



**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/11012/15/2004/129966

Date 30.01.2019

To,

M/s Ranchi Expressways Limited,  
Madhucon House 1129/A,  
Road No. 36, Jubilee Hills,  
Hitech City Road,  
Hyderabad - 500033, Telangana  
Tel: 040-23556001/2/3/4, Fax: 040-23556005  
Email: nseethaiah@madhucon.com

Kind Attention - Shri N. Seethaiah, Director

**Sub: Four laning of Ranchi - Rargaon - Jamshedpur Section (from Km. 114.000 to Km. 277.500) of NH-33 in the State of Jharkhand on BOT (Annuity) Basis under NHDP Phase-III: Termination Notice under Clause 37.1.2 of the Concession Agreement.**

**Ref:** (i) Concession Agreement dated 20.04.2011.  
(ii) Notice issued by NHAI to cure the defaults under Article-37, vide letter no. NHAI/BOT/11012/15/5004/54360 dated 15.07.2014.  
(iii) Intention to Termination Notice issued by NHAI under Article-37, vide letter no. NHAI/BOT/11012/15/2004/67876 dated 18.06.2015.  
(iv) Minutes of Meeting held on 26.10.2015 at NHAI-HQ issued vide NHAI-HQ letter no. BOT/ 11012/15/2004/74278 dated 12.11.2015.  
(v) Minutes of Meeting held on 09.05.2016 at NHAI-HQ  
(vi) Minutes of Meeting held on 26.12.2018 at NHAI-HQ issued vide HQ letter dated 02.01.2019

Sir,

The undersigned, having been duly authorized being General Manager, National Highways Authority of India (for short "NHAI") do hereby invoke the sub clause 37.1.2 of Article 37 of the subject Contract entered into by and between National Highways Authority of India (hereinafter referred to as NHAI in short) and you M/s Ranchi Expressways Ltd. (for short "you/Concessionaire" hereinafter) and accordingly serve the Notice of the Termination of the subject Contract, on the grounds and for the reasons stated here as under:

1. That, the subject project of Four laning of Ranchi - Rargaon - Mahulia Section from Km. 114.000 to Km. 277.500 of NH-33 in the State of Jharkhand on Design, Built, Finance, operate, and Transfer (DBFOT) Annuity basis under NHDP Phase-III was awarded to M/s Madhucon Project Ltd. having its office at Plot No. 55, Sector - 20, Dwarka by NHAI vide Letter of Award (LOA) dated 18.03.2011. Vide Para No. 4 of LOA, it was stipulated therein that M/s Madhucon Project Ltd. shall promote and incorporate the Concessionaire as a limited Company under the Companies Act as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under LOA, including the obligation to enter into the Concession Agreement. Accordingly, for execution of the project the limited company was duly formed and incorporated under the Companies Act, 1956.

2. That, pursuant to acceptance of the terms and conditions of LOA, a Concession Agreement (hereinafter referred to as "CA" ) dated 20.04.2011 was executed between NHAI and you/Concessionaire having its registered office at Madhucon House 1129/A, Road No. 36, Jubilee Hills, Hyderabad - 500033 for the work of Ranchi - Rargaon - Mahulia Section From Km. 114.000 to Km. 277.500 of NH-33 in the State of Jharkhand on Design, Built, Finance, operate and Transfer (DBFOT) Annuity basis under NHDP Phase-III Project (hereinafter referred as a "Project"). That, the Concession Agreement was executed inter-alia relying upon the various representations and warranties made by you to perform all your duties and obligations strictly in terms of the Concession Agreement wherein one of its terms and conditions was the completion of the project within the stipulated time and thus time was the essence of the Contract. Further, in terms of the Concession Agreement, you are/were also obliged to perform various obligations inter-alia pertaining to construction, maintenance, operation and development of the subject project highway. Reference may be made to Article 5 of the Concession Agreement, the object of undertaking the project is reflected in para (B) of the recital of the Concession Agreement which reads as under.
- "The Authority has resolved to augment the existing road from Km. 114.00 to Km. 277.500 (approx. 163.500 Km.) on the Ranchi - Rargaon - Jamshedpur Section of National Highways no. 33 (hereinafter called the "NH-33") in the State of Jharkhand by four laning on Design, Built, Finance, Operate and Transfer ("DBFOT Annuity") basis in accordance with the terms and conditions to be set forth in a Concession Agreement to be entered into".
3. Further, in terms of clause 5.1.3 of Article 5 of the Concession Agreement, you were duty bound to discharge your obligations in accordance with good industry practice as is supposed from a reasonable and prudent person.
4. That in terms of the Concession Agreement, the date of Financial Closure was to be achieved on 17.10.2011 and the appointed date for the project was to be notified thereafter, however, due to delay on your part with respect to financial closure, at your request made in this regard time was extended by NHAI and you could achieve Financial Closure on 31.01.2012. Accordingly, Appointed Date for the project was notified as 04.12.2012 vide NHAI letter no. NHAI/BOT/11012/15/2004/JH/34326 dated 11.12.2012. It may be mentioned here that a Supplementary Agreement came to be executed on 11.12.2012 between NHAI and you Concessionaire.
5. That, you failed to achieve the required progress in undertaking the construction of the project highway time and again and failed to maintain the existing project highway and committed various material breach and default of provisions of the Concession Agreement. However, despite giving repeated assurances, you have failed to execute the construction of the project highway in timely manner without any cogent reasons and also simultaneously failed to take up the maintenance of existing Highway, the details whereof shall be described hereinafter in the preceding paras.
6. Consequently, NHAI vide letter no. NHAI/BOT/11012/15/2004/54360 dated 15.07.2014 had served a Notice on you directing therein to cure the defaults under clause 37.1.1 of Article 37 of the Concession Agreement. It is pertinent to note here that before serving the Notice of Cure to Defaults, NHAI made various requests to comply with your part of obligation vide Letters mentioned below:-
- i. IE letter no. AA/IE/RANCHI/1249/13-14/532 dated 15.02.2014





- ii. IE letter no. AA/IE/RANCHI/1249/13-14/539 dated 22.02.2014
- iii. IE letter no. AA/IE/RANCHI/1249/14-15/629 dated 22.02.2014
- iv. Authority letter no. NHAI/PIU/PD/RNC/NH33/RM/SC/72 dated 12.04.2014
- v. IE letter no. AA/IE/RANCHI/1249/14-15/630 dated 22.04.2014
- vi. Authority letter no. NHAI/PIU/PD/RNC/NH33/RM/Maint/142 dated 30.04.2014
- vii. IE letter no. AA/IE/RANCHI/1249/14-15/684 dated 19.05.2014
- viii. Authority letter no. NHAI/PIU/PD/RNC/NH33/RM/Maint/246 dated 21.05.2014
- ix. NHAI,RO,Ranchi letter no. RO/RNC/JH/RNC/RRM/4796 dated 22.05.2014
- x. NHAI letter no. NHAI/PIU/PD/RNC/NH-33/Aarvee/2309/ dated 25.03.2014
- xi. NHAI letter no. NHAI/PIU/PD/RNC/NH-33/Aarvee/43 dated 07.04.2014.
- xii. NHAI letter no. NHAI/PIU/PD/RNC/NH-33/Aarvee/64 dated 11.04.2014.
- xiii. NHAI RO, Ranchi letter no. NHAI/RO/RNC/JH/RNC/RRM/4294 dated 27.03.14
- xiv. NHAI RO, Ranchi letter no. NHAI/RO/RNC/JH/RNC/RRM/4439 dated 15.04.14
- xv. NHAI RO, Ranchi letter no. NHAI/RO/RNC/JH/RNC/RRM/4507 dated 25.04.14

7. That despite repeated requests, you failed to comply with the requirements made in the aforesaid Letters.

8. In addition to the above, you also fail to Cure the defects and defaults pointed out in the said Notice dated 15.07.2014 more particularly the non-compliances of the Article No. 23.3 of the Concession Agreement, Schedule (G) of the Concession Agreement and the provisions contained in 48.1 of the Concession Agreement and also the provision contained in Clause 43.4 of the Concession Agreement. For the sake of convenience, few instances of defaults reflected in the Cure Notice are being reproduced here as under:-

- A. *As per Schedule-G of the Concession Agreement, Concessionaire had to achieve Milestone-II on the date falling on the 365<sup>th</sup> day (i.e. 04.12.2013) from the Appointed Date, but you failed to achieve the said milestone NHAI PD, Ranchi letter no. NHAI/PIU/PD/RNC/NH-33/REL/2120 dated 19.02.14 may be referred to.*
- B. *As per provisions of Clause 48.1 of Concession Agreement, Concessionaire had to open and maintain Escrow Account in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures had to be credited and debited, including the sub-Accounts of such Escrow Account. It was reported by IE vide letter no. AA/HQ/NHAI/1249/13-14/682 dated 24.01.2014 that you have committed an Escrow Default under Clause 6.1 of Schedule - S of Concession Agreement by not routing all inflows through the designated Escrow Account bearing no. 2657201009130 in the Canara Bank and an amount of Rs. 61,55,90,000/- has not been routed through Escrow Account. During meeting at NHAI-HQ on 06.03.2014, you were directed to cure the aforesaid Escrow Default within next 15 (fifteen) days but you did not care to cure the said Escrow default till date.*
- C. *As per Clause 43.4 of Concession Agreement, the Concessionaire is not entitled to sublicense or sublet the whole or any part of the site. As per Independent Engineer letters AA/IE/Ranchi/2013/0430 dated 04.12.2013 & AA/HQ/REL/1249/13-14/724 dated 15.02.2014, you had been subletting the*

*parts of the stretch to other agencies and as such you were in breach of project agreement causing material adverse effect.*

Thus, it is evident that despite the service of the said Notice, you failed to Cure the Defaults within the stipulated time of 60 days.

9. That, NHAI, after having gone through the material on record, including your replies to cure period notice, which were found unsatisfactory and based on incorrect facts and keeping in view the other material default's committed by you, came to the conclusion that you indeed failed to cure the defaults thereby leaving no option with NHAI other than to terminate the Concession Agreement under Clause 37 of the Concession Agreement. Accordingly, NHAI vide its letter no. NHAI/BOT/11012/15/2004/67856 dated 18.06.2015 was constrained to serve an intention to termination notice under Clause 37.1.2 of Article 37 and thereby provided you an opportunity to show cause to as why Concession Agreement under reference should not be terminated within 15 days of the receipt of this communication and the copies whereof was also endorsed to Lender's Representative, Canara Bank vide letter no. NHAI/BOT/11012/15/2004/67857 dated 18.06.2015 in accordance with Article 37.1.3.
10. That, it is pertinent to mention here that the Lender's Representative as provided in the Concession Agreement failed to submit proposal for suitable substitution in place of Concessionaire despite availing several opportunities and time till date.
11. Having found the chain of defaults committed by you as mentioned above and your failure to cure such defaults within time, NHAI thought it appropriate to hold a review meeting thereby giving an opportunity of personal hearing and accordingly, a review meeting was held on 26.10.2015 at NHAI-HQ (Minutes of Meeting as per letter under reference (iv) wherein RO Jharkhand informed that presently the progress of work is very slow due to inadequate deployment of resources at Site. In the course of deliberation in the said meeting, it was agreed between you and NHAI that you will submit the work programme/cash flow programme for completing the project by May 2017.
12. That, you the Concessionaire vide letter REL/RNC/NH-33/2015/2335 dated 30.10.2015 submitted the work programme and proposed completion date by May 2017 for 144 Km length. However, the Concessionaire failed to achieve the required progress in terms of its undertaking and also failed to maintain the existing project highway and thus continued to commit material breach and default of provisions of CA and undertaking as reflected in the Minutes of the Meeting dated 26.10.2015 as well as in your letter dated 30.10.2015.
13. That, you Concessionaire, vide letter no. REL/RNC/NH-33/2016/2640 dated 11.06.2016 & REL/RNC/NH-33/2016/2675 dated 28.06.2016 having admitted the default on your part, further submitted a re-revised work programme and proposed completion date by December 2017 for full length of Project Highway. However, undisputedly you Concessionaire could complete 68.1 km (equivalent 4-lane) Km by December 2017 and thereby you once again failed to achieve the required progress/target set by you as per revised Schedule.
14. That, it would not be out of place to mention here that you the Concessionaire vide letter no. 2751 dated 21.09.2016 has submitted an Affidavit in the W.P. (PIL) No. 3503 of 2014 titled as, "The Court on Its Own Motion Vs Union of India & Others" stating therein on oath that the project would be completed by December 2017 and



also submitted the month wise work programme for DBM completion from October 2016 to December 2017 for 163.500 km. But again you failed to achieve the required progress in execution of the project work as also failed in fulfilling the undertaking given to the Hon'ble High Court of Jharkhand by way of an affidavit.

15. That, thereafter a review meeting was held on 09.05.2016 at NHAI-HQ [Minutes of Meeting as per letter under reference (iv)] wherein the Concessionaire once again assured to adhere to the programme submitted by them saying that they are immediately mobilizing enough resources in order to meet the targets within the time frame given by them. The Lenders also expressed their willingness to support the Concessionaire in this regard. Believing your representation to be true and taking into consideration the request made by the Lenders Representative, the decision of termination of the instant project was kept in abeyance by NHAI.
16. That, a notice was issued vide letter no. AA/IE/Ranchi/1249/16-17/2175 dated 07.11.2016 citing various references during the period April, 2016 to November, 2016 followed with another notice no. AA/IE/Ranchi/1249/17-18/2687 dated 25.09.2017 to provide adequate safety and to maintain the existing road by NHAI. Despite several written communication and notices served upon, you failed to act in the manner provisioned under CA and also failed to perform your obligation under CA. That the consistent and continued inaction on your part led to great dissatisfaction among the public and media. The image of the Authority was also jeopardized due to breach of your commitments.
17. That, in addition to above, the IE issued notice vide letter no. AA/IE/Ranchi/1249/16-17/2278 dated 11.01.2017 followed with several notices letter no. AA/IE/Ranchi/1249/17-18/2511 dated 13.06.2017 and letter no. AA/IE/Ranchi/1249/17-18/2745 dated 03.11.2017 regarding slow progress of the work and you failed to accelerate the progress despite reminder given to you from time to time but you ultimately failed in fulfilling your own commitment to complete the work by December 2017. Your continuous failure in achieving required progress is well reflected in the notice issued by RO-Ranchi vide letter no. NHAI/RO/RNC/JH/RRM/4058 dated 04.01.2018.
18. That, in addition to what has been narrated above, NHAI has time and again brought to your notice the head-wise defaults committed by you by not complying with the provisions of the Concession Agreement as follows:-

(i) **Abandonment or manifestation of intention to abandon the construction or operation of the Project Highway without the prior written consent of the Authority (Default under clause 37.1.1(d))**

The Independent Engineer informed the Authority vide letter no. AA/IE/Ranchi/1249/18-19/3020 dated 03.07.2018 & AA/IE/Ranchi/1249/18-19/ 3069 dated 31.08.2018 that the Concessionaire has abandoned the construction works from 01.05.2018 without any notice of Authority/IE. In complete disregard to the stipulation of Concession Agreement, you failed to undertake the construction work at the project site. This conduct on your part manifests your intention to abandon the construction of the project highway without any prior notice in violation of Clause 37.1.1(d) of the CA.



(ii) **Maintenance Requirements (default under clause 37.1.1 (g)):**

As per Article 12.2 of Concession Agreement, it is clearly mentioned that during construction period it shall be the responsibility of Concessionaire to maintain the existing lanes/carriageway of project highway at its cost for safe operation of the project highway. You failed to maintain the existing lanes/carriageway of project highway and in order to keep the existing road in traffic worthy condition, the Authority had to take up the repair work at the risk and cost the concessionaire at the estimated cost of Rs. 19.20 crores and Rs. 16.71 crores. The Concessionaire was informed in this regard vide letter no. NHAI/PIU/PD/RNC/NH-33/RM/Maint/1277 dated 21.11.2016 and letter No. NHAI/PIU/PD/RNC/NH-33/RM/Maint/725 dated 07.08.2018.

(iii) **Safety Requirements (default under clause 37.1.1 (g)):**

As per Article 18.1, you shall make adequate arrangement during construction period for the safety of workers and road users in accordance with the Schedule L for safety in construction zone. You failed to make compliance of safety requirement.

You have failed to provide adequate safety arrangements despite repeated directions/requests by IE and NHAI through various meetings and letters and as a result of which road has become prone to accidents causing hardships to the road users.

(iv) **Non Payment to Independent Engineer as per Article 23.3 of Concession Agreement (default under clause 37.1.1(h)):**

(i) As per Article 23.3, the remuneration, cost and expenses of the Independent Engineer shall be paid by the Authority and the subject to the limits set forth in Scheduled-P, one half of such remuneration, cost and expenses shall be reimbursed by you to the Authority within 15 days of receiving of statement of expenditure from Authority. You failed to pay its share (50%) since January 2017 to till date in spite of repeated reminder. Due to not making timely payment towards IE's fee resulting into accumulation of interest of Rs. 58.13 Lakh on account of delayed payment of previous invoices towards your share of fee of Independent Engineer.

(ii) The Lender's Representative i.e. Canara Bank was also requested by NHAI vide letter no. NHAI/RO/RNC/JH/RNC/RRM/4050 dated 18.08.2017 for reimbursement of due amount of Independent Engineer's fee in accordance with the clause 4.1.1(h) of Escrow Agreement executed on 28.02.2012. The Lender's Representative failed to reimburse the said due amount of Independent Engineer Fee. The outstanding amount of share of fee of Independent Engineer on the part of Concessionaire is Rs 5.34 Crs along with interest thereupon (Up to 31.12.2018). A communication to this effect has already been made by PD, PIU Ranchi vide letter No. NHAI/PIU/PD/RNC/REL/Invoice/2699 dated 11.01.2019.

19. From the above chain of events, it is thus clearly brought out that you were not only in the breach and continuing breach of the provisions of Concession

Agreement but you have now completely abandoned the project work since 01.05.2018.

20. That, on the basis of above NHAI, it is established beyond any iota of doubts that you have committed defaults of the Concession Agreement in respect of:

- a. Completely abandoning operations of the project highway since 01.05.2018 without the prior written consent of the Authority which constitutes defaults under Clause 37.1.1(d) of Concession Agreement.
- b. Not maintaining the project highway in traffic worthy condition and safety requirements as per clause 12.2 and thus making default under clause 37.1.1(g) of Concession Agreement.
- c. Not reimbursing one half of the remuneration of the Independent Engineer cost to the Authority since January 2017 as per Clause 23.3 and thus making default under Clause 37.1.1(h) of Concession Agreement.
- d. Not making adequate arrangement during construction period for the safety of workers and road users in accordance with Schedule-L of Concession Agreement and thus making default under Clause 37.1.1(g).

21. Apart from the above, as per the submission made by the Authority in the Hon`ble High Court of Jharkhand at Ranchi in the pending writ petition referred to above and with reference to the decision of the Board of NHAI, a number of meetings were held with you for one time settlement of the case but due to your adamant behaviour and on account of excessive, untenable baseless claims raised by you, the One Time Settlement could not be arrived at. Further, it is clearly known to you that Lenders are not interested in the substitution. You have been apprised vide letter no. 128819 dated 09.01.2019 that one time settlement has failed in this case. Having failed to arrive at one time settlement, the Authority have no alternative except to terminate the concession agreement.

22. Apart from the above, it is a matter of record that as per enquiry report of Serious Fraud Investigation Office, Ministry of Corporate Affairs which was submitted in compliance of the directions of Hon`ble High Court of Jharkhand at Ranchi funds to the tune of Rs.264.01 crores were found to be diverted on account of round tripping in equity/sub-debt infusion, diversion of mobilization and material advances, maintenance and utilization of advances. Consequently, the Hon`ble High Court has directed CBI to enquire into the matter and accordingly CBI has registered a criminal case against you which is pending investigation.

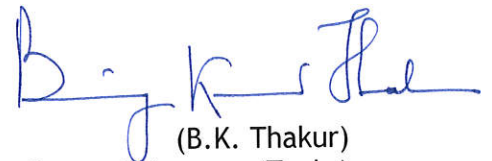
23. In the light of the aforesaid material breaches of the provisions of Contract and in view of your persistent gross defaults and out rightly refusal to cure the defaults, NHAI has come to the conclusion that a case for termination of



Concession Agreement under Clause 37.1.2 is made out. Therefore, the Authority, by invoking provisions of Clause 37.1.2 of the CA, hereby terminates the Concession Agreement dated 20.04.2011 as per the terms of Clause 37.1.2 of Concession Agreement with immediate effect. Further, in terms of Clause 37.4(a) of CA, the Authority is deemed to have taken possession and control of Project Highway forthwith.

24. This is without prejudice to any other right and remedies available to the Authority available under the Concession Agreement and the applicable law.

Yours faithfully,



(B.K. Thakur)

General Manager (Tech.)

For and on behalf of the Employer

Copy to:-

- i. Senior Lender, Canara Bank in light of Canara Bank's submissions in the hearing of Hon'ble High Court Ranchi dated 09.08.2018, inter-alia stating that the Bank does not intend to go for any substitution of the present Concessionaire as permissible under the Agreement.
- ii. Independent Engineer, M/s. Aarvee Associates Pvt. Ltd. for information and to take follow up action as required under the provision of concession Agreement.
- iii. RO-Ranchi for information and to ensure all follow up action as required under the provision of Concession Agreement.
- iv. PD- Ranchi for information and to ensure all follow up action as required under the provision of Concession Agreement.