



Office of The Executive Engineer

P.W. Division No.2, Thane

P. W. D. Compound,

Station Road, Thane - 400 601

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No. P.W.Dn.No.2/ PB -2/Thane/ 4211	Date :- 16 / 06 /2022	

To,

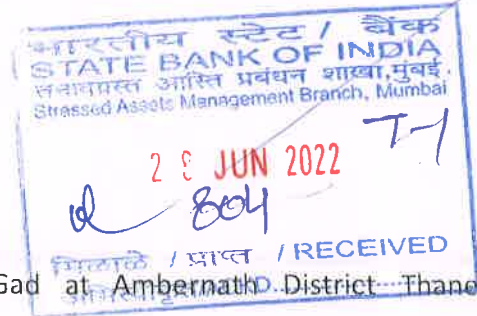
M/s Supreme Suyog Funicular Ropeway Pvt. Ltd.

Supreme House, Plot No.94C, Pratap Gad,

Opp. IIT Main Gate,

Powai,

Mumbai-400076



Sub: Construction of Funicular Railway at Haji Malang Gad at Ambarnath District Thane, Maharashtra (India) on BOT.

Termination Notice as per Article 16.2 (a)(1)(i) b of the Concession Agreement dated 09/09/2008.

- Ref:**
- 1) Concession Agreement dated 09/09/2008.
 - 2) Work Order dated 22/02/2012.
 - 3) Joint meetings held between the PW Department's officials, SBI officials, your and PMC's representatives.
 - 4) Correspondence exchanged between the PW Department and yourselves from time to time.
 - 4) Preliminary Notice issued to you by this office bearing No.P.W.Dn.No.2/PB-2/Thane/2142, dated-04/04/2022.

Dear Sirs,

1. Pursuant to the Concession Agreement dated 09/09/2008 (briefly "**the Concession Agreement**") you have been awarded the work of Construction of Funicular Railway at Haji Malang Gad at Ambarnath, District Thane, Maharashtra (India) on BOT basis (briefly "**the Project**"). Work Order for the Project has been given vide this office's letter dated 22/02/2012. As per the Concession Agreement r/w the Work Order construction period of the Project is 02 (two) years starting from the date of the Work Order. Accordingly, you were required to complete the Project and operationalize it by 20/02/2014.
2. The No Objection certificate from Forest Department was issued on 06/09/2012 and the construction work was commenced on 20/09/2012.
3. Considering the difficulties in finalizing the alignment and various hindrances during the execution of the Project, vide letter dated 10/08/2015 the original Project completion period was extended up to 31/12/2015 subject to the conditions that (i) concession period will not be increased for completing the work; and (ii) no monetary claims will be entertained.
4. You failed to complete the work by 31/12/2015. You pleaded reasons such as difficulties in chiseling of hard rock alongside the cliff for span 70 to 82, the site being in foresee and inaccessible and working hours and season being less than normal; and sought further extension of time up to December, 2018 for completing Project; and the same was granted.

5. During the review meetings taken on 12/10/2018, 15/11/2018 and 30/11/2018 by the Superintending Engineer, P.W. Circle, Thane you agreed and assured to complete and operationalize the Project by the end of March, 2019. In order to complete the Project within the extended timeline, micro level planning was done and it was decided to launch balance 18 steel girders in 75 days and thereafter complete construction of upper station and other activities within 45 days. But you did not adhere to the said planning. It was noticed that the work had slowed down from 05/01/2019 onwards for want of chiseling the rock obstructing the rope and pulley at the base. Thereafter you completely abandoned the work from 01/02/2019 without any intimation to this office and it was noticed that there were no further efforts from you to restart the construction work.
6. By this office's letter dated 05/03/2019 you were re-apprised of the above facts; and directed to restart the work immediately and complete the balance work of the Project within 01 (one) month from the receipt of the letter. You were intimated that non-compliance of the said direction will attract the action as per Article 16.1(a) of the Concession Agreement.
7. Because of the continuous follow up by this office, girder launching was completed in October, 2019, but again thereafter the work completely stopped and no progress was observed thereafter. Thus, despite giving sufficient time to expedite the work you did not complete the work and again abandoned same, from which it was concluded that you were not in a position to infuse funds for completing the Project.
8. On 30/12/2019 a joint meeting of SBI officials (your project financiers/lenders) and P.W.D. official along with your and PMC representatives was taken by the Chief Engineer, P.W. Region, Mumbai (Konkan). The matter was discussed in detail and it was concluded that the lender i.e. SBI shall substitute the present concessionaire in order to complete the Project.
9. Immediately after the above joint meeting, you issued a letter dated 30/12/2019 to this office (received by this office on 04/01/2020) pursuant to which you once again sought extension of time for completing the Project by citing some grounds allegedly beyond your control. Issuance of this letter was nothing but an attempt to circumvent this office's decision of terminating the Concession Agreement; and SBI/Lender's decision of substituting the Concessionaire.
10. On 24/01/2020 again a meeting was held under the chairmanship of Hon. Shri Eknath Shinde, the Guardian Minister of Thane District to review the progress of the Project. Your representatives Mr. Zaheer Shaikh-Project Manager was present for the meeting on your behalf. In this meeting you assured that funds for the balance work shall be raised from a private financier and the balance work of the Project shall be completed before monsoon. Further, in order to show your bona fides, you assured to deposit Rs. 1.00 Crores in an escrow account by 28/01/2020. Decisions taken in the said meeting were communicated to you vide this office's letter dated 24/01/2020. By the said letter it was expressly informed to you that in case of your failure to infuse the funds in the escrow account further action for terminating the Concession Agreement shall be taken.
11. You failed to deposit Rs. 1.00 Crores in the escrow account by 28/01/2020 and thereafter. Further, you also didn't recommence the abandoned balance work of the Project. On the contrary by your letter dated 28/01/2020 you disputed the contents of this office's letter dated 24/01/2020. This office, by its letter dated 07/02/2020 denied and refuted your claim; and advised you to focus on completing the balance work of the Project. Further this office also shown inclination to meet you/your proposed financier for clarification of the doubts if any.

12. Accordingly, on 17/03/2020 a meeting was held in the office of the Superintending Engineer with Mr. Nimish Desai from Kitara Financing Company in order to make him aware of the issue involved in the Project. Even after the said meeting you neither deposited Rs. 1.00 Crores in the escrow account nor did you recommence the abandoned balance work of the Project.
13. GoM has undertaken the Project for the convenience of the pilgrims visiting Haji Malang Gad. But due to inordinate and unexplainable delay on your part the Project had lingered for more than 9 years and thus, the purpose of undertaking the Project wasn't getting served. On 17/03/2020 a meeting was held among the officers of PW Department, your representative Mr. Shaikh and representative of the State Bank of India. In this meeting your representative again raised the issue of difficulties in land acquisition due to the local residents, but the issue was negated by this office. Thereupon you assured to recommence and complete the balance work of the Project without stopping it.
14. As per the Concession Agreement land acquisition is your responsibility. However, for the sake of expediting the Project, the GoM decided to allocate separate funds for land acquisition. This indulgence by the GoM does not amount to modification/amendment to the agreed term of the Concession Agreement; and as such land acquisition continues to be your liability only. However, you misconstrued the above indulgence that the GoM has undertaken the entire liability of land acquisition; and absolved you of your obligation under the Concession Agreement. Therefore, vide your letter dated 23/04/2021, you alleged that though you have completed 95% work of the Project; still the required private land is not made available and the approach road is not motorable; resulting in non-resuming of the work at the Project site. You alleged that the hindrances and obstacles in completing the balance work were due to the reasons attributable to the PW Department. You further alleged that you were facing additional cost and loss on account of the above.
15. By this office's letter dated 10/06/2021 this office negated your claims and allegations. It was categorically brought to your notice that you are facing financial constraints and therefore, several projects, assigned to you by the PW Department, have been either withdrawn or substitution agency has been introduced.
16. Additional Chief Secretary (P.W.D) took review of the Project on 15/07/2021 for completion. At your request, it was decided to give another and last chance to you to complete the Project and you agreed vide your letter dated 29/07/2021 to deposit Rs. 2.00 crores to your bank account so as to show your commitment to complete the Project.
17. On 05/08/2021 the Superintending Engineer, PW Circle Thane held a meeting according to instruction given by the ACS (P.W.D). During the meeting you reiterated your commitment and promised to start preliminary trials for funicular trolley up to 04/11/2021. In furtherance thereto, you submitted bar-charts and cashflow to this office.
18. However, once again you didn't keep your promise and failed to complete the work within the timeline given in the bar-chart. You further failed to submit bank statement showing that the agreed Rs. 2.00 Cr. funds has been deposited by you. Therefore, this office, vide letters dated 30/08/2021 and 29/09/2021 reminded you to submit the bank statement, but you failed to comply with the said requisition. Instead you once again sought further extension of time upto 31/01/2022 for completing the Project.
19. Vide this office's letters dated 29/11/2021 and 20/12/2021 and Superintending Engineer's letter dated 21/12/2021 you were asked to give explanation as to why the Concession Agreement should not be terminated, as you have failed to executed the Project as per given

timeline. Vide your letter dated 10/01/2022 you replied the above letters. Vide the said reply you blamed your SVP partner Yashita Automative Engineering Pvt. Ltd. for the delay in recommencing and completing the Project. The reasons given in your reply were evasive. In any event, failure, if any, on the part of Yashita Automative Engineering Pvt. Ltd., does not absolve you, of the responsibility of recommencing and completing the Project as per the bar-chart submitted.

20. GoM has undertaken the project for the convenience of the pilgrims visiting Haji Malang Gad. It was therefore expected to complete the Project within the initial construction period of 02 (two) years and in all events within reasonable thereafter. But despite lapse of more than 09 (nine) years, you have not completed the Project but completely abandoned the same. Resultantly, the pilgrims are facing inconvenience and hardship. Thus, the core purpose of undertaking the Project is getting frustrated.
21. Your failure as highlighted hereinabove amounts to "Concessionaire Event of Default" for which GoM, through this office, is entitled to terminate the Concession Agreement under Article 16.2 of the Concession Agreement. Therefore, pursuant to provision of clause 16.2(a)(1) in the Concession Agreement this office issued a Preliminary Notice dated 04/04/2022 to you inter alia calling upon you to cure the default within 30 (thirty) days and to furnish a fresh Performance Security as per Article (3.2) of the Concession Agreement. 30 days notice period under the Preliminary Notice lapsed on 4th May, 2022. Further 30 days period lapsed on 4th June, 2022. However, you have neither cured the default nor furnished a fresh Performance Security within the said 60 days' period and thereafter till date.
22. Your attention is invited to clause 16.2(a)(1) of the Concession Agreement, which gives you a total 60 days period from issuance of Preliminary Notice to cure the default, failing which this office is entitled to terminate the Concession Agreement. In view of your failure as aforesaid, this office has decided to terminate the Concession Agreement in accordance with clause 16.2(a)(1)(b) of the Concession Agreement.
23. Therefore, you are hereby informed that the Concession Agreement stands terminated as per the provision of clause 16.2(a)(1)(b) thereof with effect from the date of this termination notice. Please note that in view of termination of the Concession Agreement the GoM is deemed to have taken possession and control of the Project site. You are therefore, required to immediately remove yourself, your machinery and labour, if any, from the Project site.
24. Please note that aforesaid termination of the Concession Agreement is without prejudice to the GoM's right to recover the cost incurred in completing the Project through another agency/departmentally through this office and also damages caused due to your failure in performing the Concession Agreement.



**Executive Engineer,
P. W. Division No. 2, Thane**

CC :

- 1) The Superintending Engineer, PW Circle, Thane for information Please.
- 2) Assistant Engineer Gr-1, P.W. Sub- Division, Ulhasnager for information and further necessary action in the matter.

3)

Mr. Rajendra Dahat, AGM and head officer, Team –I, stressed Asset Management Branch, SBI,
The Arcade, 2nd floor, World Trade Center, Cuffe Parade, Colaba, Mumbai-400005.