute money for building the yard since it was Total that paid SHI to build the yard.

The Nigeria Exporting Processing Zone Authority (NEPZA) was worried by the apparent negative impact of this face-off on the federal government's efforts to improve the country's image in the international community and boost Ease of Doing Business in the country.

In a letter dated September 14, 2018 with reference number NEPZA/LS/ZF/011.VOL. VI, NEPZA directed LADOL to renew the operating license of SHI-MCI FZE.

In the letter, signed by the Managing Director of NEPZA, Emmanuel Jime, the agency stated it derived its powers to direct LADOL to renew the license for the period under review 2018/2019 from the delegated powers under Section 41 of the LADOL Free Zone Regulations 2016.

Also, relying on Section 20 (a) Part 5 of the Free Zone Regulation 2004, the agency set up a five-member committee to investigate the allegations made by LADOL against SHI but the Nigerian company ignored NEPZA's directive and carried on as if all government agencies are under its supervision.

There are strong indications that in further disregard to federal government's regulatory agencies, LADOL is again planning to terminate SHIN's operating license and the land lease that has been paid for upfront till 2019 without any directive or collaboration from the Nigerian Ports Authority (NPA).

The SHI-LADOL face-off has impacted negatively on Nigeria's ease of doing business with the country's ranking dropping drastically as foreign investors watch the unfolding drama.

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