



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(सड़क परिवहन और राजमार्ग मंत्रालय)

National Highways Authority of India

(Ministry of Road Transport and Highways)

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NHAI/BOT/11012/62/Conc./2005/10098

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Date: 16.10.2020

To

The Managing Director,
Supreme Panvel - Indapur Tollways Pvt. Ltd.,
Supreme City, Hiranandani Complex,
Powai, Mumbai - 400076. Maharashtra.

(Kind Attn.: Mr. Vikram Sharma)

Sub: Four laning of Panvel-Indapur Section of NH-17 from km 0.00 to km 84.00 under NHDP Phase III on BOT Basis on design, build, finance, operate and transfer (DBFOT) pattern in the State of Maharashtra-Intention to Issue Termination Notice for Concessionaire's Default under Clause 37.1.2 of Concession Agreement reg.

Ref: (1) Concession Agreement dt. 21-01-2011
(2) Tripartite Agreement dt.09-11-2016
(3) Various OTFIS Meetings held to Review progress
(4) IE's Letter No. PIP/IE/SPITPL/2015/3515 dt. 05-11-2015
(5) IE's Letter No. PIP/IE/NHAI/2015/3564 dt. 24-11-2015
(6) NHAI's Letter No. NHAI/PIU/Panvel/P-I/NH-17/2015/1911 dt. 31-11-2015
(7) NHAI's Letter No. NHAI/RO/MUM/BOT/NH-17/P-I/Termination/2015/1874dt 07-12-2015
(8) IE's Letter No. PIP/IE/SPITPL/2017/4935 dt. 05-09-2017
(9) IE's Letter No. PIP/IE/SPITPL/2017/5001 dt. 17-10-2017
(10) IE's Letter No. PIP/IE/SPITPL/2017/5013 dt. 24-10-2017
(11) IE's Letter No. PIP/IE/SPITPL/2017/5014 dt. 25-10-2017
(12) IE's Letter No. PIP/IE/SPITPL/2017/5037 dt. 08-11-2017
(13) NHAI's Letter No. NHAI/PIU-Panvel/Concessionaire/2017/2355 dt 09-11-2017
(14) IE's Letter No. PIP/IE/NHAI/2020/6829 dt. 01-10-2020

Sir,

For the reasons and grounds stated hereinafter in the succeeding paras, undersigned on behalf of the National Highways Authority of India (hereinafter "NHAI" or the Authority) serves the notice of intention to terminate the Concession Agreement (CA or Concession Agreement) in terms of clause 37.1.2 of CA.

1. This is submitted that NHAI had entered into a Concession Agreement/CA on 21-01-2011 with M/s Supreme Panvel-Indapur Tollways Pvt. Ltd. (hereinafter referred to as the "Concessionaire") for the Project Four Laning of Panvel-Indapur section of NH-17 (now, NH-66) from Km 0.00 to 84.00 in the state of Maharashtra under NHDP Phase III on BOT Basis (Package No NHDP-III/DL4/05) for a Concession Period of 21 years (including construction period of 910 days).

2. It is noteworthy that as per the terms of the Concession Agreement, the Concessionaire, at its own cost and expense, is required to procure, finance and undertake the design, engineering, procurement, construction, operation and maintenance of the Project Highway and also *inter alia* observe, fulfil, comply with and perform the following obligations:

2.1 Comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under the Concession Agreement [as per Clause 5.1.2 of the Concession Agreement];

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2.2 Not to do or omit to do any act, deed or thing which may in any manner be violated of any of the provisions of the Concession Agreement [as per Clause 5.1.4(g) of the Concession Agreement];

2.3 Maintain highway, at its cost, the existing lane(s) of the Project Highway so that the traffic worthiness and safety thereof are at no time materially inferior as compared to its condition 7 (seven) days prior to the date of the Concession Agreement, and shall undertake the necessary repair and maintenance works for this purpose [as per Clause 12.2 of the Concession Agreement];

2.4 Submit the drawings of the Project Highway in consonance with Schedule H and Clause 12.3 of the Concession Agreement;

2.5 Construct the Project Highway in accordance with the Project Completion Schedule set forth in Schedule-G (Original and Amended);

2.6 Comply with the safety requirements set forth in Schedule-L and Clause 18 of the Concession Agreement.

2.7 Reimburse one-half of remuneration, cost and expenses of the Independent Engineer to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority as per Clause 23.3 of the Concession Agreement.

3. Further various Representations and Warranties made by the Concessionaire, as a basis of Execution of Concession Agreement, referring Clause 7.1 of Concession Agreement, included inter alia the following:

(a) Actions under Applicable Laws for Execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement.

(b) Fulfilling financial standing and capacity to undertake the Project in accordance with the terms of this Agreement.

4. It is also crucial to note down that in accordance with the terms of the Concession Agreement, the parties mutually agreed for 19-12-2011 as the Appointed Date which as per the terms of the Concession Agreement was deemed to be the date of commencement of Concession Period and also the date of commencement of the Construction. This said Construction shall be completed as mentioned in Schedule-G of the Concession Agreement within the timelines stipulated therein. The total Construction Period for the Project as envisaged under Schedule G of the Concession Agreement was a period of 910 days from the Appointed Date and accordingly project completion date works out to be 16-06-2014 in the present case, implying *inter alia* that on or before the said period, the Concessionaire was required to complete the construction of Four Lane of the Project Highway in accordance with the terms of the Concession Agreement, breach of which entitles the Authority to claim damages under Clause 12.4.2, Clause 35.1, and other related provisions of the Concession Agreement, enforce the Performance Security as also terminate the Concession Agreement and/or pursue other rights and remedies available to the Authority under the Concession Agreement and Applicable Law.

5. The following table lists the facts which clearly demonstrate that the progress of the work had not been as per the required and agreed standard and pace from the beginning of the Project:

Project Milestone	Dates as per CA	Revised dates as approved by NHAI before OTFIS	Revised dates as approved by NHAI after OTFIS
Milestone-I (Physical progress not less than 25 % and expended not less than 25% of the total capital cost)	19-12-2012	01-05-2013	Achieved with delay of 135 days
Milestone-II (Physical progress not less than 65 % and expended not less	19-12-2013	31-10-2015	

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than 65% of the total capital cost)			
Four-Laning Scheduled Completion Date	16-06-2014	Completion date was yet to be revised by NHAI. But, work was stopped and even MS-II was not achieved due to financial crunch faced by the Concessionaire.	31.03.2018

5. It is unfortunate to note that even on 31-10-2016; only 43.31 % physical progress was achieved clearly evident of the fact that the Concessionaire has miserably failed in his obligations to complete the Project within the stipulated time period. Also, the Concessionaire failed to adhere to its various obligations including but not limited to achieving progress, maintaining the existing road in traffic-worthy conditions, carrying out necessary repair and maintenance works.

6. It is a matter of record that in view of liquidity issue and inability of shareholders of the Concessionaire to contribute funds towards Equity in a timely manner, the Concessionaire approached NHAI for availing NHAI's One Time Fund Infusion (OTFIS) for completion of the Project, pursuant to which NHAI found the proposal to be eligible for OTFIS and conveyed its concurrence for the same which inter alia stipulates One Time Fund Infusion by NHAI up to Rs.540 Cr. less any balance amounts left from the Undisbursed Amount after physical completion of 50% of the stretch of the Project Highway. Tripartite Agreement for One Time Fund Infusion (OTFIS) was signed between NHAI, State Bank of India (As Lender's representative and Escrow bank) and Concessionaire on 09-11-2016 to revive the Project.

7. Keeping in view the unavoidable issues in handing over of land by the Authority and the public interest involved in the project, it considered the request of Concessionaire and agreed that as per Tripartite Agreement for OTFIS, the Authority shall upon completion of development of at least 50% of the Project Highway, extend the Concession Period by 1095 days thereby extending the time period of Concession. Signing & acceptance of this Agreement by NHAI & Concessionaire had nullified all the concurrent defaults of NHAI & Concessionaire at that point of time. However, the following points out at the persistent failure of the Concessionaire to abide by the Tripartite Agreement as well:

7.1 *The Concessionaire had accepted, agreed and represented that it requires an amount of Rs.540 Cr. to complete the balance work. Senior Lenders provided Funds to the Concessionaire to the extent of the balance left under the un-disbursed amount to enable the Concessionaire to achieve physical completion of construction of 50 % of the Protect highway. Till the principal amount outstanding under the NHAI OTFIS facility are prepared or received, they shall all the time carry an interest equal to 2 % above the Bank rate of RBI. Concessionaire had undertaken to complete the balance work of developing the Project highway by 31-03-2018. However, Concessionaire again failed to complete the works by March 31st 2018, though Milestone-2 (for 65% physical progress) was achieved. However, work is still incomplete even on 30.09.2020 and the physical progress is only 85.13%.*

7.2 *There is no denying that the Concessionaire had achieved 50% physical progress on 07-04-2017 and accordingly, the One Time Fund Infusion started.*

7.3 *It is important to highlight that as per tripartite agreement "Clause No. 4.1", Concessionaire has to undertake balance work of the project highway and it shall be completed by 31st March 2018 (in stretches where land made available to them). As per IE's assessment, 81.32 km of land was made available to the Concessionaire as on 31-03-2018. However, Concessionaire could complete only 38.54 Km of DBM and 26.15 Km of BC up to 31st March 2018. As on date i.e. 30.09.2020, 59.84 km of DBM and 49.38 km BC is completed. This clearly establishes that slow progress and Concessionaire's lackadaisical approach towards a project of public importance is the main reason for the delay in the completion of the project. Ultimately, Completion of Project could not be achieved by 31st March 2018.*

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8. It is also a matter of record that the Concessionaire vide their letter no. SPITL/P-IE/2020/6128 dated 04.05.2020 requested for additional funding amounting to Rs.230 Cr. from NHAI even though as per Tripartite Agreement "Clause No. 4.2", Concessionaire agreed and undertook that it will arrange for the balance amount of the balance project cost (i.e. Amounts over and above the amounts disbursed under the NHAI's OTFIS facility and the balance of the Undisbursed amount) from their own resources but Concessionaire failed to arrange the same. This defiance of agreement and the undertaking by the Concessionaire also has adversely affected the completion.

9. Forasmuch as, according to the CA, provisional COD after 75 % of project length completion can be declared. Concessionaire did not utilize the above provision due to poor planning and non-completion of work. Even for 75% completion, only 63.45 km was required to be completed. ***In fact, Concessionaire has not completed the minimum required length for PCOD, till date.***

10. Moreover, Concessionaire is still struggling to complete highway work in Ch. 64+300 to Ch. 66+000 (SukeliKhind area) and construction of Canal bridge at Ch. 67+878 and RE wall work at Khamb, Talavali and Ratwad where land was made available to them long back. It is also noted that construction of Kundalika and Mahisdhara Bridges started after persuasion and intervention of NHAI. This is due to concessionaire's financial constraint and poor performance of EPC contractor which resulted in delay in taking up the work. IE has also analyzed the progress on structures and observed that so far approx. only 85% progress is achieved on structures. Also, it is observed that progress on minor bridges at Ch. 72+250 and 68+878 is very slow. It is further noted that RE wall work for Ch. 42+300 to 84+600 is almost on standstill mode since last one year. Though some works just started in between 42+300 to 64+300, they too do not show appreciable progress so that the target of project completion can be achieved.

11. The details of regular OTFIS review meetings that were held on monthly basis to review the progress of works is as follows and it clearly points out towards careless approach of the Concessionaire regarding the project completion on time:

Sr. No	Date of OTFIS Meeting	Issues discussed and deliberated
1	03.07.2017	Concessionaire could achieve only 50% of the committed targets during the months of April, May and June 2017.
2	11.08.2017	Concessionaire could not achieve the committed targets and was asked to submit revised work program.
	08.09.2017	Due to heavy rains in August, 17 no substantial works could be done.
	16.10.2017	Concessionaire could not achieve the committed targets during April to September '17 and the progress of works was extremely poor in section-2 (Ch. 38+000 to 84+600). Concessionaire was advised to either deploy sufficient resources immediately or replace the EPC agency in section-2. Further, the Committee observed that despite the direction given by the Committee, the Concessionaire has failed to achieve the targeted progress and directed IE to issue one month cure period notice to the Concessionaire considering previous two months deliberation in OTFIS meetings as two months' notice period. Accordingly, Independent Engineer has issued Cure Period Notice (Letter No. PIP/IE/SPITPL/2017/5013) to the Concessionaire on 24-10-2017.
	14.11.2017	Concessionaire assured that material supply will be expedited with Bank Guarantee of Rs.4 Cr., new EPCY agency M/s R M Kathore will be mobilized to do the works. Concessionaire could not adhere to this assurance.
	12.12.2017	It was noted that the work progress in section-2 was almost nil due to insufficient deployment of manpower, machineries and material. Further, the
	01.01.2018	Committee observed that there is no authorized representative of
	06.02.2018	Concessionaire available for the last 3-4 months and the Concessionaire is
	13.03.2018	not showing any interest in the Project as none of the commitments / assurances of previous review meetings were fulfilled by the Concessionaire
	09.04.2018	It was noted that the target dates given by EPC agency in section-1 are

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		slipping and that the progress of section-2 is still not satisfactory due to very poor deployment of manpower, machineries and material. Concessionaire submitted that M/s Jaihind Projects Ltd. was appointed as EPC agency for section-2. But, Concessionaire could not adhere to this.
	04.05.2018 to 14.08.2020	The EPC Contractor of section-1 could not achieve all the committed targets and in section-2 the poor progress status continued.

12. Even though the above stated facts and instances are enough evidence to prove that the Concessionaire failed miserably in performing its obligations to complete the Project within the stipulated time period and to comply with the provisions of OTFIS Agreement for completion of Project Works, it is also important to present the financial progress during the OTFIS period as under further stressing on Concessionaire's carelessness and lack of interest in the project:

Month	Scheduled Amount (Rs. In Crores)	Work Done (Rs. In Crores)			Physical Progress during the Month (%)	Cumulative Physical Progress (%)
		Ch. 0 to 38.000	Ch. 38.000 to Ch. 84.600	Total		
Up to March '17						49.40%
April '17	52.00	21.16	8.08	29.24	2.33%	51.73 %
May '17	54.89	20.87	1.34	22.21	2.28%	54.01 %
June '17	28.48	9.86	2.64	12.50	1.24%	55.25 %
July '17	8.77	2.46	0.92	3.38	0.85%	56.10 %
August '17	9.46	4.54	1.58	6.12	0.50%	56.60 %
Sept '17	30.24	5.23	0.51	5.74	0.52%	57.12 %
October '17	61.17	7.65	0.18	7.83	0.84%	57.96 %
November '17	61.29	16.77	0.00	16.77	1.67%	59.63%
December '17	60.90	18.98	0.00	18.98	2.34%	61.97%
January '18	61.56	19.82	0.75	20.57	1.23%	63.20%
February '18	56.54	28.07	1.57	29.64	1.50%	64.70%
March '18	13.30	24.53	0.27	24.80	1.12%	65.82%
April '18	21.08	20.74	0.46	21.20	3.12%	68.94%
May '18	23.33	20.47	2.75	23.22	1.44%	70.38%
June '18	15.93	9.84	1.20	11.04	0.74%	71.12%
July '18	6.84	2.93	0.21	3.14	0.23%	71.35%
August '18		3.30	0.43	3.73	0.27%	71.62%
Sept '18		4.12	0.12	4.24	0.07%	71.69%
October '18		5.83	0.12	5.95	0.14%	71.83%
November '18		10.69	1.18	11.87	0.27%	72.10%
December '18		12.37	2.07	14.44	0.46%	72.56%
January '19		11.33	2.47	13.80	0.27%	72.83%
February '19		9.94	1.23	11.17	0.34%	73.17%
March '19		8.67	0.75	9.43	1.16%	74.33%
April '19		10.66	0.89	11.55	0.54%	74.87%
May '19		19.19	0.67	19.86	1.27%	76.14%
June '19		12.71	1.41	14.12	1.41%	77.55%
July '19		0.86	0.11	0.97	0.02%	77.57%
August '19		2.42	0.04	2.46	0.02%	77.59%
Sept '19		1.53	0.11	1.64	0.01%	77.60%
October '19	2.76	2.73	0.00	2.73	0.04%	77.64%
November '19	9.14	9.14	0.36	9.50	0.76%	78.40%
December '19	16.82	15.51	0.87	16.38	0.61%	79.01%
January '20	29.13	12.70	1.56	14.26	1.19%	80.20%
February '20	46.43	18.50	2.57	21.07	1.13%	81.33%
March '20	83.38	11.07	2.687	13.76	1.01%	82.34%
April '20	79.83	8.06	8.11	16.17	1.04%	83.38%
May '20	56.60	13.90	4.64	18.54	1.11%	84.49%
June '20	31.59	13.25	1.30	14.55	0.36%	84.85%
July '20	0.82	2.64	0.98	3.62	0.16%	85.01%
August '20	1.70	2.00	0.85	2.85	0.07%	85.08%
Sept '20	5.88	2.40	0.95	3.35	0.05%	85.13%

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13. To avoid any ambiguity or confusion regarding fulfillment of obligations by Concessionaire under the OTFIS Tripartite Agreement, following are detailed out:

13.1 As per the Construction Program, integral part of Tripartite Agreement, the Concessionaire shall have to complete the balance work including all structures etc. by 31-03-2018. The physical progress achieved from April 2017 (after signing of tripartite agreement in Nov 2016) till date is 35.13% against targeted 50%, making cumulative progress as 85.13 % after lapse of 76.6 months after scheduled completion date. However, this is not fulfilling the requirements for Provisional Completion. The total value of Work carried out under OTFIS Funding as on date is amounting to Rs.504.86 Cr.

13.2 Despite the clear and unequivocal terms of the Concession Agreement and repeated reminders by the Authority and Independent Engineer, the Concessionaire miserably failed to perform its obligations under the Concession Agreement, causing inordinate delay in completion of the Project as per Clause 12.4 of the Concession Agreement thereby causing irreparable loss to the Authority besides exposing the road-users at risk.

14. It was observed that there are umpteen no. of instances when Concessionaire failed to undertake the maintenance works of the Project highway under Clause 12.2 of Concession Agreement. As such, Authority/IE has carried out the works at risk and cost of Concessionaire as per following details:

Sr. No.	Description	Risk & Cost Works (in cr.)
1	Maintenance work of road stretches	38.18
2	Incident Management Works	11.79
3	Rectification works	26.59
	Total	76.56

14.1 Because of the Concessionaire's misrepresentation and breach in fulfillment of various obligations and undertakings, the interest of NHAI has been seriously prejudiced besides bringing disrepute to the Authority. The Concessionaire's act of omission and commission have led to deterioration of the National Highway causing anguish amongst the general public as also exposing the road-users to severe risk of life.

14.2 Due to continued failure on part of the Concessionaire, the Authority was under severe pressure from general public, local administration to carry out the maintenance works through third party at the risk and cost of the Concessionaire.

14.3 It is also noted that construction of Kundalika and Mahisdhara Bridges were not started even after persuasion of NHAI. This was due to concessionaire's financial constraint and poor performance of their EPC contractors which resulted delays in completion of the project.

14.4 Despite the Authority having complied with its obligations and providing all necessary support to the Concessionaire, the Concessionaire's acts of omission and commission has led to the present state of affairs wherein the Project of national importance could not be completed besides causing huge loss to the public. It is a matter of fact that the Concessionaire has failed to remedy the defaults even after having been provided with repeated opportunities to remedy the same.

15. It is shocking to note that in spite of getting funds available through OTFIS, Concessionaire has still failed in achieving completion of the Project and to comply with its obligations as per the OTFIS Agreement.

16. **Needless to state that**, in various Notices including Cure Period Notice per Clauses 37.1.1 & 37.1.2, addressed to the Concessionaire and copied to the Senior Lenders and during deliberations in review meetings, the failure of Concessionaire in achieving milestones, targeted progress etc. was also highlighted. The instances when the Concessionaire has been repeatedly requested to complete the project in time are as follows:

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- a. IE's Letter No. PIP/IE/SPITPL/2017/4935 dt. 05-09-2017
- b. IE's Letter No. PIP/IE/SPITPL/2017/5001 dt. 17-10-2017
- c. IE's Letter No. PIP/IE/SPITPL/2017/5013 dt 24-10-2017
- d. IE's Letter No. PIP/IE/SPITPL/2017/5014 dt 25-10-'2017
- e. NHAI's Letter No. NHAI/PIU-Panvel/Concessionaire/2017/2355 dt 09-11-2017
- f. IE's Letter No. PIP/IE/NHAI/2018/5481 Dated 01-06-2018
- g. OTFIS review meetings

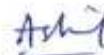
17. It is a matter of record that a Cure Period Notice was issued to the Concessionaire with intention to terminate the contract under Clause 37.1.2 of Concession Agreement. Cure Period Notice was issued to the Concessionaire with intention to terminate the contract under Clause 37.1.2 of Concession Agreement vide IE's Notice No IE's Letter No. PIP/IE/SPITPL/2017/5013 dt 24-10-17. However, it is proven that there has been consistent failure on the part of the Concessionaire in complying with its obligations under the Concession Agreement and the Concessionaire has breached on various fronts under the Clause 37.1.1(c), (e), (g) of the Concession Agreement and not capable of completing the Project.

19. It is clear from the present facts of the case and documents on record that the Concessionaire has committed material breach of the Concession Agreement. The Concessionaire has not cured the Concessionaire's Defaults even after being given sufficient and repetitive opportunities to cure the defaults despite repeated reminders, notices and requests as noted above. In such a serious case of repeated defaults and continuous negligent behaviour of Concessionaire, any kind of inaction against it, would set a wrong precedent for future actions of the Authority.

20. Under the given circumstances, without prejudice to any other rights or remedies, which the Authority has under this Agreement and to safeguard Public interest by exercising its rights as per provisions of CA, is left with no option except to issue "Intention to Terminate Notice" as per **Clause 37.1.2**, as a pre requisite to Termination as per **Clause 37.1** of the Concession Agreement.

20. **AND THEREFORE**, the Authority hereby issues this letter of **Intention to Terminate Notice** for Concessionaire's Default under Clause 37.1.2 of Concession Agreement and also grants 15 days' time to the Concessionaire to make representation/s, if any. Failure to represent by the Concessionaire with substantiated conclusive evidences, the Authority will be at full liberty to immediately terminate the Contract as per Clause 37.1.2 of the Concession Agreement, without any further entertainment.

Yours faithfully,



Ashish Asati
General Manager (T)
(Maharashtra Division)

Copy to: i) RO Mumbai for information and necessary action.
ii) PD Panvel for information and necessary action.
iii) IE, M/s Yongma Engg. Co Ltd - Feedback Infra Pvt Ltd for Information and n.a.
iv) Senior Lender, State Bank of India, Stressed Assets Resolution Group, Corporate Center, 2nd floor, The Arcade, World Trade Center, Cuffe Parade Mumbai - 400005.