

Ref.: SPITPL/P-I/NHAI/2021/6360**Date: -10.08.2021**

To,

The Project Director, National Highway Authority of India, Panvel Chinchpada Road, Panvel- 410 206	The Team Leader, M/s Yongma Engineering Co. Ltd. in association with Feedback Infra Pvt Ltd. Panvel, Raigad – 410 206
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Sub: Four-Laning of Panvel-Indapur Section of NH-17 from Km 0+000 to 84+000 in the State of Maharashtra under NHDP Phase-III on BOT Basis (Package No.-NHDP-III/DL4/05):

Ref: 1. Your Letter No. NHAI/BOT//1 1012/62/Conc./2005/0098 dated 16.10.2020 regarding intention to issue Termination Notice for Concessionaire's default under Clause 37.1.2 of Concession Agreement

2. Reply dated 31.10.2020 to your Notice dated 16.10.2020

3. Show Cause Notice bearing No.PIP/IE/SPITPL/7305 dated 17.07.2021 issued by Yongma Engineering Co. Ltd. in Association with Feedback Infra Pvt. Ltd.

Dear Sir,

We, Supreme Panvel Indapur Tollways Private Limited are in receipt of your Show Cause Notice bearing reference No.PIP/IE/SPITPL/2021/7305 dated 17th July 2021. We do not accept or admit any of the contentions/allegations/averments made by you and the contents thereof are denied by us in totality and nothing should be deemed to have been admitted / accepted by us for the want of specific denial.

1. It is pertinent to mention here that the said letter is nothing but merely a reproduction of the averments / allegations mentioned in First Notice as mentioned at Sr. No.1 above.

2. We would further like to have your kind appreciation to the fact that the First Notice had been adequately replied by us by placing on record the correct and factual data vide our letter bearing reference No.2 above.

**SUPREME PANVEL INDAPUR TOLLWAYS PRIVATE LIMITED**

510, 5th Floor, ABW Tower, IFFCO Chok MG Road, Gurgaon, Gurgaon- 122 002.

Tel.: + 91-124-4221403-10 Tele Fax: + 91-124-4221401-02

CIN: U45400HR2010PTC043915

3. The contentions/averments mentioned in our First Reply are not reproduced herein below for the sake of brevity and the First Reply is deemed to be part of this letter (summary of our earlier replies is enclosed at Annexure-1 for quick reference).

4. It is specifically made clear that our proposals mentioned below in the succeeding paras are subject to the condition that the provisions/clauses contained in the Article 37 of the Concession Agreement shall not be invoked by NHAI, in any manner whatsoever. Furthermore no coercive action shall be taken by NHAI against us.

5. Subject to above and without prejudice as per Suspension Clause 36 of Concession Agreement, in the interest of early completion of project and to achieve Provisional Completion, we have no objection to Authority's suggestion for invoking clause 36.1, 36.2 & 36.3 only and take following actions: -

a) NHAI may invoke provisions of Article 36.1, 36.2 & 36.3 of the Concession Agreement only (suspension of concession) with a view to get the balance work completed to achieve the Provisional Completion for the project for a maximum period of 180 days from the date of invocation of such clauses.

b) During the suspension period of 180 days as invoked above, NHAI should get balance work done from the EPC /Sub-contractor as appointed by us for achieving PCOD. The payments to such EPC/sub-contractors engaged by us and consequently working on-going (for road works, bridge works, plantation, signage, road furniture and ETC tolling infrastructure and tolling operations) can be done from existing escrow agreement directly by NHAI as per the EPC/sub-contracting agreement, under prior intimation to us.

c) Prior to the completion of 180 days of suspension period, the suspension shall stand revoked automatically and the Authority shall restore back the project to the Concessionaire. Further, the rights of the concessionaire shall stand revived in accordance with the original Concession Agreement, as were existing prior to the invocation of suspension. Furthermore, in no case there shall be deemed Termination, as provided in Article 36.5 of the Concession Agreement.

d) NHAI should ensure that payment of all EPC/sub-contractors bills for achieving provisional completion, are released out of toll revenue first.



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e) At the time of PCOD proposal a punch list shall be prepared and only the same shall be completed within 90 days from PCOD date.

f) Apart from punch list rest all works of entire project length to achieve COD shall be completed within reasonable time from the revenue as generated from toll collections as per Tripartite Agreement dated 9th November 2016 only after utilizing the funds for payment of all EPC/sub-contractors bills to achieve PCOD works.

g) In case lenders provide additional funds of Rs.40 crores as requested by us or put thru resources of Supreme Group, the same shall be utilised to complete the entire Project to achieve COD.

h) To the extent above, the provisions contained in Article 36.1, 36.2, 36.3, and 36.5 of the Concession Agreement stand modified.

6. Considering the above suggestion and long-term relation with Authority we request you to inform your decision regarding Suspension to achieve Provisional Completion in the interest of Authority, lenders and Concessionaire.

Thanking you & looking forward to an early and favourable response at your end.

Yours truly,

For Supreme Panvel Indapur Tollways Pvt. Ltd.


Authorised Signatory.



Enclosures:

1. Annexure - 1 referred as above.
2. Reply dated 31.10.2020 to your Notice dated 16.10.2020 as in ref. no.2 as above.

cc:

1. The Chief General Manager, (Tech), RO, Mumbai.
2. The AGM, State Bank of India, SARG, Corporate Centre, 21st Floor, Maker Towers E, Cuffe Parade, Mumbai- 400 005

Annexure-1**Summary of Contentions/averments made by Concessionaire through various correspondence on notices issued by Authority.**

- 1) The reasons for delay and latches due to which the project PCOD could not be achieved is well documented and placed before the authority into number of correspondences addressed by the Company to the Authority, which is a matter of record. The reasons for not achieving PCOD and shortage of funds is something which is a creation of various reasons not completely attributable to the Company including but not limited to acquisition of land which is one of the major reasons.
- 2) Pursuant to a Circular dated 09.06.2015 and as a matter of policy decision of the NHAI to revive languishing projects which were stuck up due to land acquisition issues, NHAI after deliberation recommended for funds infusion of Rs.540 crores, looking into factors of non-availability of forest land in eco-sensitive zone area of Karnala bird sanctuary

We would also further like to state and submit that the facts and circumstances under which one time fund infusion was approved by NHAI is something which is admission of the fact that the viability of the project to respond & sustain was badly eroded.

- 3) Accordingly, Tri-partite Agreement was entered upon between the Lenders, Concessionaire and NHAI on 09.11.2016 and specified completion date as 31st March, 2018. 50% project work was achieved on 07.04.2017 and, the funding under OTFIS scheme was availed.

However, land as made available even by this Revised Completion Date as per OTFIS Agreement i.e. 31st March, 2018 was only 75.70 km as against 84.6 km required.

Thus, undoubtedly land has been one of the major reasons for prolongation of the work, leading to time and cost overrun and overheads and having cascading and crippling effect on the concessionaire.

- 4) On the basis of the facts which were not considered in the cost of original OTFIS and escalation thereof due to delay, the requirement of Additional Funding arose.
- 5) We would like to further draw your attention to the fact that the said project is under private public partnership model wherein the infrastructure facility is to be created by way of entrepreneurs, equity and debt as raised from public financial institutions and banks.

The company has already put in the equity as it was anticipated at the time of bidding for the said project and have demonstrated their ability to raise finances in the past.

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It is due to the delay and additional works that were necessitated as per site conditions and other reasons that the project cost has escalated too far beyond original estimated project cost.

- 6) The funding as required now for project completion is additional to the original estimated plans and OTFIS estimate.

OTFIS funds as on today stand fully utilized and the Balance cost of the work to achieve PCOD stands at about Rs.40 crores which compromises of Road work, Bridges, Toll booths & Toll equipment.

- 7) Also our bankers have now expressed unwillingness to infuse further funds of Rs.40 crore to achieve PCOD and due to which completion still looks uncertain.

As you are aware the banking system in India is governed by the principles laid down by Reserve Bank of India and it is due to restrictions on to the lenders by the guiding principles that the bankers are finding it difficult to fund the additional cost requirement of the project. This is something which is beyond the anticipation of any prudent businessman and is by way of extraordinary contingency which could not be planned.

- 8) Without prejudice to and reserving all our rights and contentions and not deeming anything contrary to same; we are more than willing to support the Authority in the larger interest of all the stakeholders.

- 9) We would like to further state and submit that achievement of PCOD for the projects is also of the upmost priority to us and we are open to any discussion / suggestion as may be mutually agreed between Company and NHAI.


