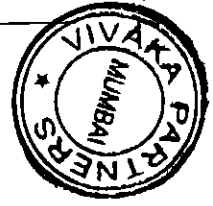


UDAYA SANKAR SAMUDRALA
B.Sc., LL.B, CAIIB
Advocate, High Court



To,

Hon'ble Mr. Justice Shri Naresh H. Patil (Retd.),
Sole Arbitrator & Former Chief Justice of Bombay High Court,
2203, Ajmera Zeon-A, Ajmera I-land, Next to Imax,
Bhakti Park, Wadala (East), Mumbai 400 037.
E-mail: nareshpatil7@gmail.com

Dear Sir,

Sub: In the matter of Arbitration between:

Supreme Manor Wada Bhiwandi Infrastructure Private Limited
.. Claimant

And

State of Maharashtra through)
The Executive Engineer, PWD, Jawahar) .. Respondent

Ref: Letter bearing No.SK/2020/1614 dated 7th December, 2020 from the Advocates for the Respondent.

BE PLEASED TO TAKE on record the accompanying Written Statement of the Claimant in reply to the Respondents' Counter Claims. Hard copy of the Application shall be submitted in due course.

A copy of the Written Statement of the Claimant in reply to the Respondents' Counter Claims is forwarded to the Respondents as and by way of service upon them.

Dated this 6th day of January, 2021.

Please acknowledge receipt.

Yours faithfully,

Uday Sankar

Udaya Sankar Samudrala
Advocate for the Claimant

Cc to: Kadam & Co., 305, 3rd Floor, Yusuf Building, M. G. Road, Fort,
Mumbai 400 001. E-mail: tanuja@kadam.co
sanjay@kadam.co

Encl: As above.

LAW CHAMBERS OF SAMUDRALA

2, Rewa Chambers, 31 New Marine Lines, Mumbai 400 020
Tel: 91-22-22090909, Telefax: 91-22-22080404, Cell: 91-9820340180
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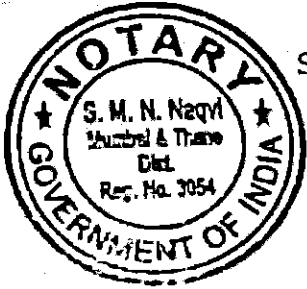
BEFORE THE SOLE ARBITRATOR
HON'BLE MR. NARESH H. PATIL
(FORMER CHIEF JUSTICE OF BOMBAY HIGH COURT)

IN THE MATTER OF ARBITRATION BETWEEN

Supreme Manor Wada Bhivandi)
Infrastructure Pvt. Ltd.) .. Claimant

AND

State of Maharashtra & 3 Ors. .. Respondents

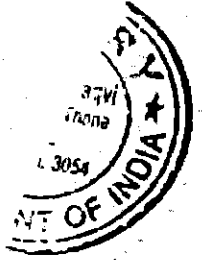


WRITTEN STATEMENT OF THE CLAIMANT TO THE COUNTER
CLAIM OF THE RESPONDENTS

THE CLAIMANT ABOVENAMED MOST RESPECTFULLY SUBMITS
AS UNDER:

1. At the outset, Claimant submits that the Counter Claim filed by the Respondents is an afterthought, false, frivolous and vexatious and the same was filed only in order to prolong the Arbitration Proceedings before this Hon'ble Tribunal and prejudice the Proceedings and, therefore, the Counter Claim ought to be dismissed and may please be dismissed accordingly.

2. It is submitted that the Respondents filed their Written Statement on or about 13th October, 2020 and in the said Written



Statement the Respondents did not whisper a word about any Counter Claim that they may have against the Claimant. Only after a month of filing their Written Statement, the Respondent made a belated Application before this Hon'ble Tribunal seeking permission of this Hon'ble Tribunal to permit them to file the Counter Claim and accordingly as per the Orders passed on 9th November, 2020 by this Hon'ble Tribunal permitting the Respondents to file the Counter Claim, the Respondents filed their Counter Claim on 7th December, 2020.

3. The Claimant submits that the Counter Claim of the Respondents is not maintainable, fraudulent, imaginary and fictitious and the same is made with *mala fide* intentions and ulterior motives.

4. The Claimant further submits that this Hon'ble Tribunal has no jurisdiction to try and entertain the Counter Claim of the Respondents as the Respondent has neither invoked the Arbitration Clause nor followed procedure as contemplated under Article 19 of the Concession Agreement for adjudication of the alleged Counter Claim. Nevertheless, without prejudice to the rights of the Claimant to challenge the jurisdiction of this Hon'ble Tribunal, the Claimant is dealing with the allegations raised in the Counter Claim and the same shall not be treated as waiver on the issue of jurisdiction as stated hereinabove.

5. It is submitted that the Respondents wrongfully and illegally terminated the Concession Agreement executed between the Claimant

and the Respondents on 11th October, 2019 only in order to harass the Claimant and to cause loss to the Claimant. Therefore, the Claimant Initiated these Arbitration Proceedings emphasizing that the termination of the Concession Agreement is wrongful and illegal and sought a declaration to that effect.

6. The Claimant submits that the claims raised in the Counter Claim are in regard to the works executed by the Respondents through some other Agencies and such execution of the work is after termination of the Concession Agreement and, therefore, the Claimant is not liable for such claims raised by the Respondents.

7. The Claimant repeats, reiterates and confirms whatever stated in their Statement of Claim and also in their Applications filed u/s 17 of the Arbitration and Conciliation Act, 1996 before this Hon'ble Tribunal and deny each and every allegation and contention of the Respondents which are contrary and inconsistent with whatever stated by the Claimant.

8. The Claimant submits that the Counter Claim of Rs.1,322,57,28,536.00 (Rupees One Thousand Three Hundred Twenty Two Crore Fifty Seven Lakh Twenty Eight Thousand Five Hundred Thirty Six Only) is fictitious, highly imaginary and devoid of any merit and, therefore, is liable to be dismissed and may please be dismissed accordingly.

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9. The Claimant submits that as stated by them in their Statement of Claim and other previous Applications, the Claimant Invested huge funds and completed the road and thereafter in terms of Concession Agreement and as per the directives / government notifications of the Respondents, the Claimant was collecting the toll charges in order to recover their investments in the project strictly in terms of the Concession Agreement. The Respondents wrongfully and illegally and without following the due process of law and also contrary to the terms and conditions of the Concession Agreement, terminated the Concession Agreement in order to cause huge loss to the Claimant. It is surprising to note that the Respondents stopped collecting the toll charges either by themselves or through any other Agency inasmuch as the subject contract is a BOT contract whereby the investments in the project ought to be recovered from the collection of toll charges. Thus, the *mala fide* intentions of the Respondent can be seen in their action of not collecting the toll charges since 11th October, 2019. Despite the Applications made by the Claimant before the Hon'ble High Court of Judicature at Bombay and also before this Hon'ble Tribunal that the toll collection should go on either by the Respondents or by any Agency appointed by the Respondents, the Respondents i.e. the State of Maharashtra failed and neglected to commence the toll collection whereby the Respondents caused tremendous loss not only to the Claimant but also to themselves. In these circumstances, the Respondents cannot pass on the amounts spent by them, if any, to the

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Claimant. Therefore, the Claim of the Respondents is unjustified and illegal.

10. Without prejudice to the aforesaid and in reply to the Counter Claims of the Respondent, the Claimant submits as under:

(a) Referring to para 1 of the Counter Claim, it is true that the Claimant disputed the termination of Concession Agreement dated 8th March, 2010 between the Respondents and the Claimant as the said termination was wrongful and illegal and contrary to the terms and conditions of the Concession Agreement. It is specifically denied that the Claimant raised frivolous claims as alleged. It is true to say that the Respondents have filed their Written Submission in the Application filed by the Claimant u/s 17 of the Arbitration and Conciliation Act, 1996 and also Written Statement dated 9th October, 2020. However, it is pertinent to mention here that the Respondents did not whisper a single word in the said Written Submissions and the Written Statement that they have any Counter Claims against the Claimant.

(b) Referring to para 2 of the Counter Claim, the Counter Claim of the Respondents of Rs.1,322,57,28,536.00 (Rupees One Thousand Three Hundred Twenty Two Crore Fifty Seven Lakh

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Twenty Eight Thousand Five Hundred Thirty Six Only) is fictitious, highly Imaginary, afterthought and devoid of any merit.

- (c) Referring to para 3.1 of the Counter Claim, the contents are substantially correct.
- (d) Referring to para 3.2 of the Counter Claim, the contents are substantially correct save and except that the Claimant was granted extension of five months. The work of four laning of 57.22 KMs length of the project road was completed in February, 2013 within the extension period of contract. The land acquisition was the responsibility of the Respondents. It is specifically denied that the Claimant had abandoned the construction of the bypass road as alleged.
- (e) Referring to para 3.3 of the Counter Claim, the contents are substantially correct.
- (f) Referring to para 3.4 of the Counter Claim, it is submitted that the Claimant could not complete the incomplete works of the bypass road due to various breaches attributable to the Respondents such as acquisition of requisite land. The Claimant denies having committed any breach of the Concession Agreement as alleged.





- (g) Referring to para 3.5 of the Counter Claim, the contents are substantially correct. The Claimant craves leave of this Hon'ble Tribunal to refer to and rely upon the Articles of Concession Agreement mentioned in the paragraph under reference for their true and correct interpretation at the time of hearing. The Claimant submits that they have followed and complied with the Articles of the Concession Agreement.
- (h) Referring to para 3.6 of the Counter Claim, it is true that the Claimant furnished to the Respondents Performance Security of Rs.8,40,00,000.00 (Rupees Eight Crore Forty Lakh Only) which is valid and in force till date. It is submitted that the Respondents are not entitled to recover from the said Performance Security any amounts by making false claims and under false pretext.
- (i) Referring to para 3.7 of the Counter Claim, it is specifically denied that the Claimant has been a habitual defaulter in performance of their obligations relating with repairs and maintenance of the project road as alleged. The Respondents issued a Termination Notice to the Claimant in the year 2016 under false pretext and as such the Claimant challenged the same by filing Arbitration Petition No.66 of 2017 before the Hon'ble High Court of Judicature at Bombay. The Claimant craves leave of this Hon'ble Tribunal to refer to and rely upon the papers and proceedings and Orders passed in the said

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Arbitration Petition No.66 of 2017 for its true and correct interpretation.


(j) Referring to para 3.8 of the Counter Claim, It is submitted that even though there was no default in maintaining the project road, the Respondents wrongfully and illegally entrusted certain repair work to one Shivsai Constructions. The Respondent did not give any prior notice of such entrustment. The Claimant is not aware as to whether any work was really done by the said Shivsai Constructions as it is the Claimant who did the repair work to the project road at all times. The Claimant submits that the said work order (Exhibit-A) and the said Running Account Bills (Exhibit-A1 and A2) are false and made up. The Claimant is not a party to the said documents.

(k) Referring to para 3.9 of the Counter Claim, the Claimant denies the contents in toto. It is specifically denied that the Claimant failed, neglected and avoided carrying out the incomplete work of the project road and incomplete work of the bypass road as alleged. It is submitted that the Respondents, in order to harass the Claimant and to build up a record, periodically issued certain Notices which were replied by the Claimant from time to time. It is further submitted that one Shramajivi Sanghatna, who are in the habit of making false complaints against Contractors who refused to pay *hafta* to them, made certain false complaints



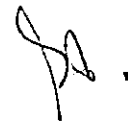
against the Claimant. The Claimant informed the Respondents about the illegal activities of the said Shramajivi Sanghatna. However, the Respondents failed to take any action against the said false complaints. The complaints made by Shramajivi Sanghatna (Exhibit-B1 Colly.) are false and the same were made only in order to collect illegal *hafta* from the Claimant. The Claimant craves leave of this Hon'ble Tribunal to refer to and rely upon the MERI Report of October, 2019 for its true and correct interpretation as and when produced. Referring to further contents of the para under reference, it is specifically denied that 64 accidents occurred in the year 2018-2019 taking a toll of 32 human lives as alleged. It is true that a young lady doctor died on 9th October, 2019 and her death was not attributable to the road conditions. On 8th and 9th October, 2019 there was severe rains with gusty winds and during that time a lady doctor going by a scooter skidded and died. The Claimant specifically denies that they had grossly failed, neglected and overlooked to carry out the necessary repairs and maintenance work of the project road in terms of the Concession Agreement as alleged. The Respondents, without following the due process of the terms and conditions of the Concession Agreement, wrongfully and illegally terminated the Concession Agreement on 11th October, 2019.





(l) Referring to para 3.10 of the Counter Claim, the Claimant is not aware and does not admit the contents of the Inspection Note (Exhibit-C) dated 13th October, 2019 of the Secretary (Roads), Government of Maharashtra. It is submitted that the damage to the project road, if any, is not attributable to the Claimant. The Claimant further submits that in any way the Claimant is not responsible and liable for any actions of the Respondents and their Officers after the termination of the Concession Agreement though the said termination is illegal.

(m) Referring to para 3.11 of the Counter Claim, the Claimant submits that they are not aware and not concerned with the works awarded by the Respondents and executed by various Agencies post termination of the Concession Agreement on 11th October, 2019. Para 3.11 of the Counter Claim refers to four works awarded by the Superintending Engineer of the Respondents and allegedly executed by some Agencies. The Claimant is not aware, not concerned with and does not admit the documents and Running Account Bills being Exhibits-D, D1, D2, D3; E, E1, E2, E3; F, F1, F2, F3, F4; G, G1 and G2. The Claimant submits that they are not liable in any way for the said works allegedly executed by certain Agencies at the behest of the Respondents post termination of the Concession Agreement. The Claimant further submits that as per the information gathered from local people and reliable sources, no such works



were executed by any Agency at the project road site. It is submitted that the Running Account Bills are false, frivolous and bogus.

(n) Referring to para 3.12 of the Counter Claim, the Claimant submits that they are not aware and not concerned with the works awarded by the Respondents and executed by Mayur Constructions and Developers post termination of the Concession Agreement on 11th October, 2019. Para 3.12 of the Counter Claim refers to the work awarded by the Respondents and allegedly executed by Mayur Constructions and Developers. The Claimant is not aware, not concerned with and does not admit the documents and Running Account Bills being Exhibits-I, I-1, I-2 and I-3. The Claimant submits that they are not liable in any way for the said works allegedly executed by Mayur Constructions and Developers at the behest of the Respondents post termination of the Concession Agreement.

(o) Referring to para 3.13 of the Counter Claim, the Claimant submits that they are not aware and not concerned with the works awarded by the Respondents and executed by Jai Bharat Constructions post termination of the Concession Agreement on 11th October, 2019. Para 3.13 of the Counter Claim refers to the work awarded by the Respondents and allegedly executed by Jai Bharat Constructions. The Claimant is not aware, not concerned



with and does not admit the documents and Running Account Bills being Exhibits-J and J-1. The Claimant submits that they are not liable in any way for the said works allegedly executed by Jai Bharat Constructions at the behest of the Respondents post termination of the Concession Agreement.

(p) Referring to para 3.14 of the Counter Claim, the Claimant submits that they are not aware and not concerned with the works awarded by the Respondents and executed / to be executed by Mayur Constructions and Developers post termination of the Concession Agreement on 11th October, 2019. Para 3.14 of the Counter Claim refers to the work awarded by the Respondents and allegedly executed / to be executed by Mayur Constructions and Developers. The Claimant is not aware, not concerned with and does not admit the documents and Running Account Bill being Exhibit-K. The Claimant submits that they are not liable in any way for the said works allegedly executed by Mayur Constructions and Developers at the behest of the Respondents post termination of the Concession Agreement.

(q) Referring to para 3.15 of the Counter Claim, the Claimant submits that as stated hereinabove the Claimant is not liable and responsible for any works awarded by the Respondents and executed by any Agency on behalf of the Respondents and,

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therefore, the said Claim No.1 is untenable. It is submitted that In respect of the contract amount of Rs.2,18,71,179.00 which was awarded to Shivsal Construction, the Claimant is not liable even though the same was allegedly awarded before termination of the Concession Agreement. It is submitted that the Respondents were withholding various due and payable amounts payable to the Claimant and the said amounts were claimed by the Claimant in their Statement of Claims. It is further submitted that the Claimant is not at all liable for Rs.16,15,59,048.00 claimed by the Respondents in their Counter Claim as Claim No.1. Referring to further contents of the para under reference, it is submitted that as stated hereinabove the Claimant is not liable and not responsible for in any way for the amount mentioned in Counter Claim No.1 and, therefore, the Respondents are not entitled to recover part of the cost by encashing the Performance Security of Rs.8,40,00,000.00 of the Claimant. It is further submitted that the Respondents are not entitled to recover any interest on their claim amount of Rs.16,15,59,048.00 In view of the fact that the said Counter Claim itself is in dispute and as the Respondent is not entitled for the said amount. As such, the prayer of the Respondents in para 3.15 is untenable and, therefore, the same may be rejected.

- (r) Referring to para 3.16 of the Counter Claim, as stated hereinabove, the Respondents are not entitled for any amount of

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Counter Claim No.1 and, therefore, their Counter Claim No.2 which is termed as 'penalty' is also untenable and liable to be rejected. The Claimant denies that they are liable to pay to the Respondents a sum of Rs.32,31,18,096.00 towards 'penalty' as alleged.

- (s) Referring to para 3.17 of the Counter Claim, which is alleged as Counter Claim No.3 for recovery of 'costs to be incurred in renewal and strengthening / reconstruction of certain patches / locations on the project road', it is submitted by the Claimant that they are not liable and responsible in any way for the said Counter Claim. It is further submitted that the Respondents prevented the Claimant from doing any work by terminating the Concession Agreement on 11th October, 2019 and, therefore, the Claimant is not liable and responsible for any works executed / to be executed post termination of the Concession Agreement. The Claimant would have executed the work, if the Concession Agreement is in force. The Claimant repeatedly made Applications to this Hon'ble Tribunal to direct the Respondents to collect the toll charges either by themselves or through any other Agency. However, the Respondents objected to the same and informed this Hon'ble Tribunal that Government of Maharashtra is in the process of taking some decision in respect of the said project road. The Claimant was not informed of any Government decisions in this regard till date. In any way, as the



Concession Agreement is terminated, the Claimant is not liable to execute any further work of the project road and not entitled to reap any benefits. Therefore, it is submitted that the Counter Claim No.3 is false, bogus and untenable. The Claimant is not liable in any manner for the said Counter Claim No.3.

(t) Referring to para 3.18 of the Counter Claim, the Claimant submits that the said Counter Claim is false, bogus and untenable. As per the terms of the Concession Agreement, land acquisition was the responsibility of the Respondents and the Respondents miserably failed in acquiring the requisite land. It is denied that the Claimant was liable for acquiring the land on behalf of the Respondents. Therefore, the Claimant is not liable and responsible in any manner for land acquisition or for the increased cost of land acquisition and ground rent payable. The Counter Claim No.4 of Rs.50,51,00,000.00 is bogus and untenable and as such deserves to be rejected.

(u) Referring to paras 3.19 and 3.20 of the Counter Claim, the Counter Claim Nos.5 and 6 raised therein are fancy, bogus and untenable. The said Counter Claims are imaginary and have no substance. The Claimant is not liable in any manner for the said Counter Claims. The said Counter Claim Nos.5 and 6 may please be rejected.



(v) Referring to para 3.21 of the Counter Claim, the Claimant submits that they are not liable for the cost of the Arbitration. In fact, it is the Respondents who have driven the Claimant for Arbitration by wrongfully terminating the Concession Agreement on 11th October, 2019. On the other hand, the Claimant is entitled to recover cost of Arbitration from the Respondents as the Claimant is driven to Arbitration by wrongful deeds and acts of the Respondents. The Counter Claim No.7 towards cost of Arbitration may please be rejected.

(x) Referring to para 3.22 of the Counter Claim, it is submitted that the Respondents are not entitled for any Counter Claim and, therefore, the question of claim for interest does not arise. Therefore, the Counter No.8 for interest may please be rejected.

(y) Referring to para 4 of the Counter Claim, the Claimant denies that the Respondents have a good case on merits in the Counter Claim and are entitled to an Award against the Claimant as alleged. The amounts as claimed by the Respondents aggregating to Rs.883,80,10,734.00 is sham, bogus and untenable and the Respondents are not entitled for any Counter Claim. Further contentions raised in the para under reference are entirely false and untenable. In these circumstances, no Order can be passed as prayed for by the Respondents.



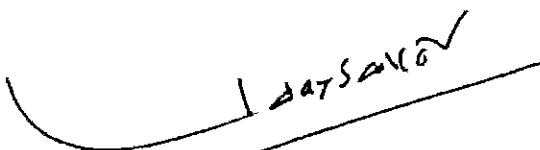
(z) Referring to para 5 of the Counter Claim, the Respondents are not entitled for any ad-Interim reliefs in terms of the reliefs sought for in para 4.

(aa) Referring to para 6 of the Counter Claim, it is denied that grave and irreparable harm, loss and injury will be caused to the Respondents, if the reliefs as prayed for are not granted. It is further denied that no loss or injury will be caused to the Claimant, if final interim and ad-interim reliefs are granted to the Respondents. It is denied that the balance of convenience is in favour of the Respondents.

(bb) Referring to para 7 of the Counter Claim, the Claimant craves leave of this Hon'ble Tribunal to refer to and rely upon the documents annexed thereto for its true and correct interpretation as and when produced.

11. In the aforesaid circumstances, the Claimant humbly prays that the Counter Claim of the Respondents may please be rejected with exemplary costs.

Dated this 6th day of January, 2021.



Uday Sankar Samudrala
Advocate for the Claimant



Claimant

VERIFICATION

I, Govardhan Lakhane, aged 59 years, Occupation: Vice President (Legal) and Authorised Officer of the Claimant, having office address at Supreme House, Plot No.94/C, Pratapgad, Opp. IIT Main Gate, Powai, Mumbai 400 076, do hereby solemnly declare and state that what is stated in paragraph Nos.1 to 11 of this Written Statement to the Counter Claim is as per the records of my office and I believe the same to be true.



Solemnly declared at Mumbai)

on this 6th day of January, 2021)

Uday Sankar

[Signature]
Before me;

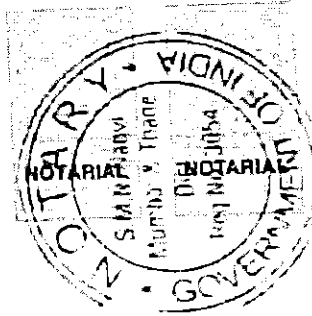
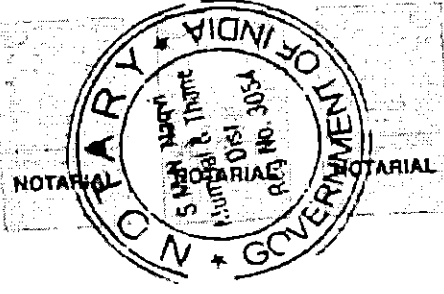
Uday Sankar Samudrala
Advocate for the Claimant



BEFORE ME

Notary Serial No. 478 Page No. 45
Notary Book No. 469 D. 06/1/2021

[Signature]
6-1-21
S. M. N. Naqvi
NOTARY
Government of India
Mumbai & Thane Dist



**BEFORE THE SOLE ARBITRATOR -
HON'BLE MR. NARESH H. PATIL
(FORMER CHIEF JUSTICE OF BOMBAY
HIGH COURT)**

Supreme Manor Wada Bhivandi)
Infrastructure Pvt. Ltd.) .. Claimant
And
State of Maharashtra & 3 Ors. .. Respondents

**WRITTEN STATEMENT OF THE CLAIMANT TO
THE COUNTER CLAIM OF THE RESPONDENTS**

DATED THIS 6TH DAY OF JANUARY, 2021

Udaya Sankar Samudrala
Advocate for the Claimant
Law Chambers of Samudrala
2, Rewa Chambers,
31, New Marine Lines, Mumbai 400 020.
O.S. Regn. No. 3001
Bar Council Regn. No. MAH 304/1987
Advocate Code No.I-5008