

BEFORE THE LD. SOLE ARBITRATOR
SHRI NARESH H. PATIL
(FORMER CHIEF JUSTICE OF BOMBAY HIGH COURT)

**SUPREME MANOR WADA BHIWANDI
 INFRASTRUCTURE PVT. LTD.**

...CLAIMANT

VERSUS

**STATE OF MAHARASHTRA THROUGH
 THE EXECUTIVE ENGINEER,
 PUBLIC WORKS DEPARTMENT, JAWAHAR**

...RESPONDENT

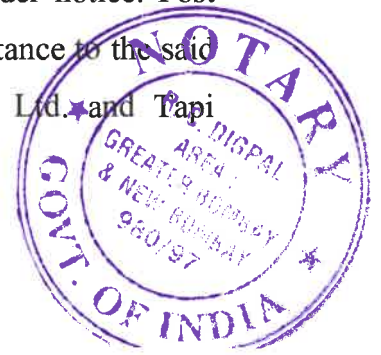


**AFFIDAVIT OF EVIDENCE OF MR. ZAHIR AHMED NAZIR AHMED
 SHAIKH ON BEHALF OF THE CLAIMANT**

1. I, Zahir Ahmad Nazir Ahmed Shaikh, residing at Wafa Park, M Wing, Flat No. 5/2, Almas Colony, Kausa, Thane – 400 612 Indian resident hereby affirm the truth of the within witness statement.
2. The within witness statement is prepared in English language in which I will give my testimony at the evidentiary hearing.
3. I have personal knowledge of all matters herein affirmed to. I have read the pleading filed by both parties and I am generally aware of the current arbitration proceedings. For sake of convenience and brevity, I have adopted all acronyms used by the Claimant in the Statement of Claim dated 24th February 2020. I refer to the Claimant in these proceedings as “**Supreme/Claimant**” and the Respondent as “**GOM / Respondent**”.



4. I say that I am a mechanical engineer by qualification and employed as the Vice President – Operations in the Supreme Manor Wada Bhiwandi Infrastructure Pvt. Ltd. and oversee its construction, operation, maintenance and all other ancillary work required for the Wada Bhiwandi Road SH no. 35 (Km. 49/000 to 89/000) and Manor Wada Road SH no. 34 (29/550 to 53/800) (“**Manor Wada Road**”). As I was personally involved in this project since I took charge in 2015, and thus am personally aware of all the facts leading to the present dispute.
5. While I was employed with the claimant since the year 2010, I took charge of the present project on about early 2015. However, as part of the Claimant company, I was generally aware about this project and had attended internal meetings. I also took over custody of the entire record in relation to this project when I was assigned to this project and therefore in relation to the period prior to my taking over the present project, I have all the records in my custody.
6. The Claimant is a special purpose vehicle which was particularly formed for a Built Operate and Transfer (“**BOT**”) project. The Respondent had in the month of April 2009, invited tenders by way of a tender notice for the work of four lanning of existing 2 lane road from Manor to Wada Road S.H. – 34 in KM 29/550 to 53/800 and Wada to Bhiwandi S.H. 35 in KM 49/100 to 81/070, Taluka Wada, Bhiwandi, Palghar, District Thane, including construction of bypass, as more particularly stated in the tender notice. The said project was on BOT basis. The copy of the tender notice is annexed to the Statement of Claim (“**SOC**”) as Exhibit – 2. The same be kindly taken on record and marked as an Exhibit.
7. M/s. Ram Infrastructure Ltd. and Tapi Prestressed Products Pvt. Ltd. had duly submitted its bid on 2nd July 2009 in response to the said tender notice. Post which, the Respondent on 24th September 2009 issued its acceptance to the said bid, awarding the subject work, to M/s. Ram Infrastructure Ltd. and Tapi



Prestressed Products Pvt. Ltd. (“**Original Bidders**”) The copies of the bid and the tender document submitted and the acceptance to the bid issued by the Respondent is annexed as Exhibit – 3 and Exhibit – 4 to the SOC (Pg. 525 of the SOC Compilation). The same be kindly taken on record and marked as an Exhibit.

8. The Original Bidders were desirous of executing the said project with Supreme BOT Infrastructure Pvt. Ltd. and had accordingly entered into a memorandum of understanding 18th December 2009 (“**MOU**”) with Supreme BOT Infrastructure Pvt. Ltd., which is a group company of the Claimant and M/s. Ram Infrastructure Ltd. and Tapi Prestressed Products Ltd. It was *inter alia* agreed in the MOU that an special purpose vehicle (SPV) will be formed as per the relevant provisions of the tender with the name Supreme Manor Wada Bhiwandi Pvt. Ltd., the Claimant abovenamed, in which the Original Bidders will have a majority equity stake of 51% and Supreme BOT Infrastructure Pvt. Ltd. will have 49% equity stake. A copy of the MOU dated 18th December 2009, is annexed to the SOC as Exhibit – 5. The same be kindly taken on record and marked as an Exhibit. The Respondent was aware of the said MOU as a copy of the same was shared with the Respondent by the Original Bidders vide letter dated 18th December 2009 at Pg. 526 of the SOC.
9. Accordingly, the SPV was formed in the name of Supreme Manor Wada Bhiwandi Infrastructure Pvt. Ltd. i.e., the Claimant and a SPV agreement dated 30th January 2009 was executed between the Respondent, Claimant, M/s Ram Infrastructure Limited and Tapi Pressed Products Ltd. The agreement *inter alia* records the roles and responsibilities of the Original Bidders and the Claimant with respect to the said Project. The copy of the SPV Agreement dated 30th January 2010 is annexed as Exhibit – 6 to the SOC. The same be kindly taken on record and marked as an Exhibit.



10. Subsequent to entering into the SPV Agreement, a performance security amount of Rs. 840 lakhs was given to the Respondent by the Claimant, as per the directions of the Respondent in their letter dated 19th January 2010. The said letter also *inter alia* recorded that a concession agreement will be executed between the parties. Thus, in compliance of the same, on 8th March 2010, a concession agreement was executed between the Claimant and the Respondent (“**Concession Agreement**”). The Concession Agreement was signed on behalf of the Governor of Maharashtra by the Executive Engineer Thane (PW) Division, Thane and the Deputy Executive Engineer Thane (PW) Division, Thane from the Respondents end and by and Mr. Vikram Sharma, the authorised signatory on behalf of the Claimant. Only the covering pages, i.e. two-page sheet recording agreement to abide by the terms of Concession Agreement were actually executed by the parties as the terms and conditions of the concession agreement were already supplied in draft form with the tender documents. The said signed agreement has been annexed as Exhibit – 7 to the SOC. The remaining terms and conditions of the Concession Agreement is provided at Pg. 48 of the SOC (Exhibit – 3) of the tender document provided by the Respondent at Pgs. 17 to 520. The said document be kindly taken on record and marked as an Exhibit.
11. Amidst all this, as this being a BOT project, discussions with our bankers for getting the finances for the project was accordingly commenced. Accordingly, a common loan agreement dated 30th August 2010 (“**1st Common Loan Agreement**”) was entered into between the Claimant and the consortium of banks, in which the Union Bank of India acted as the lenders agent and the security trustee. The total cost of construction and development of the project was initially estimated to be Rs. 430,00,00,000/- (Rupees Four Hundred and Thirty Crores). Out of the said total cost, the equity investment in the Claimant was Rs. 107,50,00,000/- and Rs. 322,50,00,000/- (Rupees Three Hundred Twenty Two Crores) were borrowed from the banks under the said 1st Common Loan Agreement. A copy of the common loan agreement is annexed at Exhibit –



8 Pg. 549 of the SOC Compilation. The same be kindly taken on record and marked as an Exhibit.

12. I say that at all times the Respondent was fully aware of the finances obtained by the claimant. In any case, with my experience in dealing with such projects, I can say with confidence that no loan and/or top of and/or further disposals would be done by financial institutions without consultation and concurrence of the employer of the project, which in this case was the Respondent. In order to protect the interests of the lenders, and in compliance of the terms of Article 21(d) of the Concession Agreement, a substitution agreement was executed between the Claimant, the Respondent and the lenders, wherein the lenders had the right to seek substitution of the concessionaire i.e. the Claimant under the Concession Agreement, in case of the event of default, as more particularly detailed out in the substitution agreement dated 31st August 2010 (“**Substitution Agreement**”). A copy of the Substitution Agreement is annexed as Exhibit – 9 at Pg. 701 to the SOC Compilation. The same be kindly taken on record and marked as an Exhibit.

13. Subsequently, we received a work order dated 11th October 2010 (“**1st Work Order**”) from the Respondent *inter alia* stating that the concession period approved by the Respondent is 22 years and 10 months (including construction period of 2 years) from the date of the work order. The Respondent vide the said letter acknowledged the receipt of the performance security deposit submitted by the Claimant, amounting to Rs. 8,40,00,000/- (Rupees Eight Crore Forty Lakhs). The copy of the 1st Work Order dated 11th October 2010 is annexed as Exhibit – 10 at Pg. 715 of the SOC Compilation. The same be kindly taken on record and marked as an Exhibit.

14. Thereafter the work commenced. As is the normal practice, the lenders closely monitored the progress of Project and utilization of funds *inter alia* through independent engineers i.e. Bhide Engineers appointed by them. Similarly,

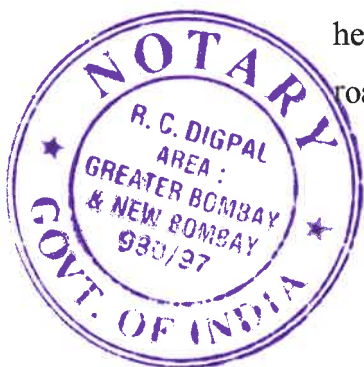


Claimant had also appointed one M/s. Stup Consultants Pvt. Ltd. as independent engineers, to monitor, supervise and ascertain the progress of the Project and also to certify the quality of the project etc. Respondent also monitored each aspect through the PWD department which was fully involved at all stages. While the construction of the road continued, the representatives of the Respondent also visited the site on several occasions to supervise the progress.

Issues that led to the delay in completion of the Project.

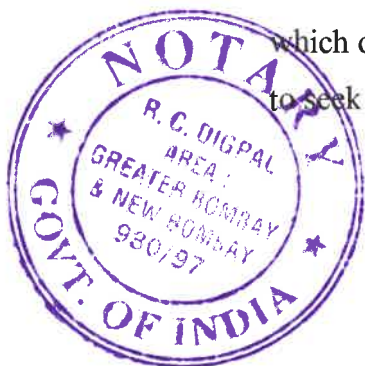
15. I say that, as per the 1st Work Order dated 11th October 2010, the Project was to be completed within a period of 2 years i.e. by 11th October 2012. The Claimant had to face a lot of hinderances while executing the Project which were recorded in various correspondence with the Respondent and the Respondent was fully informed. For instance:

- a. A part of the whole stretch which was to be widened to a 4 lane road, was getting covered under the forest land. Thus, we were not able to widen the road as prior to doing that, necessary permissions from the forest department for acquiring that piece of land were to be obtained, which permissions were not in place. Thus, the same took substantial time.
- b. Another part of the stretch, coming in the jurisdiction of Shelar village, had a Hanuman Mandir on the road, which we were not able to shift, keeping in mind the religious sentiments of the public therein. Though attempts were made to convince the local villagers, the same became a huge issue and in fact the local politicians therein got involved. On the same stretch of about 3Kms, starting from Bhiwandi and Shelar, the same was totally flooded with heavy encroachment of permanent building, along with influx of heavy traffic, making it all the more difficult for the Claimant to widen the road.



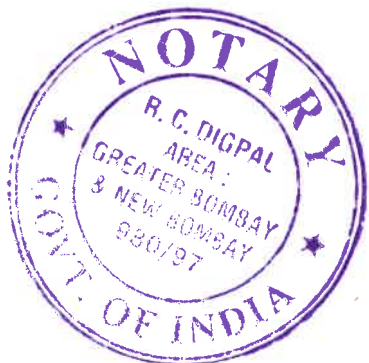
Thereafter, we received a letter, addressed by a local M.P., Shri Suresh Taware, proposing to construct a by-pass road, avoiding Shelar and Bhiwandi and connect the Bhiwandi Wada – Manor road with old NH 3 at Bhinar junction, and then subsequently to Wadapa junction in next NH3. It was understood that this by-pass was proposed on demand of the local people and the local political leaders. Claimant had no option but to agree with the Respondent with such proposed change in order to timely complete the Project. However, the Claimant made it clear that in order for it to agree, the entire construction cost of the by-pass would have to be attached to the main contract work and necessary adjustment would have to be done in the original concession period. Thus, a letter was addressed to the Respondent on 15th December 2011, *inter alia* mentioning all the issues being faced by the Claimant in executing the project and proposing to the Respondent to construct a by-pass road in light of the representations received from the local MP. Claimant was instructed to send such a letter to the Respondent as a proposal from the Claimant based on the ground situation. A copy of the letter dated 15th December 2011, is annexed as Exhibit – 11 at Pg. 717 to the SOC. The same be kindly taken on record and marked as an Exhibit. It is pertinent to note that, by this time i.e. 15th December 2011, the Claimant had already finished 50% of its construction of the said Project.

16. The construction however continued and we kept facing hurdles in meeting our deadline due to the reasons not attributable to the Claimant. I say that there have been substantial delays on part of the Respondent in getting necessary permissions to the Claimant, *inter alia* with respect to the forest land and various other issues all of which are recorded in contemporaneous correspondence. As a result, the Project couldn't be completed within the 2 year time frame and thus, the Claimant had to seek extension. I am setting out in detail, all the delays, which of course were not attributable to the Claimant, which forced the Claimant to seek extension of the completion date from the Respondent:



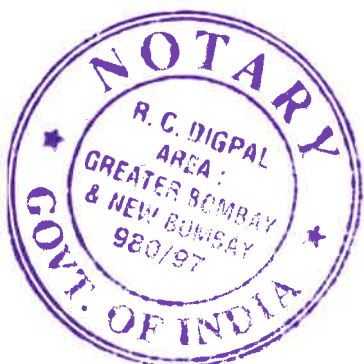
a. Delay in acquisition of land and obtaining necessary permissions by the Respondent:

- i. I say that the principal issue of land acquisition is a primary obligation to be discharged by the Respondent, with which the contract commences. All other events flow from this principal obligation. I say that on several instances, the land acquired for construction, we had to face huge demands from the owners, whose lands were being acquired, which eventually slowed down the land acquisition proceeding, thereby indirectly leading to delay in construction. In many cases, the areas and boundaries that the Respondent informed us to have been already acquired were incorrect and needed substantial work to clarify the position and to acquire and work on such areas. I say that the representatives of the Respondent who visited the site for inspection were time and again informed on the hurdles being faced by the Claimant in relation to this.
- ii. Even for the lands acquired by the PWD, we had to face a lot of trouble from the original owners, causing continuous physical obstructions, and also from the encroachers. I say that all these issues were personally witnessed by the Respondents representatives, who had visited the site for inspection of the Project. At many instances, we were threatened of a police complaint, because of which the construction was stopped, which indirectly led to the delay in completion of the Project within the stipulated timeline.
- iii. Delay in acquisition of the Adhivasi Stretches, nearing about 6.5 Kms. The Permission to acquire this stretch was received as late as 14th March 2012 i.e. almost after 17 months from the commencement date.
- iv. I say that with respect to the acquisition of the forest land, there has been substantial delays on part of the Respondent to acquire the additional 10 meter width of the land, for obtaining forest clearance. In fact, the Superintending Engineer, Thane (PWD) Board on 10th



December 2011 in his inspection note mentioned that the acquisition of the remaining 10 mtrs wide space is under progress and only 20 mtrs of the land is with PWD. Whereas, for 4 lanning, a width of 30 mtrs is required. Thus, suggested that in the present situation, it will be correct to construct road in the 20mtrs wide area which is in the possession of the PWD. However, due to perplexity amongst the forest department and the authority till October 2012, we were not able to progress and extend construction work on the stretch of 12.5Km on the said project, as the land was not handed over to the Claimant.

- b. Delay in obtaining permissions and getting approvals from the authority for making an underpass at Ambadi into flyover.
- c. I say that we had even faced huge difficulties in getting all the utilities shifted concerning shifting of power/transmission/supply and telecommunication facilities, which were to be relocated by the Claimant at the commencement of the work. Initially when the construction commenced, a survey was conducted identifying the utilities within the proposed ROW and accordingly estimates were sanctioned by the various departments. Though the expenditure towards the electric pole shifting is capped in the tender, the same almost doubled basis the estimated we received from MSEDCL and Torrent Power. I have dealt with this in more detail later in my evidence when I explain the claim No. 4.
- d. Another reason that led to the delay was in getting in principal approval of the Respondent for constructing a by-pass for the 3.5KM stretch on the Wada- Bhiwandi road. As I have already stated earlier in my statement, that due to certain illegal encroachments and the hanuman temple, we were not able to proceed ahead with 4 Lanning of this stretch and had received representations from the local M.Ps for construction of a by-pass. On

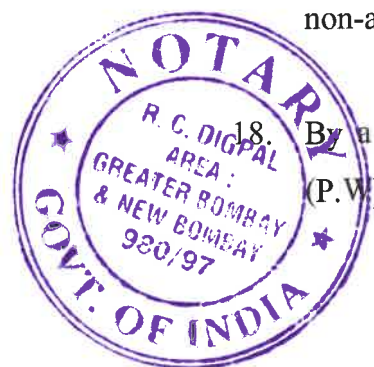


instructions, the same was proposed to the Respondent vide our letter dated 15th December 2011, however, an in-principal approval for the same was only granted in mid-March 2012.

- e. I further say that we had faced huge difficulties in obtaining Bitumen during the peak seasons i.e. April 2011 to July 2011 and April 2012 to July 2012, from the refineries at Mumbai region. The said delay was beyond anyone's control. The Respondent was also kept informed about the same and even a few communications exchanged with the EPC Contractor and the representations of the refineries, were shared with the Respondent for their ready reference.

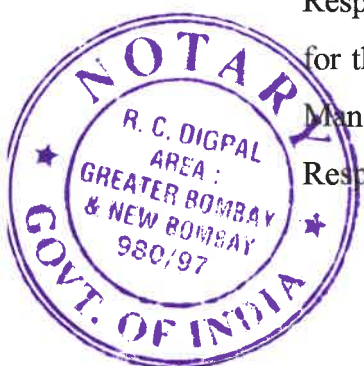
17. In light of delays attributable to the Respondent and other reasons not attributable to the Claimant, a letter was addressed to the Respondent seeking extension of time to complete the project as we did not want any LD to be imposed for no fault of ours. The said letter dated 12th October 2012 is annexed as Exhibit – 12 to the SOC. I say that the copy of the letter annexed to the SOC Compilation is without its annexures. I am attaching herewith the copy of the letter dated 12th October 2012, with all its annexures, as sent to the Respondent, as **Annexure - A**. The said copy by kindly taken on record and marked as an Exhibit. It is also pertinent to mention, that in the said letter, the Respondent was informed that the Claimant has already incurred an expenditure of Rs. 352 crores towards engineering, procurement and construction of the Project, till September 2012, which is 104% of the tender provisions. Thus, a request was made to the Respondent to extend the concession period for the additional cost that the Claimant is incurring and also provide an extension for completing the project by a period of 5 months (150 days), considering the obstructions, hinderance and non-availability of site in particular and others in general.

18. By a letter dated 22nd November 2012 addressed to Chief Engineer, Mumbai (P.W) Regional Division, the Respondent acknowledged and agreed that the



issues stated above are genuine, which had led to the delay in completion of the Project and thus recommended that extension as sought by the Claimant be granted till 10th March 2013 i.e. 5 months from the original completion dated of 10th October 2012. A copy of the said letter dated 22nd November 2012 is annexed as Exhibit – 14 at Pg. 731 to the SOC Compilation. The same be kindly taken on record and marked as an Exhibit.

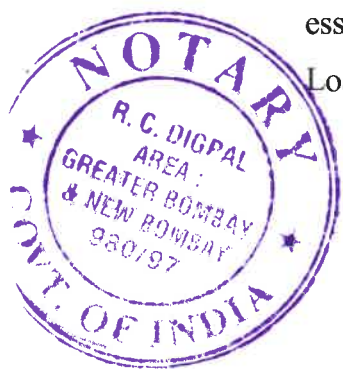
19. Subsequent to this, a letter dated 8th January 2013 was addressed by the Chief Engineer, PWD to Dt. Secretary (Privatization) P.W. Department. In the said letter, the Chief Engineer, acknowledged all the difficulties and hardships that the Claimant had to face in timely completion of the Manor Wada Road recorded all the reasons that led to the delay and accordingly recommended the proposal for granting extension of the period of construction to the Claimant upto 10th March 2013.
20. In any event, the work was nearly completed, with some minor finishing left. Only on the bypass portion nothing had progressed yet as the Respondent had still not decided on it and not yet issued necessary work orders. The Respondent had then visited the site for inspection. Post inspection, the Respondent found the road to be safe to open for commercial operations. Accordingly, a provisional completion certificate was issued on 27th February 2013 stating that the project is nearly completed by the Claimant and the project can be legally, safely and reliably opened for commercial operations. A copy of the provisional completion certificate is annexed as Exhibit – 16 at Pg. 737 to the SOC. The same be kindly taken on record and marked as an Exhibit.
21. Immediately thereafter, a notification dated 1st March 2013 was issued by the Respondent under the signature of the Secretary of the GOM, fixing the toll rates for the classes of motor vehicles passing over the section of the four lanning of Manor Wada road. Through the said notification dated 1st March 2013, the Respondent also permitted the Claimant to collect and retain the amount of toll.



A copy of the notification dated 1st March 2013 is annexed as Exhibit – 17 at Pg. 738 to the SOC Compilation. The same be kindly taken on record and marked as an Exhibit.

22. I say that though the construction work of 90% of the project was completed, the by-pass which was required to be constructed from Vishwabharti Phata to Vadapa Junction, was still under consideration by the Respondents. After several meetings and discussions, the Respondent finally issued a 2nd work order dated 26th July 2013 (“**2nd Work Order**”), revising the scope of construction for bypass work for Vishwabharati Phata – Bhinar – Vadapa Junction, totalling around 7.9 KMs. Vide the said 2nd Work Order, the Respondent revised the project cost to Rs. 383.02 Crores from Rs. 339.76 Crores and further revised the concession period to 28 years 6 months (including construction period of 16 months for the bypass). A copy of the 2nd Work Order is annexed as Exhibit – 18 at Pg. 740 to the SOC Compilation. The same be kindly taken on record and marked as an Exhibit. The Respondent had also provided us with revised cash flow projections, as per the revised concession period. I am attaching herewith a copy of the revised cash flow projections, duly signed by the Respondent, as **Annexure – B.**

23. In light of the 2nd Work Order that we received from the Respondents, and to implement the same, we had approached our lenders for additional lending facility in order to commence construction of the bypass road, we had once again approached our banks, who were the original lenders under the 1st Common Loan Agreement. Union Bank of India agreed to finance the additional cost of project and accordingly one more common loan agreement was executed on 23rd July 2013 (“**2nd Common Loan Agreement**”), under which Union Bank of India had agreed to grant a facility of Rs. 83.66 Crores to the Claimants, which essentially was the cost of construction of the bypass road. A copy of the 2nd Loan Agreement dated 23rd July 2013 is annexed as Exhibit – 19 at Pg. 741 to



the SOC Compilation. The same be kindly taken on record and marked as an Exhibit.

24. Immediately upon the sanction of the facility, Claimant had mobilized all resources and commenced construction of the bypass road and all ancillary work required for its successful execution. As per the terms of the 2nd Work Order, the construction was required to be completed within a period of 16 months. However, due to the various hurdles being imposed by the authorities, collector and the Respondent himself, the Claimant was unable to acquire the land on the entire stretch for the purpose of 4 lanning. I say that the majority of the land on which the bypass was to be constructed was acquired. However, out of the total of 7.9Kms, around 2.5KMs of land could not be acquired, even as on the date of filing this evidence statement. The reasons that led to this are:

- a. On 7th May 2015, the Claimant received a letter from the Tahasildar Office, Bhiwandi Old Octroi Naka, asking us to stop the construction of the bypass road, till the payment of the land holders is made and the complaints are resolved and also till the royalty payments of the materials used for the construction of the bypass road are paid. Through the said notice, a penalty amount of Rs. 4.06 crores was also imposed upon the Claimant. The copy of the notice received from the Tahasildar's office is annexed to Exhibit – 20 at Pg. 872 of the SOC Compilation. The same be kindly taken on record and marked as an Exhibit.
- b. Despite Claimant having clearly explained that all necessary payments were already made, the Tehasildar did not allow the Claimant to commence work, but in fact seized and sealed our machinery.

On seeking legal advice, a suit was filed with the Civil Judge (S.D.) Link Court, Bhiwandi. After hearing the Claimant, the Ld. Civil Judge was pleased to pass an order on 31st October 2015, granting a temporary



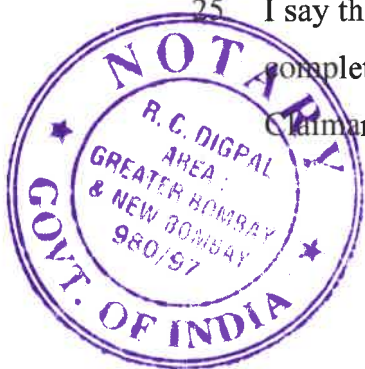
injunction against the order of the Tahasildar, and allowed the Claimant from continuing the construction work of the bypass road. The court in the said order observed that the Claimant has acquired land through private negotiations, and the compensation have been duly paid to the land holders. The Hon'ble Court also acknowledged that even in the letter issued by the Respondent on 23rd July 2015, Respondent has stated that the work of the bypass road is in progress and it is found to be proper. It is also pertinent to mention that the compensation was paid to 841 land holders out of the total of 1154 and also to the adhvasi land holders, which was more than the market rate of the year 2008-2009. The Hon'ble Court also directed that the machinery of the Claimant to be released.

- d. However, despite obtaining orders from the court, the Respondents therein failed to obey the same and the work could not progress. Thus, contempt proceedings were filed, which were pending in the court and the whole work came to a stand still. Respondent made no reasonable efforts to resolve the issue despite being fully in the know that work was stopped due to local political intervention and pressure.
- e. Claimant made every reasonable effort to resolve the situation on ground, including making all necessary payments to land owners where due. The tender contemplated only a specific amount to be used for such acquisitions, which was long exhausted. However, there was assurance that additional monies spent would be reimbursed and accordingly Claimant did whatever it could in this respect. Such huge unanticipated payments led to the Claimant facing temporary liquidity crunch. Thus, a letter dated 4th February 2016 was addressed to the Respondent stating all the hardships being caused by the Claimant, that despite court orders, they are not able to progress with the work of the bypass road. Thus, the Claimant sought an extension of 9 months from the Respondent, from February 2016 onwards, to allow us time to complete the construction of the bypass road.



- f. Thereafter, as by this time, I had taken over the said project of the Manor Wada Road, I was called to the Collectors office on 1st March 2016 wherein the representatives of the Respondent were also present. During the meeting, the Hon'ble Collector had asked the Chief Engineers to stop the work of the by-pass till the land acquisition process gets completed and asked to submit the land acquisition proposal. The Respondent had in the meantime, vide their letter dated 2nd March 2016 (Pg. 871 of the SOC Compilation) asked us to stop the work of the by-pass road and submit a proposal of the land acquisition.
- g. The Claimant immediately on 12th March 2016 submitted its proposal for the lands to be acquired of the said by-pass road. Copy of the letter dated 12th March 2016 is annexed at Pg. 1482 of the SOC Compilation. The Respondent vide its letter dated 30th April 2016 acknowledged that they have received the land acquisition proposal from the Claimant and the same has been submitted to the Hon'ble Collector for further consideration. Copy of the Respondents letter is at Pg. 889 of the SOC Compilation.
- h. The Claimant had also hired the government registered contractors and suppliers and vide letter dated 17th December 2015, named V.G. Mhatre. Accordingly, the Claimant issued a work order for acquisition of the lands, at a cost of Rs. 45,00,000/- to be done by them within a particular time frame. A copy of the letter dated 17th December 2015 addressed to Mr. V.G. Mhatre is annexed to Exhibit – 20 of the SOC at Pg. 893 of the SOC Compilation.

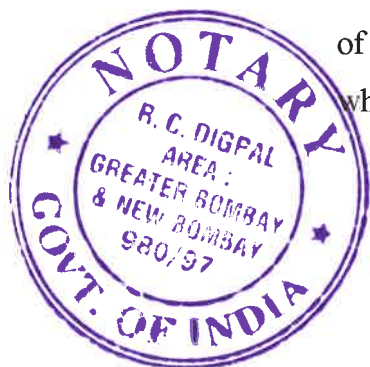
25 I say that because of all the delays, as stated above, the bypass road could not be completed, as is still pending completion. This happened for no fault of the Claimant. However, because of these delays, the Claimant had to suffer huge



loss of revenues from the toll. In fact, the land acquisition proposal submitted by the Claimant is still under consideration.

Operating and Maintaining the Toll Road (excluding Bypass)

26. My role has been the overall supervision on the toll operations and maintenance of road after Claimant received the notification to initiate operations. I have had significant past experience in this regard as previously I have overseen toll and operations at Atlanta Limited for 9 years.
27. We faced various resistance and local issues in the collection of tolls which was duly brought to the attention of the Respondent. However, most often instead of making any efforts to resolve the same, the Respondent took a hand-offish approach and immediately bowed down to political pressure. For instance, the Claimant had to face the following issues:
- a. The toll notification issued on 1st March 2013, the Respondent exempted all light motor vehicles from payment of toll. Though Respondent was to compensate the Claimant for the same, however, no timely payments were made by the Respondent. In fact, huge sums are still due and outstanding.
 - b. The Respondent thereafter again issued another toll notification in May 2015, exempting all car, busses, jeeps etc. from paying the toll at the Manor Wada Road. This came as a huge surprise to us, as a major chunk of the revenue on the toll was from these vehicles. This led to a major cash crunch on the toll.
 - c. The other issue that we had to face was reduction in our revenues because of construction of parallel roads on the Manor Wada Road, because of which the traffic got diverted.



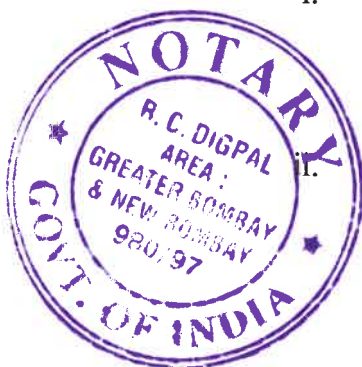
- d. On many instances, the local villagers never used to pay the toll, causing a daily loss of approximately 2 – 2.5 lakhs.
- e. Also, during every monsoon season, the local groups in that area used to come and protest at the toll and at some instances, did not even let the vehicles cross the toll, thus leading to a huge loss of revenue.

The Respondent was kept informed of all these practical difficulties being faced by the Claimant on the toll. Despite that, no efforts were taken to rectify it.

28. Maintenance of road in Maharashtra, particularly in and around Mumbai, is always a challenge in light of heavy monsoons, which lasts roughly 4-5 months. Therefore, special effort is put in this regard. I confirm from my own personal knowledge and having overseen the entire operations and maintenance, that maintenance of the road was always done as per contractual requirement and there was no deficiency that could be termed as a breach of contract. Before dealing with specific facts in this respect, I want to highlight certain points that are important to appreciate this issue in its proper perspective:

- a. It is well understood and expected by all concerned that maintenance of roads before, during, and immediately post monsoons are different in approach. For instance, it is not possible and not advisable to carry out elaborate maintenance works during monsoon as such work is susceptible to be washed off or otherwise damaged.
- b. Accordingly, the contract also expressly provided that:
 - i. April-May pre-monsoon work to be completed tackling all potholes and shoulder dressing. Same was to be done once again post monsoon in Oct-Nov.

The period between May and October was considered the monsoon period wherein pothole filling patchwork repairs was to be carried out



and other potential protective maintenance, while awaiting completion of monsoon for proper tackling of problem areas.

- iii. Every 7 years, 25mm thick open graded carpet with liquid seal coat /SDBC was to be put as part of improving the general roughness index and for long-term upkeep.
- iv. Road strength and quality is assessed on the basis of certain assumptions of traffic flow. For instance, constant traffic flow has a very different impact on road than traffic at a lane crossing or turning point, which are anticipated to be under higher stress and accordingly catered to. In the present case, as I will explain in detail below, multiple unauthorized stopping, lane crossing points used to be created by locals which the Respondent failed to control despite repeated complaints. This led to repeated maintenance issue arising in such areas. This caused substantial loss to us and the Respondent, despite full knowledge, not only failed to resolve it – as it was essentially a law and order problem – but passed the buck by blaming Claimant without addressing the underlying issue.

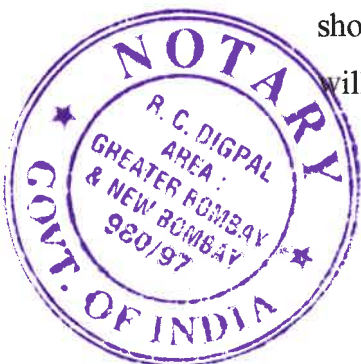
29. It is important to note that the contract allows Claimant to carry out maintenance works itself or engage any third-party contractor if it so wishes. Claimant being experienced in road construction and maintenance had always contemplated doing all maintenance work itself. Despite prompt and adequate maintenance being carried by us, in various ways, we were indicated that we should hire local contractors. I confirm that I had also received such indications and suggestions from Respondent's representatives. However, appointing a third-party contractor was not advisable both from the perspective of costs and quality of work. Particularly, the local road contractors were known to be miscreants and their work was of extraordinarily poor quality. Therefore, despite such overtures, we resisted such suggestions and pressures. It is my understanding that this displeased certain individuals at Respondent's end at local level who took pre-meditated steps against Claimant's interests. This is the



reason why from mid-2015 onwards, Respondent started sending vague and unsubstantiated correspondence complaining about maintenance.

30. The Respondent started agitating issues of maintenance of the road and other works, *inter alia*, regarding completion of the by-pass road, completing works under the punch list etc. A meeting was then finally held between the representatives of the Respondent and the Claimant. I had, along with our group Chairman, Mr. Vikram Sharma, had attended the meeting in the chambers the Chief Engineer, Mumbai P.W. Regional Division, Mumbai of 16th October 2015. A copy of the minutes of the meeting dated 16th October 2015 is hereto annexed and marked as **Annexure - C**. The Respondent had essentially directed us in the meeting to carry out the repair and maintenance work on the said road, which in any event was going on. We were accordingly directed to submit a bar chart of works by 21st October 2015. In compliance thereof, the Claimant had issued a letter on 21st October 2015. The following points are relevant to note from the letter:

- a. The Claimant had carried out the required repairs and maintenance work of the said road, during the monsoon and kept the road in a motorable condition;
- b. Even post monsoon, as has been the practice, required repairs and maintenance work was done – the road was pot hole free as on that date and the required rough surfaces were also repaired to the conditions as required under the contract.
- c. The Claimant further assured that the removal of grass from median and shoulders, painting of median verge where ever required, road painting etc. will also be done before 30th November 2015.

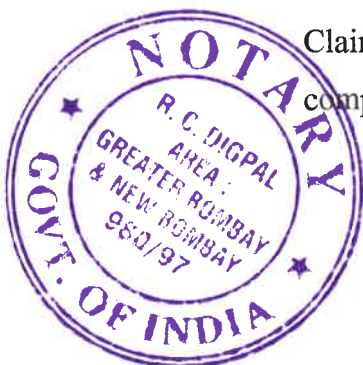


- d. The Claimant also brought to the Respondents attention that there are various false and frivolous complaints being raised against the Claimant, for example, the complaint of one Mr. Chintaman Wanga, who was a M.P. then, who had himself withdrew the complaint vide his letter of 1st November 2014. Thus, we had requested the Respondent not to consider this fake complaints, as clearly the same were done for those parties personal interest and to harass the Claimant.

I say that the said letter was prepared under my instructions and in fact, I has personally supervised the repairs and maintenance work on the road. A copy of the letter dated 21st October 2015 is hereto annexed and marked as **Annexure - D**. The same be kindly taken on record and marked as an Exhibit.

31. Thereafter, once again a meeting was held on 19th December 2015 between the representatives of Respondent and the Claimant. I was present on behalf of the Claimant in the said meeting. Parties had *inter alia* discussed about the pending work on the road and directions were given to me on the further progress/construction of the by-pass road. I was also directed to follow up with the forest department where the work is pending for road widening and joining of bridges, pending due to forest land. Parties had also discussed regarding the compensation to be paid by the Respondent towards the car and busses, which they had exempted from payment of Toll. I am producing herewith the letter dated 31st December 2015, issued by the Respondent, *inter alia*:

- a. sharing the schedule of the car and bus compensation.
- b. the Respondent in the said letter also stated that they are liable to pay to the Claimant an amount of Rs. 308.07 Lakhs towards car and bus compensation for the period 1st June 2015 and 31st December 2015.



- c. For other general repairs and maintenance of the road, which points were discussed between the parties in the meeting.

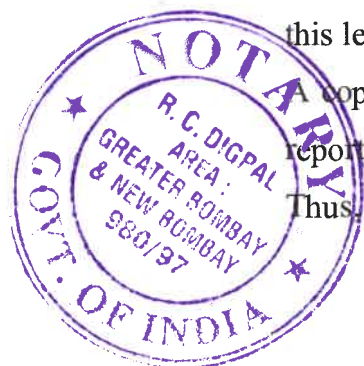
The copy of the letter dated 31st December 2105 is marked as Annexure - E.

32. Accordingly, on 4th January 2016, we had responded back to the Respondent, *inter alia* stating:

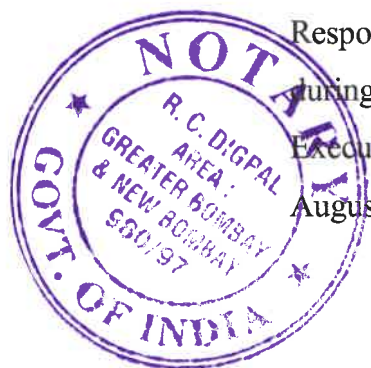
- a. With respect to the punch list, the Claimant had already submitted its reply. Some works under the punch list were completed and for the rest, the Claimant had already paid to the Respondent in lieu of the same;
- b. Roughness index of the said road was below 2000. I say that this was as per the contractual terms of the Concession Agreement;
- c. That the maintenance of the said road is a continuous process and the Claimant has deployed 4 teams of 15 labours each to carry out the pot hole filling, repairs of damaged patches, repairs of damaged dividers etc.
- d. The Claimant also asked the Respondent not to attach the compensation payment with the maintenance as because of the exemptions granted to the vehicles, the Claimant has already suffered a revenue loss. Thus, requested the Respondent to release the compensation amount.

I am producing herewith a copy of the said letter dated 4th January 2016 as Annexure - F. I say that this letter was prepared under my instructions. A copy of the same be taken on record and marked as Exhibit. The Claimant had vide this letter shared a report prepared by MERI on the roughness index of the road.

A copy of the said report is also annexed herewith as Annexure - G. The said reports shows that the roughness index of the road was within the limit of 2000. Thus, there cannot be any issue of any pot holes etc. being there on the road.



33. Consistent with the pre-meditated vague allegations initiated since mid-2015, to Claimant's utter shock, we received a letter dated 21st August 2016 from the Executive Engineer, P.W. Division, Jawahar, directing the Claimant to stop the toll recovery from midnight (12:00 Hrs in night) of 29th August 2016. A copy of the letter dated 21st August 2016 addressed by the Executive Engineer, P.W. Division, Jawahar is annexed as Exhibit – 21 to the SOC. The same be kindly taken on record and marked as an Exhibit. I say that the copy annexed to the SOC is in Marathi. I am herewith reattaching the copy of the said letter along with its translation in English, as **Annexure - H**.
34. The Claimant immediately on the very same day, addressed a letter to the Respondent informing that the action of the Respondent is not in accordance with the Concession Agreement as the Engineer in Charge has no right to stop the toll once the COD is achieved. In any event, a notice should have been issued to carry out the works, if any, during the cure period, failing which, the Engineer in Charge can then get the same work done on their own with penalty or collect the toll to recover the expenses. I say that the road was kept in a good condition despite heavy monsoon. Thus, the Claimant requested the Respondent to revisit their instructions on stopping the toll operations and withdraw the letter dated 21st August 2016. I am producing herewith a copy of the letter dated 21st August 2016, as **Annexure – I**.
35. In any event, the Claimant immediately moved to the Hon'ble Bombay High Court and filed an Arbitration Petition being lodging no. ARBPL/946 of 2016, seeking stay on the operation and implementation of the suspension letter dated 21st August 2016. The matter came up for hearing on 29th August 2016. The Respondent realized that what they have done was completely illegal, thus, during the hearing, the advocate for the Respondent, on instructions of the Executive Engineer, PWD, Jawahar, withdrew the impugned order dated 21st August 2016. A copy of the order dated 29th August 2016 passed by the Hon'ble



Bombay High Court in CARBPL/946 of 2016 is hereto annexed and marked as Annexure - J.

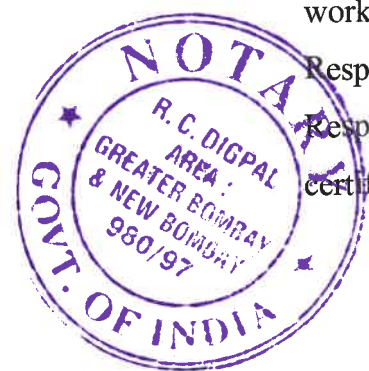
36. Despite having withdrawn the notice, the Respondent's local officers continued to pester us that we should use local contractors for maintenance. On some pretext or the other, issues were being created without any underlying cause and without any expressly identified point of complaints. General complaints about maintenance without any specifics were made in correspondence.
37. Thereafter, the Respondent continued to pester the Claimant, intentionally raising issues of maintenance during the monsoon season. Once again on 22nd November 2016, the Respondent wrote a letter to the Claimant, framing a long list of alleged breaches. Without raising any specific issue on maintenance of any particular stretch, the Respondent gave a notice to carry out repairs on the said road. I say that in any event, during that time, the normal maintenance of the road was going on, as that being a post—monsoon period. The Claimant had vide its letter dated 5th December 2016, responded back to the letter of the Respondent dated 22nd November 2016. The Claimant in this letter clarified that they are maintaining the road and all efforts are being put to keep the road pot hole free. The Claimant also informed the Respondent that an amount of Rs. 35.34 Crores is pending with the Respondent which the Claimant is still to receive, because of which the Claimant is facing huge financial hardships. However, in the interest of safety, the Claimant continued the maintenance work. Also, with respect to the Respondents allegation that the work has not been completed as per the punch list, the same was totally false. I have covered the issues on punch list in great detail below. I am producing herewith the copy of the letter dated 22nd November 2016 and 5th December 2016, exchanged between the parties, as Annexure – K (Colly.).

I say that we were maintaining and keeping the road in the best possible condition, managing the monsoon damage and damage caused due to local



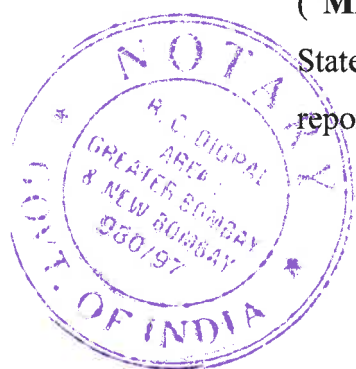
unauthorized diversions created. However, normal wear and tear due to several external reasons such as monsoon, damages by villagers, frequent braking due to obstruction by villagers etc. lead to formation of pot-holes, particularly in May to October as the road is made of Asphalt. Despite the huge financial crunch that we were facing due to various defaults of Respondent, we continued to maintain the road and kept filling up these pot holes during monsoon and carrying out further maintenance post-monsoon.

39. I further say that the Respondent has also alleged that the work was not carried out as per the punch list. I say that the Respondent had issued a provisional completion certificate on 27th February 2013, certifying that the major part of the work on the said road has been completed. The copy of the provisional certificate is at Exhibit – 16 of the SOC Compilation. Thereafter, the toll notification was issued and the Respondent permitted the Claimant to collect the toll. The Respondent had also issued a punch list, as per Clause 9.3(g) of the Concession Agreement, providing a list of pending work, as on 10th June 2013. The Claimant endeavoured to complete all the pending items of the punch list, however, due to the various hurdles that the Claimant had to face i.e. Respondent not being able to procure permission from the forest department, encroachers, agitation by the villagers etc. the pending work as per the punch list could not be completed. Thus, in compliance thereof, the Respondent had asked the Claimant to pay Rs. 58.4 lakhs, as more particularly mentioned in the punch list, in lieu of the pending works. Accordingly, we had deposited a demand draft of Rs. 58.4 Lakhs with the Respondent on 29th July 2013. However, subsequently, the Claimant was able to finish works amounting to Rs. 23.64 Lakhs under the punch list and had accordingly written a letter to the Respondent on 23rd October 2015, stating that out of the total works under the punch list of Rs. 58.4 Lakhs, works amounting to Rs. 23.64 Lakhs has been completed and thus, requested the Respondent to release the said amount of Rs. 23.64 Lakhs. Till date, the Respondent has not released this amount, and also not issued a completion certificate, as the work that was pending for the Manor Wada Road, the



Respondent had been duly compensated for the same. I am attaching herewith the copy of the letter dated 11th June 2013 received from the Respondent along with the Punch list, the copy of the letter sent to the Respondent along with the DD copy and the letter dated 23rd October 2015 addressed to the Respondent, as **Annexure - L (Colly.)**. Thus, the Respondent cannot contend that any work with respect to the said Manor Wada road could not be completed because of the Claimants fault. The Claimant had in their letter stated that it is impossible to complete the pending work due to the various reasons, as mentioned in their table annexed with the letter of 23rd October 2015.

40. Thereafter, once again, the Respondent malafide and with an ulterior motive, vide their letter dated 9th December 2016 directed suspension of the toll collection with immediate effect from 10th December 2016. A copy of the order dated 9th December 2016 is hereto annexed and marked as **Annexure – M**. This simply appeared to be tactic of the Respondent to harass the Petitioner as in a span of 3 months, the Respondent did the same illegal act, which previously they withdrew during the hearing before the Hon'ble Bombay High Court. The Claimant was once again constrained to move before the Hon'ble Bombay High Court and filed an Arbitration Petition bearing no. ARBPL/66/2017, praying for staying implementation/operation of the order/letter dated 9th December 2016 of Executive Engineer Jawar, P.W. Division. The Hon'ble Bombay High Court during the hearing on 19th December 2016 was pleased to grant a stay on the order/letter of the Respondent dated 9th December 2016 and directed both the parties to take joint inspection of the road in question on 20th December 2016 and submit a report to the Hon'ble Court on 21st December 2016.
41. The Parties accordingly appointed Maharashtra Engineering Research Institute (“MERI”) to inspect the Wada Bhiwandi Road from 29.55KM to 53.80KM State Highway No. 34, Dist. Thane, to identify the deficiencies and submit their report along with the photographs. The same also recorded vide the Hon'ble



Courts order dated 21st December 2016 and MERI was asked to submit the report by 27th December 2016.

42. MERI had in their report only suggested some areas where some repair work needed to be carried out. There was no suggestion that there was a total lack of maintenance, warranting the suspension of toll, as alleged by the Respondent. On the contrary, the Report confirmed the issues raised by Claimant that the refusal to allow 4 laning in one of the stretches was leading to deterioration of road and unauthorised medians being removed were causing problem. MERI noted that 92% of the potholes were in the two lane stretch.
43. As I was the toll in charge and was also concerned for the repairs and maintenance of the road, I had submitted a chart to my management, to be submitted in the court, stating that all the repair work that MERI has suggested will be completed within a period of 100 days, with no further extensions. A chart showing the time required for completion of the repairs was tendered before the Hon'ble Court and taken on record. The Hon'ble Court accordingly directed us to carry out the repairs over the period of 100 days and directed MERI to submit its report every fortnight. The Hon'ble Court also observed that so far as the issue of land acquisition is concerned, the same be done strictly as per the Concession Agreement dated 8th March 2010. The grievance of the Claimant with respect to the encroachment under the bridge was also raised. The Hon'ble Court was pleased to consider the same and vide the same order, directed that the local police under whose jurisdiction the space under the bridge is encroached, shall immediately take steps to remove the encroachments. Accordingly, an order dated 30th December 2016 was passed by the Hon'ble Bombay High Court. A copy of the order dated 30th December 2016 is hereto annexed and marked as **Annexure - N**.

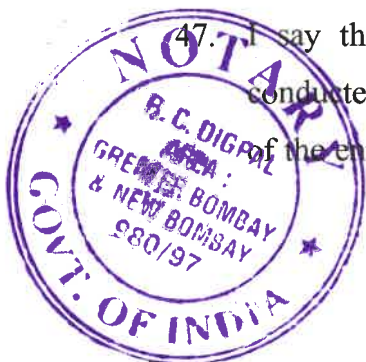
44. As directed, the repair work commenced strictly in compliance with and in accordance with what was suggested by MERI. Every fortnight the report was



submitted to the Hon'ble Court i.e. 18th January 2017, 3rd February 2017 and 2nd March 2017. The said reports were taken on record by the Hon'ble Court and orders were passed. A copy of the orders dated 18th January 2017, 3rd February 2017 and 2nd March 2017 are hereto annexed and marked as Annexure - O (Colly.).

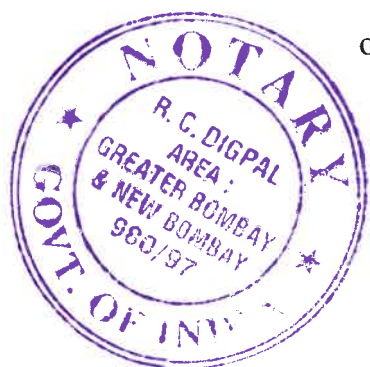
45. I say that the Claimants finished the repairs work of the road, as per the suggestions made by MERI and accordingly a final report of MERI was to be prepared based on joint inspection, as ordered by the court. However, on the date of inspection, the Respondents ignored the representatives of the Claimant entirely and proceeded with MERI representatives in one vehicle without informing us. However, I was conscious of such possible attempt to rule us out of the joint inspection ordered and was ready with arrangement of equipment and vehicle at our end and followed the Respondents continuously. Eventually realising they had no option but to include us, the joint inspection was finally carried out with our presence resulting in a report dated 10th April 2017 which speaks for itself.
46. The said report dated 10th April 2017 was submitted before the Hon'ble Court and accordingly the same was taken on record. The Claimant undertook to comply with the suggestions/observations of MERI, more particularly during the monsoon season. Basis the said undertaking, the Hon'ble Court directed the Respondent not to act as per the order dated 9th December 2016 and disposed off the Petition. A copy of the final order dated 10th April 2017 is annexed as Exhibit – 23 Colly at Pg. 914 of the SOC Compilation and the final report of MERI dated 10th April 2017 is annexed as Exhibit – 24 at Pg. 916 of the SOC Compilation. The same be kindly taken on record and marked as an Exhibit.

47. I say that I was personally present at all times when the inspection was conducted by MERI. This can also be seen from the details of the representatives of the entrepreneur mentioned in the final report submitted by MERI at Pg. 917,



Vol III of the SOC. I further say that, as per the report submitted by MERI, *inter alia* the following can be seen:

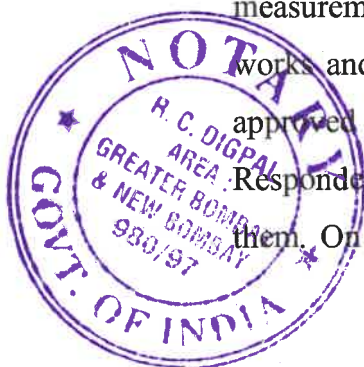
- a. Roughness Index: The roughness index values were found to acceptable for 95% of the stretch, as per the tender and only 5% of the stretch i.e. 12KM was not acceptable as per the tender, as that stretch was made of paver blocks, as this length is in the village area.
- b. Potholes and Bad Stretches: As per the report, no potholes and bad stretches were observed.
- c. Unauthorised Gaps (Median Village): I say that the villagers in the area used to break upon the paths on the highway for their smooth flow, putting the Claimant with a heavy cost to repair it time and again. MERI in their report had observed that the Executive Engineer of the Respondent who had inspected the site on 18th December 2012 had instructed us to submit the list of median gaps to the Executive Engineer for their approval. I had accordingly prepared a list and submitted it with the Executive Engineer on 25th December 2016. While during the inspection being done by MERI on 16th January 2017, it was decided that this problem will be mutually resolved between the P.W.D office and the Claimant. Unfortunately, Respondent took no steps in this regard and the problem of unauthorised gaps remained as is, which is also recorded in the final report of MERI dated 10th April 2017.
- d. Median Verge: The same was repaired. The grass and shrubs were totally cut and clean and the median verge was painted. Thus, no issues were observed with respect to the median verge.



- e. Road Side Furnitures: I say that the road side furnitures i.e. PVC Lights, project information boards, zebra crossings, thermostatic paints, toilets at the toll plaza etc., were all found to be in proper order.
- f. Embankment: It was observed in the report that only 150 m on the right side on Bhiwandi – Wada Road in Km 71/650 to 71/800, embankment is cut up to B.T. edge. I say that we were not able to repair the same due to the objections being taken by the local person at the spot. This was acknowledged by MERI and also agreed upon by the P.W.D. officers.
- g. Major Bridges: While inspection being done by MERI, I had conveyed to them the difficulty being faced by us in completing the bridges at Manor – Wada road at Km 47/800 across Pinjal river and at Km 30/600 across Vaitarna river, because of the land acquisition problem. The same was acknowledged by MERI and it was decided that the P.W.D. officers and the representatives of the Claimant will solve this problem with mutual co-ordination.

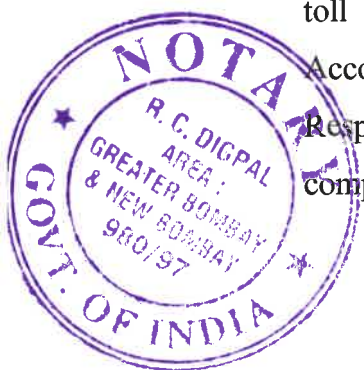
48. I further state that the Claimant was maintaining the road as per the suggestions and observations of MERI. Even during the monsoon season, the Claimant ensured that the road is in proper conditions and all the requirements/suggestions of MERI, as more particularly mentioned in the final report of 10th April 2017 are met.

49. I say that the maintenance for the said road was carried out every month from August 2017 till September 2019 and daily maintenance and repairs combined measurement booklet was prepared. I had personally monitored the maintenance works and the progress sheets were prepared under by direct supervision sand approved by me. I say that on a lot of instances, the representatives of Respondent were also there and the said reports were even counter signed by them. On the instances where the Respondents representative was not present,



we used to share the report with them through a letter. I am producing herewith the complete set of all daily maintenance reports showing the maintenance work done on the Manor Wad Road, as Annexure – P (Colly.) As the said annexure is voluminous, I am filing the same as a separate compilation. The same be taken on record and marked as an Exhibit. I say that the above reports shared along with the photos reflect expressly the work done and other details regarding the material used, the part of the road which has been repaired/maintained and the quality and nature of the maintenance done.

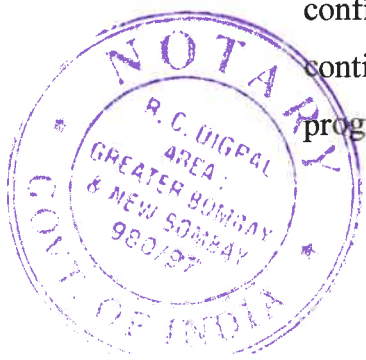
50. I further say that the said Manor Wada Road comes in the Konkan region of Maharashtra, which region sees a very heavy rainfall every monsoon. The Respondent has sought to rely upon MERI Reports at Exhibit B-1 and B-2 of their Statement of Defence. Neither of these 2 reports were ever shared with us and therefore we have no basis to believe that they were indeed contemporaneous reports of this project. As far as Exhibit B-1 is concerned, I do not recall any such survey done in our presence and therefore, the said report is surprising. I say that these reports do not show a true and actual picture of the road. In any case, it is strange and unheard of any such survey and report being prepared in September month as it is well recognized that during monsoon such surveys are meaningless. During the rainy season, the pot holes are filled up with GSB / WMM / WBM / Emulsion Mix. Thus, during this time, as the final layering with asphalt is not done, the roughness index will be high. Post monsoon, after October onwards, the repairing of the road starts by filling up all pot holes and using asphalt to smoothen the road surface and accordingly conduct an internal test. Thus, by December the roughness index of the road comes back to normal. I say that the repairs post monsoon were conducted and in fact a roughness index test was also carried out for the purpose of extending the toll notification. During the test, the road was found to be pot hole free. Accordingly, on 28th February 2019, the Claimant addressed a letter to the Respondent stating that the repairs and maintenance of the said road has been completed and the road is pot hole free. Thus, the Claimant requested the



Respondent to extend the toll notification for a further period. The Respondent after due consideration was pleased to extend the toll notification for a further period of 3 months, after duly noting that the road was in good condition, pot hole free and in motorable condition. I may also state here that a survey was done in February 2019 for this purpose which is referred to in our letter of 28th February 2019. I was personally present during the survey and the condition as well as the roughness Index was found within limits. Subsequently, no report, such as Exhibit B-2 now being relied upon was ever sent to us by the Respondent making any complaints. I therefore find the contents of these new documents at Exhibit B-1 and B-2 as inaccurate and contrary to the fact on ground and deny both their existence and accuracy. I am annexing herewith a copy of the letters dated 28th February 2019 exchanged between the Claimant and the Respondent, as Annexure – Q (Colly.).

51. I would also like to point that, in the letter annexed by the Respondent at Pg. 108 of the Statement of Defence, the Respondent states that the testing equipment stopped working. Thus, the authenticity of the machines being used for the test is itself in doubt and thus, the reports prepared cannot be relied upon. It is also not out of place to mention that certain roughness index figures mentioned in the purported report are also ranging upto 11000 or 13000, which is totally impossible. I say that such a roughness index would be only possible when there is a huge hole on the road which can even subsume a car.

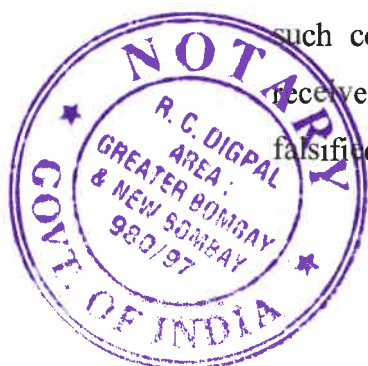
52. I say that Respondent has in writing confirmed having satisfied itself of the conditions of the road as late as March 2019. Thereafter, in any case, May to October 2019, was the monsoon period. Therefore, it is evident that Respondent's sudden decision to terminate the Concession Agreement on the pretext of poor condition of road had no basis in reality. I say this with confidence also because throughout between March – September, 2019, we had continued maintenance works as required and every month submitted the daily progress reports of that particular month (which are part of the compilation



produced herewith). All these DPR's were duly received by the Respondent's and not even in one instance did the Respondent raise any questions or objections or concerns regarding maintenance work not being done. The reason for termination was entirely extraneous, which I attempt to explain below.

53. It is pertinent to note that elections were scheduled in Maharashtra on 21 October 2019. It is well known that local residents as well as parties with vested interest, such as local road contractors, had always been against toll collection. With election related political activity increasing, various efforts were being made to stop toll collection to appease local vote bank in the area. The easy pretext for such illegal action was always to point fingers at maintenance. For instance, Claimant had received a letter from an organisation by the name Swabhimani Sangathan right in the middle of peak monsoon (on 1 July 2019) openly threatening to take law and order in its own hands and prevent collection of toll. Despite our efforts, Respondent was not assuring us of taking necessary action to prevent any untoward situation. Therefore, in our letter dated 16th July 2019 addressed to Respondent, we raised the issue again and copied the police as well. We also informed what was well known to the Respondent that the maintenance during monsoon was in full swing and infact, over and above the contractual obligation, when we got a dry spell of few days, we were even taking risk and doing asphalt mixes.

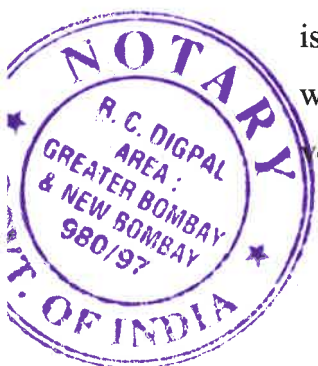
54. It is pertinent to note that the 2019 monsoon in Maharashtra was extraordinary and much heavier than usual. For instance, Mumbai region had broken its 65-year record for highest rainfall. By mid-September 2019, city had already recorded about 3453.4mm rainfall. Due to extraordinary pressure, we were even made to engage some local contractors of Respondent's choice in 2017 and 2019 for maintenance at risk and cost of the Claimant. It is pertinent to note that one such contractor, M/s. Kshatriya Infrastructure emboldened by the support it received from Respondent's local officers and other political support submitted a falsified bill of over Rs. 1.45 crore for a few days in September 2019 minor



maintenance done during monsoon. We protested against such blatant attempt to extort money and raised various issues. We were threatened by them that if we do not agree and pay it would not be beneficial for us. Instead of giving in to such threats, we continued to carry out our works with full information to the Executive Engineer and Deputy Engineer. PWD. Apart from the formal DPR reports of daily work done which was submitted every month, there was a whatsapp group wherein regular updates on real time basis was provided by us. R.T. Patil, Superintendent Engineer and Mr. Ingole, Chief Engineer, of the Respondent, *inter alia* were part of such whatsapp group.

55. I further say that, to our shock and surprise, we suddenly received a letter from the Respondent on 11th October 2019 purporting to terminate the concession agreement and allegedly asking to stop collecting the toll w.e.f. 19th October 2019 at 24:00 hours. The notice appeared to be a result of a pre-meditated action against us by using a recent road accident as a pretext to throw all legal obligations to the wind and for immediate political mileage. It is not a coincidence that the elections were scheduled only 13 days later. If Respondent had followed the contractual mechanism and given a 30 day notice, it would not have served the purpose of gaining political mileage by achieving stoppage of toll collection before polling date. It is also clear from the contents of the termination letter itself that Respondent was fully aware of its legal obligations but chose to ignore it with impunity. A copy of the letter dated 11th October 2019 is produced at Exhibit – 27 of the Claimants SOC. The same be kindly taken on record and marked as an Exhibit.

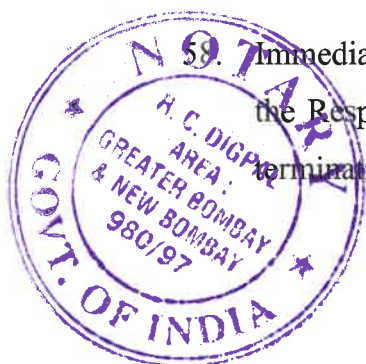
56. It would be appropriate at this stage to explain the context of such BOT projects. These type of projects have, across the globe in the last 20 to 30 years as part of what is commonly referred to as public – private partnership. The idea is very simple and very efficient provided the government keeps its bargain without flexing its muscles as the sovereign. Huge infrastructure projects have a very high capital cost. Therefore, it puts a very heavy burden on state budgets to



build such projects at its own cost by hiring an expert contractor. Therefore, to avoid such heavy upfront capital expense and to lessen the burden on state budget the concept was evolved that a private party can be invited to build such project at its own cost and be compensated both as to the cost and the expected profits by being given the right to collect toll from the users of such roads/projects directly over a defined period of time. Therefore, while such projects are owned by the state, they have not been paid for by the state. It is in this context that appropriate safeguards are built in the concession agreements to ensure that the sovereign/state does not exercise its powers to cancel such agreements after the private party has already made all the expenses and built the infrastructure. This is the reason why the concession agreement in the present case as well does not allow the state powers to cancel the concession on grounds of maintenance. It on the contrary are allowed the state to take over maintenance by appointing its own third-party contractors at the cost of the concessionaire. This is because to cancel the concession on the issue of maintenance is on the face of it extraordinarily disproportionate. Maintenance cost through any contractor of choice would be nowhere close to the cost that the state will need to pay in order to take over such asset by an early termination. It must always be remembered that in such projects the state has not yet paid the cost of the infrastructure and if early termination is done for any reason including any purported breach by the contractor, the taking over of the project is subject to payment of the cost of such project – which in the present case is defined in the 2 scenarios noted in Article 16.2 of the Concession Agreement.

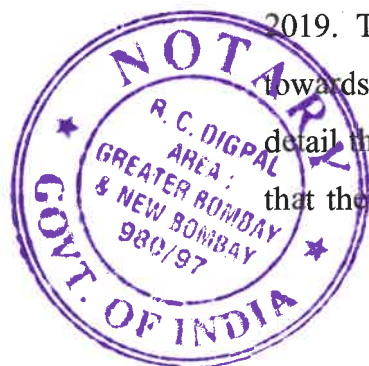
57. However, the Respondent for short-term political gains through all caution and all legal obligations to the wind, terminated the Concession Agreement and has till date on false pretext failed to pay for the asset it has illegally taken over.

58. Immediately on receipt of the notice from the Respondent, we had sent a letter to the Respondent on 17th October 2019, raising our concerns towards the illegal termination and suspension of toll collection, which was totally in beach of the



agreed terms of the Concession Agreement. A copy of the letter of the Claimant is annexed as Exhibit – 28. The same be kindly taken on record and marked as an Exhibit. I say that, even assuming while denying that the Claimant failed to maintain the road, the Respondent ought to have asked the Claimant to carry out the repairs within the cure period, as per the notice of the Engineer – in Charge of the Respondent, as more particularly specified in Scheduled – O of the Concession Agreement. Clause 16.2(a)(1) which gives the right to the Respondent to terminate – clearly mentions that the Respondent has to first issue a notice showing his intention to terminate and give a notice to cure the breach within a period of 60 days from the date of the notice. The Respondent, without following the due procedure under the Concession Agreement, directly terminated the Concession Agreement and falsely stated that “...*considering the public sentiment and your total negligence in maintenance the concession agreement condition of 60 days cure period is also waived...*”. Further, even the Schedule – O does not give any right to the Respondent to terminate the concession agreement and indefinitely suspend the toll collection. At the maximum, the Respondent can partially or fully stop the toll collection during the period when the repairs are being carried out and/or carry out the work on its own and recover twice the cost (as penalty) from the Claimant from the performance security or from the arrears of land revenue. I say that the Respondent had in fact appointed third party agencies to carry out the repair works of the road, some payments for which were done by the Claimant and the rest were done by the Respondent from the compensation payable to the Claimant towards the car and bus toll stoppage. The document towards the bill and payments made to the these third party agencies are at Exhibit C-26 Colly.

59. We had further issued a legal notice, through our lawyers, on 1st November 2019. Through the said letter, the Claimant *inter alia* raised their concerns towards the illegal and malafide conduct of the Respondent and mentioned in detail the series of events that transpired under the Concession Agreement. I say that the Respondent has majorly, basis an unfortunate incident, that took place



on 9th October 2019, wherein a lady doctor died to an accident on the Manor Wada road, sought to terminate the Concession Agreement. However, what is important to note here that, one JIAU Samajik Sanstha (an associate of one JIAU construction) which protested and agitated at the work site and made certain complaints, were awarded the maintenance of the road on 10th October 2019 by the Executive Engineer of the Respondent. I say that the said JIAU group is in the habit of making agitations and thereafter getting the repair work allotted to them with the help of certain PWD officials – which was even reported in a local news paper – at Pg. 1005 of the SOC Compilation. Thus, clearly the Respondents Executive Engineer were hand in gloves with some contractors and at the behest of such contractors, some false and baseless complaints/allegations were alleged to have been made. It is also not out of place to mention that Mr. Nitin Sambre, head of JIAU Group, has criminal antecedents. In fact, when the toll operations were started by the Claimant, JIAU Group had attacked us at the toll and had in fact even shot one of our crew members, for which FIR was registered and Mr. Nitin Sambre was in jail for a period of 3 months. The copy of the FIR and other details are annexed herewith as **Annexure - R (Colly.)**.

60. Through the letter sent by our advocates also pointed out that the poor maintenance of the road cannot be a concern as one Kshatriya Infrastructure Pvt. Ltd. who was entrusted with the work of filling the pot holes and providing and laying of WBM and MPM work had executed the maintenance work during the period of September – October 2019 and the same was certified by the assistant engineer, PW sub-division. The letter received from Kshatriya Construction sending us a bill of Rs. 1,45,81,551/- dated 15th October 2019 is annexed at Exhibit – 26 Colly of the SOC Compilation. Thereafter a joint inspection was conducted on 24th October 2019 and part of the bill was certified, amounting to Rs.35,73,823.2/-. A copy of the letter addressed by the Claimant citing reasons for certification of the part amount of the bill is produced at Pg. 1013 of SOC Compilation, forming part of Exhibit – 26 Colly. A copy of the said letter was



even marked to the Respondent officers. The said documents be kindly taken on record and marked as an Exhibit. Thus, the Claimant vide their advocates letter dated 1st November 2019 requested the Respondent to withdraw the notice of termination. The letter of the Claimants advocate dated 1st November 20019 at Exhibit – 29 be kindly taken on record and marked as an Exhibit.

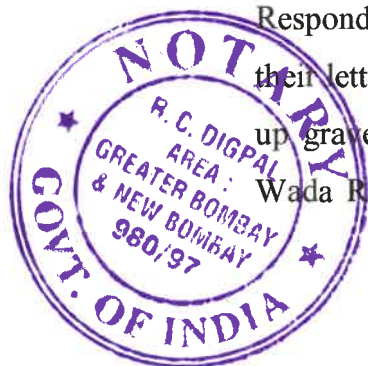
61. However, as Respondents took no steps thereafter, we had once again sent a letter through our advocates, dated 19th February 2020 invoking arbitration clause under the Concession Agreement and asking the Respondent to pay to the Claimant an amount of Rs. 687.48 crores towards the termination payment, as per the contractual provisions of the Concession Agreement. A copy of the letter dated 19th February 2020 is annexed as Exhibit C-3 to the SOC Compilation. The same be kindly taken on record and marked as an Exhibit.
62. I have seen the pleadings filed by the Respondent. The Respondent has in Exhibit B (Colly) sought to produce 4 letters issued by them to show that how the Claimant has failed to maintain the road. I say that the issues were allegedly raised with respect to the maintenance of the road, more particularly because of the pot holes, during the rainy season. I had personally gone and met the representatives of the Respondent and had assured them that the maintenance will be taken care of. Accordingly, soon on completion of the monsoon, the repair work used to commence and completed. As already stated above, the roughness index used to go up during the monsoon season because of the pot holes, as that area being a konkan region, used to have a very heavy rainfall, more particularly the rainfall in 2018 and 2019 was extremely heavy.
63. In any event, the Respondent has not produced the correspondences that we have addressed to them after completing the repair works. on 28th February 2019, we had confirmed the Respondent of the completion of the repair work, post which the road was pot hole free. A copy of the letter dated 28th February 2019 and the



Respondents reply to it, is already produced with the compilation filed with the evidence statement.

64. One Swabhimani Sanghatana had also agitated issues and raised concerns with respect to the maintenance of the road and had sought to blame us for the deaths of the people due to accident on the Manor Wada road. They had also threatened us by sending letters for shutting the toll plaza and if the same is not done, they will by force, shut down the toll plaza and carry out a protest of closing the road. The letters are annexed at Exhibit C-1 Colly to the Respondents Written Statement. I say that all these issues were agitated without any cause and concern and only to harass the Claimant. The maintenance work on the Manor Wada road was being carried out on a daily basis. This stand was also made clear to the Respondent vide our letter dated 16th July 2019 addressed to the Executive Engineer of the Respondent, stating that the monsoon maintenance work on the road is going on and the Claimant has deployed all necessary labour and machineries at various places. The photos reflecting the maintenance work being carried out was also shared with the Respondent for reference. Thus, we had requested the Respondent to stop Swabhimani Sanghatan from acting on their letter of 1st July 2019. The letter dated 16th July 2019 is hereto annexed and marked as **Annexure - S**. Thereafter, the Claimant was even compelled to seek police protection to ensure that no violence happens at the toll.

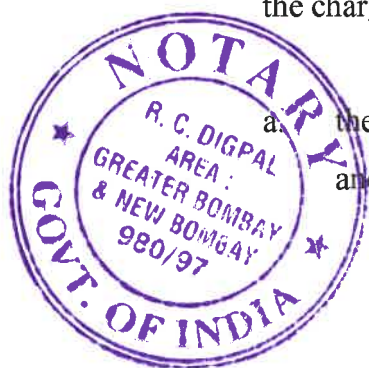
65. The Respondent has in their letters also sought to raise an issues of filling up the pot holes with paver blocks. On this issue, I would like to state that the use of paver blocks is only done during the monsoon season. During the monsoon season, every pot hole is filled up with paver blocks as the same gives instant and immediate relief and allows us to keep the road motorable. In fact, the Respondent themselves had suggested in their inspection note, forming part of their letter dated 14th September 2016, that pot holes should be immediately filled up with gravel and paver blocks. As already mentioned above, as the said Manor Wada Road falls in the Konkan region, there are heavy rainfalls during every



monsoon, specially in the 2018 and 2019 monsoon season. Thus, for durability, paver blocks are used. I do not see why the Respondent has sought to agitate such issues, while being aware that the road was being maintained throughout the monsoon season, till the Concession Agreement was terminated. Post Monsoon, the paver blocks are removed and asphalt is put in, to make the road smooth, ensuring the roughness index is as per the contract. It is pertinent to note that all these letters vide which the Respondent has sought to raise issues were deliberately issued during the monsoon, only with a sole intent to create false records and to give contract to other third party contractors. It is also not out of place to mention here that one such area called Kudus, where a part of the stretch of the Manor Wada road was built, had a huge market on both side of the road. Initially, the road was built with bituminous, however, due to mass breaking on that stretch of some 200 mtrs. the road got spoiled and we had then put paver blocks to higher durability, which was also the demand of the people of that village.

66. Subsequently, Claimant's position has been duly confirmed after a thorough investigation by the State's police machinery. In this respect, it may be noted that a chargesheet was filed in relation to the case of accident of Dr. Neha Shaikh on 2nd February 2021 a copy of which is attached, as **Annexure – T (Colly)** along with its English translation. In the final chargesheet filed by the Police Authorities on 21st February 2021, it was concluded that the Claimant cannot be held responsible for the death of Neha Shaikh and even the road found to be in order, without any pot holes in that area. The Police had also noted that the pot holes were filled up with asphalt, as against the alleged allegation of the Respondent that the pot holes were not filled up properly by bituminous binder but only by WMB Material and murum. It is pertinent to note the following from the charge sheet:

as the Claimant cannot be held responsible for the death of Dr. Neha Shaikh and the same happened due to sheer negligence;

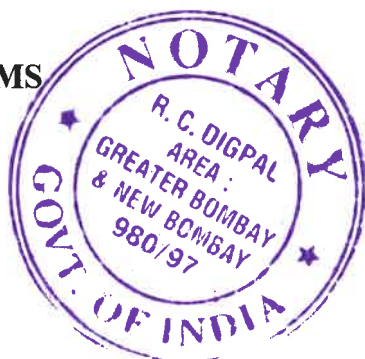


- b. The pot holes were filled up by the Claimant with asphalt;
- c. There was no pot hole on the road where the accident occurred – as can be seen from the pictures annexed to the charge sheet;
- d. Daily maintenance of the road was being done and reports were shared with the Respondent.

Thus, it is clear from the above, that the whole basis of the Respondent terminating the Concession Agreement was itself wrong, devoid of merits and illegal. In fact, the Respondent has also admitted and acknowledged that road was maintained until September 2019 by the Claimant and other third party agencies appointed at Claimant's cost.

67. I say that, till date, for no fault of the Claimant, the Claimant is being penalized and is suffering unnecessary hardships, by not being able to operate the toll and pay to the financial institution. Even the Respondent has not taken any efforts to operate and maintain the toll and the dues of the financial institution are piling up day by day with huge interest.
68. I further say that a lot of discussion and liasoning of work was done on the field where the Respondents representatives were also present. During such meetings, on many instances, the Respondents representatives had handed over their internal correspondences to us. Thus, all the internal correspondences of the Respondent which are already on record and/or are now being produced, are the ones that were handed over to us, records of which are now being maintained by me.

CLAIMS



Claim No. 1

69. I say that Claim No. 1 as stated in the SOC relates to the amount that the termination payment which the Respondent is liable to pay contractually under the Concession Agreement as per Article 16.2 and 16.4 of the Concession Agreement. As explained in detail above, this payment is an essential pre-condition to the Respondent taking over the asset / project as without such payment, the cost of the project would remain entirely unpaid and any takeover would be illegal. This is the reason why the contract contemplates payment in both situations, i.e. whether the Claimant is at breach for the termination or not.

70. I say that and as also explained in detail above, for no fault of the Claimant and by putting false and baseless allegations, the Respondent has terminated the Concession Agreement vide their letter dated 11th October 2019 and asked the Claimant to stop collecting the toll. Apart from the fact that the termination has been done for a cause which does not contemplate termination at all, the Respondent has also failed to follow the procedure and protocol outlined in the contract. The same amounts to repudiation of the Concession Agreement, which amounts to an event of default on part of the Respondent as per article 16.1(b)(2) of the Concession Agreement. The fact that the allegations on the pretext of which the termination was hurriedly issued was entirely false, as has also been confirmed after a thorough police investigation in Chargesheet dated 02nd February 2021. The chargesheet expressly notes that maintenance work was duly done by Claimant and that the accident had nothing to do with the road condition. It is therefore established beyond doubt that the termination was issued on false and / or incorrect pretext and was therefore in breach / default of the Concession Agreement.

71. Thus, in such a scenario, the Respondent is liable to make the Termination Payment in accordance with clause 16.2(b) (2) reproduced below for ease of reference:



“(b) Termination for the GOM Events of Default

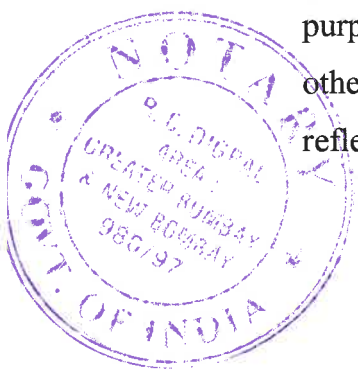
(1) The Concessionaire may, upon the occurrence and continuation of any of the GOM Event of Default terminate this Agreement by issuing Termination Notice to the GOM.

(2) Upon Termination of this Agreement by the Concessionaire due to a GOM Event of Default, the Concessionaire shall be entitled to receive from the GOM, by way of Termination Payment a sum equal to:

- (i) The total debt due, plus*
- (ii) 120% (one hundred twenty percent) of the Equity subscribed in cash and actually spend on the Project if such Termination occurs at any time during the tree years commencing from the Commencement Date and for each successive year thereafter, such amount shall be adjusted every year to fully reflect the changes in WPI during such year and the adjusted amount so arrived at shall be reduced by 7.5% (seven and half percent) per annum.”*

72. I say that that total debts due, as certified by our auditor as on 10th October 2019 is Rs. 507.46 crores. The certificate of the auditor certifying the total debt due is annexed at Exhibit C-1 to the SOC at Pg. 1047. I say that the same be taken on record and marked as an Exhibit. The Claimant has even annexed a certificate of the equity subscribed, issued by the statutory auditor, which is annexed as Exhibit C-2 to the SOC at Pg. 1049A. I understand that the said certificate has inadvertently not annexed to the hard copy filed served upon the Respondent. Thus, for sake of completeness, I am herewith reproducing the certificate issued by the Auditor certifying the debt due as Rs. 507.46 Crores and equity as Rs. 180 crores, as **Annexure - U**. The same be kindly taken on record and marked.

73. I further confirm that to the knowledge of Respondents, the Claimant is a special purpose vehicle incorporated solely to carry out this project. It does not have any other business or asset of any kind. Therefore, its audited financial statements reflect the expenses for this project, which has been certified by the statutory



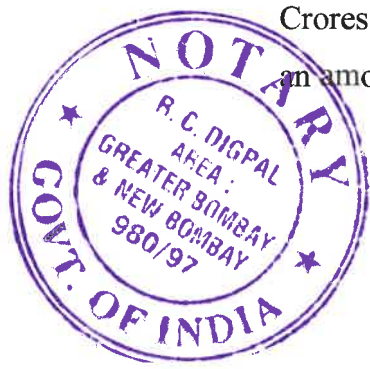
auditors certificate produced and mentioned hereinabove. Additionally, it may be highlighted that major part of this project was financed and monitored by the financial institutions. In this respect, the financial institutions had appointed independent engineer to periodically prepare report after thorough verification as to the utilization of funds and progress. Accordingly, various Lenders Independent Engineer Report were produced, some of which have been produced at Exhibit C-8 (Colly). The other such Lenders Independent Engineer Reports are also produced by me as Annexure – V (Colly.).

74. Thus, I say that the Claimant is entitled to an immediate payment of Rs. 687.48 Crores.

75. In the alternative to above, I say that even in the unlikely event if the Tribunal comes to a finding that the termination happened due to the fault on behalf of the Claimant, still the Respondent is liable to pay the Claimant the termination payment as per Article 16.2(a)(3) of the Concession Agreement, which is reproduced herein below:

“(3) Upon Termination by the GOM on account of occurrence of a Concessionaire Event of Default during the Operations Period, the GOM shall pay to the Concessionaire by way of Termination Payment an amount equal to 90% of the Debt Due actually spent on the project less pending insurance claims, if any. Provided, however, that in the event of such insurance claims or any part thereof are not admitted and paid, the Concessionaire shall be entitled to received from the GOM further sum equal to 80% (eighty percent) of amount if such claims not admitted.”

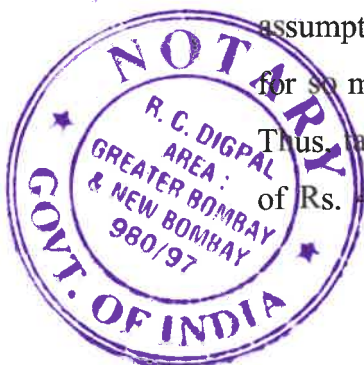
76. I confirm that there are no pending insurance claims. I say that as per the debt due certificate issued by the statutory auditor, the total debt due is Rs. 507.46 Crores. Thus, under this article, the Respondent is liable to pay to the Claimant an amount of Rs. 507.46 * 90% i.e. Rs. 456.71 Crores.



Claim No. 2

77. As explained hereinabove, the present project is in the nature of a public-private partnership project (PPP). In such projects, huge capital expenses are made upfront by private party to build and operate a public asset on the express assurance that the private party would be allowed to recoup costs and make profits on the assumptions based on which the project is awarded. In the present case also, the Claimant had bid for and obtained the concession on the basis of the assumptions that it will be permitted to collect toll throughout the entire concession period resulting in recouping of its costs and making certain profits over the concession period. The Respondent by untimely and wrongful termination in breach of the contract between parties after having introduced to the Claimant in making huge upfront capital expenses prevented it from recouping its costs and from making the profit which was the very basis and the only consideration for the entire contract. Therefore, the Claimant has suffered losses which are in the nature of lost profits and have been quantified in the statement of claim as explained below.

78. I say that the concession period as per the 2nd Work Order issued by the Respondent at Exhibit – 18 to the SOC Compilation, was revised to 28 years 6 months. The Claimant was allowed to collect the toll from 1st March 2013 till 11th October 2019 i.e. almost 6 years 6 months. Respondent had also given to the Claimant the updated cash flow projection for the revised concession period, which is hereto marked and annexed as Annexure - B, which is duly signed by the Respondent. The Claimant has estimated its profit at 10% every year on the net toll collection. I had prepared a table which is annexed at Exhibit C-4 of the SOC Compilation at Pg. 1054 which shows the calculation of lost profits on the assumption of 10% profit on revenue. I say that with my experience in this sector for so many years, it is extremely conservative to assume at least a 10% profit. Thus, taking a profit of 10% ever year, the Claimant could have earned a profit of Rs. 419.78 Crores. I have even prepared a working sheet and annexed the



same with other documents in support of this claim, at Exhibit C-4 of the SOC Compilation. The same be kindly taken on record and marked as an Exhibit.

Claim No. 3

79. I say that the Claimant had bid for this project on certain assumptions which are completely overtaken for no fault of the Claimant and primarily due to Respondent's inaction. Firstly, certain expansion of the road into four-lane was prevented as per the 1st Work Order, making the entire project less attractive to commercial vehicles. To compensate, the Respondent very belatedly agreed to the bypass road. However, due to failure to co-operate further necessary permissions and acquisitions of land, the Respondent allowed the work on the bypass road to languish and eventually stopped entirely. Resultantly, what was meant to be an attractive four-lane road through and through between Vishwabharti Phata – Bhinar – Vadapa Junction (total length 7.9 Km) became a not so attractive proposition owing to a two-lane road for 7.9 Kms in a busy city leading to huge traffic jams.

80. In particular, I say that the various reason for revenue loss/shortfall in revenue, are:

- a. Stoppage of bypass work by executive engineer Jawar vide their letter no. 1032 dated 23rd March 2016;
- b. Not allowing of FDCM in 3.7 KM road length at various 8 locations, which created bottle neck, due to only 2 lane road in 14 metre land width, inpite of PWD promising 20 meter of land width. This led to traffic jams, resulting in damaging the road and loss of revenues;

Two lane road in Shelar village - after cancellation of proposed four lane road from NAdi Naka to Vishwabharti Phata due to the oppositions of the



villagers - restricted us to construct four lane due to religious structures, political pressures from MP's – which resulted in traffic and revenue loss. Also, due to heavy traffic, police restricted traffic entry from our road vide their notification (attached to SOC compilation), due to thee being only a two lane road.

- d. The construction on the Vanjar Patti Flyover started, which also restricted traffic, resulting in loss of revenues.
- e. Even after construction of the Vanjar Patti Flyover, the traffic was allowed to pass through the Manor Wada Road. However, due to the 2 lane road, heavy vehicles used to create traffic jams, resulting in less multi-axle vehicles entering the road, and in turn, loss of revenues.

81. I say that for reasons stated above the Claimant has suffered huge revenue loss to the tune of Rs. 256.43 Crores, as set out in detail at pgs. 1057 – 1059 of the SOC

82. I say that due to the proper permissions not being in place from the forest department, the Claimant was unable to finish the construction of the by-pass road, as already stated in detail hereinabove, the Respondent had himself asked the Claimant to stop work of the by-pass road till the acquisition of land is completed. I say that the Claimant had also submitted a proposal for the land acquisition with the Respondent, which the Respondent had sent to the Hon'ble Collector for consideration. The same has also been acknowledged by the Respondent in their letter attached at Exhibit – 20 Colly at Pg. 889 along with the proposal pointers. I say that we had even appointed an external agency, V.G. Mhatre for the purpose of acquisition of the land to be done for the construction of by-pass for a total cost of Rs. 45,00,000/-. This was only done after seeking approval of the Respondent and in fact, even the payment to V.G. Mhatre was made by the Respondent. The letter issued to V.G. Mhatre by the Claimant is already produced at Exhibit – 20 Colly. at Pg. 893 of the SOC Compilation. I say

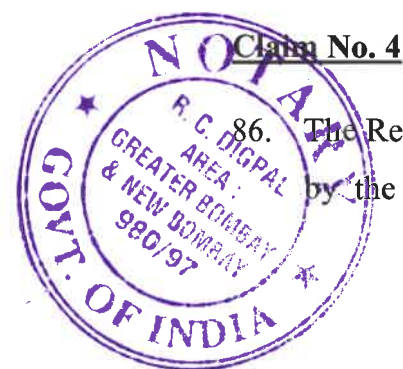


that till date the land acquisition proposal has not been finalized and is at the final stage of approval.

83. In light of the above there was huge loss of revenue due to reduction of traffic owing to non-completion of by-pass road and blockage of multi-axle vehicle @Nadi Naka, due to construction of two lane bridge by MMRDA, which in turn resulted in diversion of all traffic which was expected on Manor Wada Road. The Claimant had also brought this to Respondent's attention vide their letter of 20th November 2018, at Exhibit C-20 Colly at Pg. 870 of the SOC Compilation
84. This loss of revenue naturally resulted in substantial difficulties faced by the Claimant with respect to its financial arrangements. I confirm that at no stage there was any allegation of diversion of funds from the SPV for any other purpose and yet the Claimants struggled to meet its obligations with the financial institutions, purely due to the breaches of the Respondent, resulting in substantial losses, as has been explained as part of this claim.
85. I say that the Claimant has continued to suffer this loss till the termination of the Concession Agreement and has estimated the revenue loss at Rs. 256.43 Crores. The table showing the revenues loss suffered due to low collection of toll because of the diversion of multi-axle vehicles not coming on Manor Wada Road is prepared by me and produced at Exhibit C-5 Pg. 1057 to Pg. 1059. The documents showing that the reason for by-pass not being completed was not attributable the Claimant are also produced along with the table at Exhibit C-5. Thus, the total revenues loss suffered is Rs. 256 Crores. I say that the documents in support of this claim are at Exhibit C-5. The same be kindly taken on record and marked as an Exhibit.

Claim No. 4

86. The Respondent is also liable to pay to the Claimant the additional cost incurred by the Claimant towards the land acquisition and shifting of poles. I have



prepared a table showing the additional cost incurred, which is produced at Exhibit C-6 at Pg. 1115 of the SOC Compilation. The Claimant had intimated the Respondent about the increase in cost of land acquisition and pole shifting vide their letter dated 25th June 2013, at Exhibit C-6 at Pg. 1111 of the SOC Compilation. The same was also acknowledged by the Respondent in their internal letter. The said letter was even addressed to the Claimant, dated 31st July 2013, produced at Pg. 1113 of the SOC Compilation. On plain reading of the annexures to the said letter, one can see the detail list of amounts spent for acquiring land from villagers (pgs. 1116 to 1120), adhvasi land (pgs. 1144 to 1156) and to encroachers (pgs. 1147 to 1148). The letter of the Respondent also records that the Claimant had to pay amounts over and above the ready reckoner rates. The ready reckoner rates are provided at pgs. 1121 to 1144. The letter also records that the Claimant has incurred an additional amount for shifting the electric poles, cost of which has gone upto Rs. 5.70 Crores. Thus, from Respondents own letter, it is clear that an amount of Rs. 55.29 Crores has been incurred towards shifting of poles and acquisition of land. The quotation from Torrent Power and Mahavitran, towards shifting of electric poles is also annexed at Pgs. 1153 to 1157.

87. I say that as against the cost agreed in the tender documents i.e. Rs. 14.79 Crores for land acquisition and Rs. 3.58 Crores for shifting of electric poles, the extract of which is produced at Pg. 1158 of the SOC Compilation and is also mentioned in the Concession Agreement at Pg. 10 of the SOC Compilation, the Claimant incurred a cost of Rs. 55.29 Crores. All these expenses have been verified and admitted and Respondent had certified that it will compensate the Claimant by increasing the concession period. However, since the concession agreement has been terminated, the payment of these costs is mandated as per terms of the Concession Agreement. As shown at pg. 1115, deducting tender estimated cost of Rs. 18.37 crores from the total expense of Rs 55.29 crores, an additional cost of Rs. 36.92 Crores is liable to be paid by the Respondent.



88. I further confirm that an amount of Rs. 18,08,27,304/- has been paid towards this claim on 6th April 2016. Therefore, the total balance claim is Rs. 18,83,72,696/-. I am producing herewith the ledger statement of the Claimant for the amounts received from Executive Engineer (PWD), as Annexure - W. I say that all the documents produced at Exhibit C-6 be taken on record and marked as an Exhibit.

Claim No. 5

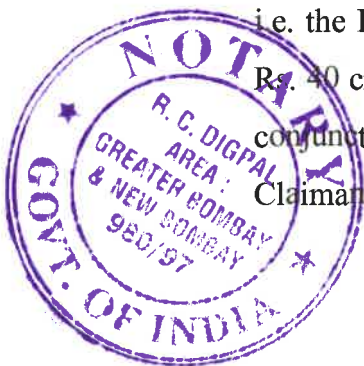
89. The Claimant had to bear additional cost towards the expenses incurred for utility shifting in the project place. The documents in support of this claim are produced at Exhibit C-7 of the SOC Compilation. All details were submitted, verified, duly considered and contemporaneously accepted by the Respondent and a work order was issued for such additional works as has been produced at pg. 1178 of SOC. I say that the Claimant had incurred a cost of Rs. 9,92,03,561/- towards utility shifting which Respondent had agreed to pay in the form of increase in concession period. Since the same is now not possible in light of termination, the cost of the said works needs to be paid by the Respondent. I say that the documents at Exhibit C-7 (colly) at Pgs. 1162 to 1394 clearly establish entire chain of correspondence on this issue which also demonstrates that the Respondent had duly considered and approved these expenses as additional expenses. Respondent has falsely denied the same now in the Statement of Defence without offering any reason.

Claim No. 6:

90. I say that as per the 2nd Work Order, the Claimant commenced work for construction of the by-pass road. Substantial efforts and money was put in by the Claimant. However, due to various reasons and hurdles that the Claimant had to face, it became impossible for the Claimant to finish the construction of the by-pass road, as already mentioned in detail in the paragraphs above. I say that for the construction of the by-pass road, the Claimant had spent an amount of Rs.



56,89,11,031/-. However, as the Claimant could not get the benefit of the collection of toll charges, the Respondent ought to pay to the Claimant the cost of the construction. I say that the documents in support of the said claim are at Exhibit C-8 of the SOC Compilation starting from Pg. 1396. A certificate was issued by the Claimant, duly certified by the third party consultant appointed by the Lenders i.e. Bhide Associates and K.S. Ayyadurai. A copy of the certificate is produced at Pg. 1396 of the SOC compilation and the same relates to the by-pass being constructed on the Manor Wada road. The same clearly mentions that the value of the work done for the by-pass is Rs. 56,89,11,031/-. The abstract sheets, showing the complete details of the work done are at pgs. 1397 to 1401 of the SOC Compilation. If we see the grand total of the materials used and the work done in the sheet at Pg. 1407, the same comes to Rs. 56,89,11,031/-. We have also annexed a report prepared by K.S. Ayyadurai at Pg. 1409 of Exhibit C-8 of the SOC Compilation, who was the Lenders Independent Engineer appointed for the inspection and preparation of the report for the by-pass. After a detailed inspection, the report was prepared. The cost of the construction of the by-pass can be seen from the details of the RA bills mentioned at Pg. 1434 of the said report which shows that a total bill of Rs. 60,49,06,112/-. Even the report prepared by Bhide Associates, who was also a lenders independent engineer, had prepared a report in 2013, while the by-pass construction was going on. The said report also shows the cost being incurred by the Claimants for construction of the by-pass road. It was only after certification from these independent engineers that the lenders used to release the payments to Claimant. Accordingly, post certification by Bhide Associates, the Claimant had written a letter dated 30th July 2013 to their lenders, under the 2nd Common Loan Agreement, asking for a drawdown of Rs. 40 crores. The said letter is annexed at Pg. 1469 of SOC Compilation along with the letter from Bhide Associates to Union Bank of India i.e. the Lead Lender, certifying that the Claimant is eligible for a drawdown of Rs. 40 crores. I say that all the documents forming part of Exhibit C-8 if read in conjunction, will show that a cost of Rs. 56,89,11,031/- was incurred by the Claimant for the construction of the by-pass road. I say that all the documents in



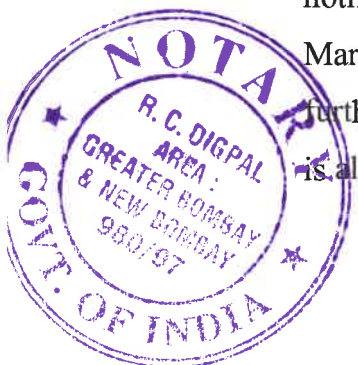
support of this claim at Exhibit C- 8 be taken on record and marked as an Exhibit.

Claim no. 7:

91. In further to the same, the Respondent is also liable to pay to the Claimant towards the cost of land acquisition for the said by-pass road which is an amount of Rs. 9,56,90,000/-. I say that the Claimants had acquired lands for the construction of the by-pass road. The details of the lands acquired in mentioned in the table produced from Pgs. 1487 to 1493 of the SOC Compilation. The Claimant had also appointed an independent party to complete the acquisition land. The letter awarding the contract to V.G. Mhatre is annexed at Pg. 1494 of the SOC Compilation. I confirm that the contents and statements made in the documents produced at Exhibit C-9 are true and correct and the same be taken on record and marked as Exhibit.

Claim No. 8:

92. I say that the Claimant was allowed to collect toll from 1st March 2013. The said notification allowing the Claimant to commence collection of toll is at Exhibit 17 at Pg. 738 of the SOC Compilation. However, vide a government regulation dated 26th May 2015, annexed at Pg. 1503 of the SOC Compilation, the Respondent exempted the light motor vehicles mentioned in entry at serial no. 2(a) of the schedule and buses of the Maharashtra State Road Transport Corporation passing over the said Manor Wada road, from payment of toll. I am attaching herewith a legible copy of the said government regulation in Marathi and English. I say that the Respondent thereafter continued to exempt the light motor vehicles and busses from payment of toll till 1st March 2019 vide another notification issued on 1st March 2016. A copy of the said notification dated 1st March 2016 is attached herewith as **Annexure – X**. The said notification was further extended by the Respondent vide their letter of 28th February 2019, which is already annexed as Annexure – Q (Colly.).



93. The Respondent had in lieu of the said exemption, agreed to pay compensation to the Claimant and had accordingly, vide their letter dated 31st December 2015, which is already annexed to this evidence statement as Annexure - E, giving a detailed calculation of the compensation payable to the Claimant. In the said letter, the Respondent also stated that they are to pay an amount of Rs. 308.07 Lakhs towards compensation for the period 1st June 2015 to 31st December 2015. I further say that the Respondent had also issued a Government Resolution dated 31st August 2017 exempting vehicles from payment of toll from 9th November 2016 to 2nd December 2016 because of demonetization and stated that the Government has to decided to pay Rs. 144.68 crores as compensation to the agencies. A copy of the said Government Regulation along with its English translation is hereto annexed and marked as **Annexure - Y**. Thus, the Respondent is obligated to reimburse the Claimant for the vehicles that were exempted from toll collection. The Claimant had time and again written letter to the Respondent, asking them to pay for the same. A copy of the letter dated 5th December 2016, addressed by the Claimant to the Respondent, asking them to pay Rs. 6.58 Crores towards the compensation for light motor vehicles, busses etc., is annexed hereto as **Annexure - Z**. Though some payment have been made by the Respondent towards the said compensation, despite that an amount of Rs. 19,76,64,657/- is still due and outstanding from the Respondent. The Claimant had even in its letter in response to the termination notice, at Exhibit – 28, called upon the Respondent to pay the said amount. But till date, the Respondent has not paid the same. I have even seen the written statement of the Respondent, wherein the Respondent has admitted that the Claimant is compensated for the loss/deficit caused due to such exemptions. I had prepared a table showing the Car and Bus compensation reconciliation statement, upto September 2019, which is annexed at Pg. 1500 of the SOC Compilation. I verify the contents and figures of the said table to be true and accurate. I say that the documents forming part of Exhibit C-9 be taken on record and marked as an Exhibit.

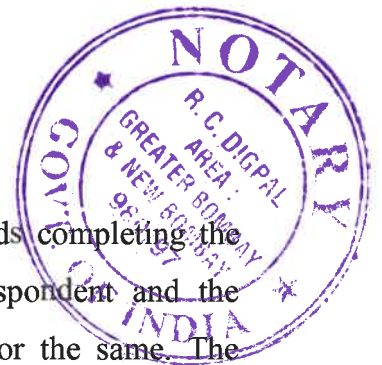
Claim No. 9:



94. As I have explained above, road construction is based on certain assumptions of how the traffic is expected to move. The impact of slow moving or stationary traffic is very different from normal flow of traffic. This is the reason why unauthorized gaps leading to slowing down of traffic and unauthorized turnings created adverse impact on the road, leading to repeated maintenance work required again and again in such areas. I say that the Claimant compelled to bear additional cost due to such unauthorised median gaps created by the unknown villagers / local population illegally for their convenience. Despite request Respondent and / or police authority of the State Government did not take any necessary action. This issue of median gaps was even acknowledged by MERI in their report of 26th December 2016 – Point No. 3, submitted before the Hon'ble Bombay High Court. Annexure C of the said report at Pg. 1531 of the SOC Compilation shows the details of the median gaps. I say that the documents showing the work done towards repairing and maintenance of the said Manor Wada Road with all details of work done and the rates specified by the Respondent, are produced at pgs. 1535 to 1607 of the SOC Compilation. I had prepared a table showing the extra cost that the Claimant had to incur in repairs and maintenance of the median gaps after the monsoon of 2014 till 2018, making a total of Rs. 37,70,84,565/-, is produced at Pg. 1505 of Exhibit C-11 of the SOC Compilation. The Respondent ought to reimburse the additional cost that the Claimant had to bear because of the unauthorised median gaps, which was due to no fault of the Claimant. I confirm the contents and figures of the said statement and the same is prepared basis the actual cost incurred by the Claimant. The documents produced at Exhibit C-11 be kindly taken on record and marked as an Exhibit.

Claim No. 10:

95. I say that the Claimant has incurred substantial costs towards completing the process for forest land acquisition as required by the Respondent and the Respondent has not yet compensated / paid the Claimant for the same. The



amounts claimed under this head amounting to Rs. 5,19,58,275/- have been particularized in the table at Pg 1609 of Exhibit C-12(colly). The first item relates to the payment made to forest department for acquiring 22.66 Ha land at site. This payment was made on 31st March 2016 and has been duly acknowledged by the Respondent in the documents produced at Exhibit C-12 (colly). The second item relates to cost of removal of trees, which has also been paid and duly acknowledged. The third item relates to valuation to FDCM Ltd., which has also been paid and duly acknowledged by the Respondent. The fourth item relates to the purchase for forest department of alternate land for afforestation in lieu of the land being acquired. The Index 2 for the purchased land has been produced. The last item in the table is the expenses incurred in the process which primarily includes the consultancy charges. I verify the contents and figures mentioned the said table. I also confirm that the letters and documents produced at Exhibit C-12(colly) are produced by me from the record maintained under my custody. I say that the documents at Exhibit C-12 (Colly) be kindly taken on record and marked as an Exhibit.

Claim No. 11:

96. I say that due to the delays that were caused in completion of the project, which delays are not attributable to the Claimant, for various reasons mentioned above, the Claimant had incurred an additional cost of Rs. 1,81,00,000/- for the extended 5 months period, towards the machinery. I had prepared a table which gives the bifurcations of the machineries used during the extended period. The said table is produced at Pg. 1664 of the SOC Compilation. I verify the contents and figures mentioned the said table. The reasons because of which a 5 month extension was sought are more particularly mentioned in the letter of the Claimant produced at Pg. 1665. The Respondent in fact, vide its letter dated 22nd November 2012 (at Exhibit – 14 of the SOC Compilation at Pg. 731), acknowledged the delay by stating as follow:



- a. Obstructions were created by private land holders for acquisition of extra 10mtr width of the road for the purpose of 4 laning;
- b. Local associations showed protests for stopping the road with respect to the land acquisitions;
- c. That it is not possible for the contractor i.e. the Claimant to carry out the work on the said forest land until the proposal to acquire 17.72 Hectare is not completed.

Thus, for reasons mentioned, the Respondent granted the extension of 5 months. Thus, clearly no delay was caused from the Claimants end. However, as the Respondent has cancelled the Concession Agreement and stopped collecting toll, the Respondent ought to reimburse the Claimant for the additional cost incurred towards the machinery. I am producing herewith a few invoices of these machineries from my other project, just for comparing the rental charges. Copies of these invoices are produced as Annexure – AA (Colly.).

Claim No. 12:

97. I say that the for a patch of 7.5Km of the Manor Wada Road, which could not be converted from a 2-lane to a 4-lane road due to the proper permissions not being in place from the forest department, the Claimant had to endure hardships and spend extra money in maintaining that road. I say that the Claimant had incurred an additional cost of Rs. 6,09,67,297/- towards the extra cost incurred for repairs and maintenance of the 2 – lane road of 7.5Kms, during the period of October to December, during 2-14 to 2018. I say that due to FDCM not being allowed at about 8 locations on the 75Km stretch, totalling to around 3.7Km, due to the 2-lane road being of 14 metres, in spite the Respondent committing a 20metre wide road. In fact, the forest department had clearly instructed that no work of road to be carried out in the forest area outside the 14 meters. A copy of the



letter dated 19th October 2012 from the Forest Department, is annexed at Exhibit C-14 at Pg. 1677 of the SOC Compilation. Eventually due to the traffic load increasing and various heavy vehicles passing the said 2 – lane road, the road kept deteriorating every year and required additional maintenance, over and above, that was done by Claimants in the normal course. The documents produced at Exhibit – C14 be kindly taken on record and marked as an Exhibit.

98. I say that in view of the aforesaid facts and documents, I say that the claims of the Claimant be allowed and the counter- claim of the Respondent be dismissed with cost.

Dated this 19th day of July 2021.

Mr. Z.N. Shaikh

Witness for the Claimant



Before Me

R. C. DIGPAL
ADVOCATE & NOTARY
MUMBAI

REGISTERED VIDE	
SL NO.:	684
DT:	19 JUL 2021

