

# Kadam & Company

Advocates

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By Hand Delivery/E-mail

Ref: SK/2020/1615

Date: 7<sup>th</sup> December, 2020

To

**Mr. Naresh Patil**  
(Former Chief Justice, Bombay High Court)  
Ld. Sole Arbitrator  
63, Rajgir Chambers, 7<sup>th</sup> Floor,  
Opp. Old Custom House,  
Fort,  
Mumbai 400 001.

RECD  
6:25 PM  
7/12/20

Sir,

**Sub: Before Ld. Sole Arbitrator Hon'ble Mr. Naresh Patil**  
(Former Chief Justice of the Bombay High Court)

In the matter of arbitration

Between

**Supreme Manor Wada Bhiwandi**  
**Infrastructure Pvt. Ltd.**

... Claimant

Vs

**State of Maharashtra & Ors.**

... Respondents

We are concerned for our clients the **State of Maharashtra & Ors.**, the Respondents in the captioned arbitration proceedings.

On 13<sup>th</sup> October, 2020 the Respondents have filed their Written Statement in the captioned Arbitration Proceedings.

Further, pursuant to directions given in the meeting held on 9<sup>th</sup> November, 2020 the Respondents have been directed to file their Counter-Claim on or before 7<sup>th</sup> December, 2020.

While interacting with the Respondents' concerned officers regarding the Counter-Claim it was noticed that through inadvertence few points had remained to be incorporated in the Respondents' Written Statement. Respondents are therefore, proposing to incorporate such omitted points in their Written Statement by way of amendment. A schedule of amendments is enclosed herewith.

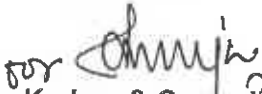
Proposed amendments do not widen or alter the scope of the captioned Arbitration Proceedings. Respondents are not making out any fresh cause of action. The proposed amendments would not delay adjudication of the questions raised in the

*M*

present Arbitration Proceedings. On the contrary the said proposed amendments would assist in expeditious adjudication of the said questions. The proposed amendments also do not cause any prejudice to the Claimant.

Hence, the Respondents may be permitted to amend their Written Statement as per the Schedule of amendments enclosed herewith; and a formal procedural direction to that effect may be given in the interest of justice and fair-play.

Yours Faithfully,

  
for **Anurag Kadam & Company**  
Advocates for the Respondents

Encl: As Above

✓Cc:

**Adv. Udaya Sankar Samudrala**  
Advocate for the Claimant  
Law Chambers of Samudrala  
2, Rewa Chambers,  
31, New Marine Lines,  
Mumbai 400 020.

**BEFORE THE SOLE ARBITRATOR  
HON'BLE MR. NARESH PATIL  
(FORMER CHIEF JUSTICE OF THE BOMBAY HIGH COURT)  
IN THE MATTER OF ARBITRATION BETWEEN**

**SUPREME MANOR-WADA-BHIWANDI  
INFRASTRUCTURE PRIVATE LIMITED                      ... Claimant**

**AND**

**STATE OF MAHARASHTRA & ORS.                      ... Respondents**

**AMENDMENTS TO THE WRITTEN STATEMENT**

**1. Add the following at the end of para (4.6):**

In any event definition of the term "Project Agreements" as given in Article 1 of the Concession Agreement excludes Financing Documents. Hence, the Common Loan Agreement cannot be looked into for determining the Total Project Cost.

**2. Add the following at the end of para (4.27):**

In any event at the time of bidding for the Project Road the said Bypass Road was neither existing nor was it proposed in the original scope of work. Therefore, the Claimant's traffic projection was based on the then existing road and the scope of the Work Order No. 1, without the presence of the said Bypass Road. Further, the origin and destination of the Project Road and location of toll plazas have remained unchanged. Therefore, there cannot be any loss of revenue on the said count.

**3. Add the following at the end of para (5.1)(c):**

(iii) Definition of the term "Debt Due" in Article 1 of the Concession Agreement provides the details which are to be included and excluded while computing the Debt Due.

However, the Debt Due Certificate as certified by the Claimant's Statutory Auditors does not contain any of the said details. Therefore, the said certificate cannot be relied upon for determining the amount of Debt Due.

- (iv) On Pg. 658 to 660 and Pg. 844 to 847 in the Claimant's Compilation of Documents names of the Claimant's lenders and amounts disbursed by them have been specified. When these names and amounts are compared with the names and amounts mentioned in the Claimant's Statutory Auditor's Certificate, they do not tally. This means that amendments were made in the Common Loan Agreements. As per Article 10.2 of the Concession Agreement the Respondents' express consent is mandatory for any amendment in the financial documents. Pertinently the Claimant has neither stated that they have amended the financial documents and it has been done with the Respondents' consent nor have they relied upon any such consent. Hence, the Claimant's Statutory Auditors' Certificate cannot be taken into account for adjudicating the claim.

**4. Add the following at the end of para (5.3)(a):**

Respondents reiterate contents of para (4.27) above which establishes that the Claimant's claim for the alleged loss in toll revenue is per se not maintainable.

**5. Add the following at the end of para (5.4)(b):**

(b1) As per Clause I of the Concession Agreement [Pg. 276 of the Claimant's Compilation of Documents] the Claimant is solely responsible for land acquisition. Further it has been clearly stipulated that no claims shall be made due to delay in land acquisition nor any extra payment shall be made on the said account. Thus, owing to the specific agreement between the Respondents and the Claimant any claims arising out of delay in land acquisition are barred.

**6. Add the following at the end of para (5.12):**

5.12A Regarding Claim No. 2 to Claim No. 12 it is additionally submitted that pursuant to the provision of Article 16.5 of the Concession Agreement the Respondents get discharged of their obligations upon making the Termination Payment to the Claimant in accordance with the conditions agreed upon. Amounts claimed in Claim Nos. 2 to 12 are other than the Termination Payment; and therefore, the Claimant is not entitled to the same.

5.12B Regarding Claim Nos. 4 to 12 it is additionally submitted that the said claims are in the nature of additional costs and expenses purportedly incurred by the Claimant. However, any such additional cost and expense, if any, is incurred and done from the debt and equity spent on the Project. As the Claimant has claimed debt and equity under Claim No. 1, their claim for alleged cost and expenses under Claim Nos. 4 to

12 gets automatically covered in Claim No. 1.  
Therefore, Claim Nos. 4 to 12 are duplications and  
hence, cannot be granted.

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