

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA

ORIGINAL APPLICATION NO. 198 OF 2024/EZ

Subhas Dutta

.....Applicant

-Versus-

The State of West Bengal & Ors.

...Respondents

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Filed by:

Sudip Kumar Dutta
Sudip Kumar Dutta
Advocate-on-Record
For the State of W.B.



03 MAR 2025

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-Versus-

The State of West Bengal and others.

...Respondents

**COMPLIANCE REPORT BY THE RESPONDENT NO.3 i.e DEPARTMENT
OF TRANSPORT, GOVERNMENT OF WEST BENGAL**

I, Abdur Rakib Shaikh, son of Late Abdul Mazid Mian, Aged about 54 years, by faith – Hindu, by occupation – Service now posted as Additional Secretary, Transport Department, Government of West Bengal do hereby solemnly affirm and say as follows:

1. I have made myself well acquainted with the facts and circumstances of the instant case and am directed by this Hon'ble Tribunal vide order dated 26.09.2024, 18.11.2024 and 13.01.2025 to file a compliance report.
2. That in compliance with direction dated 26.09.2024, 18.11.2024 and 13.01.2025 of this Hon'ble Tribunal, it is humbly submitted that it is reported



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from Director, Transport Directorate that now, there is only 01(one) RSD machine functional in Kolkata and other adjacent districts, which is owned by the Transport Department.

3. That the said RSD machine was purchased in the year 2009 and being operated by an agency selected through bidding process, under overall supervision of the Transport Department. Monthly Expenditure for Transport Department for the existing RSD is Rs. 8.73 Lac + GST (appx.).

4. That the contract for the only functional RSD machine, currently owned by the Transport Department, Government of West Bengal was renewed on 16-04-2024 for 11(eleven) months in terms of Clause 29 of the Agreement signed on 05-10-2020 and is set to expire on 15th March 2025. Since there is no further provision of extension and also given the machine's considerable age with the problem of spare parts unavailability, renewing the contract does not appear to be a feasible option. The said Agreement is annexed herewith and marked as **Annexure-A**.

5. That it has been reported by the Chief Scientist, West Bengal Pollution Control Board that the WBPCB in collaboration with Transport Department took an initiative to monitor and control Air pollution contributed from Transport Sector by deploying more Remote Sensing Devices (RSDs) for on road emission monitoring of in-use vehicles plying in Kolkata, Howrah and



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other Non-attainment Cities (NACs) in West Bengal as a part of National Clean Air Programme (NCAP).

6. That to convene the same, 02 nos. of bids were floated in the Government e-Market (GeM) portal, from the end of West Bengal Pollution Control Board, for which two agencies namely, M/s. Environmental Systems Products India Pvt. Ltd. and M/s. Ground 2 Skye Solutions LLP were awarded to provide the necessary services, enlisting a contract of 10 nos. of RSD machines from each Agency.

7. That initially, 02 nos. of RSD machines, one from each Agency, were hired for the purpose of trial run and handed over to the Transport Department by the WBPCB.

8. That the Transport Department, Government of West Bengal raised a requirement for the agencies to provide authorization certificates including the Type Approval Certificate approved by Government of India (GoI). One of the agencies, M/s. Ground 2 Skye Solutions LLP understood the need of the Transport Department regarding submission of Type Approval Certificate of the RSD machine and sent a communication to the State Board ensuring to provide the Type Approval Certificate prior to processing bills for the service rendered.



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9. However, it is reported that the delivery date for the awaited machines from M/s. Ground 2 Skye Solutions LLP has expired on 31.05.2024 and that of M/s. Environmental Systems Products India Pvt. Ltd on 28.09.2024 even after repetitive extension.

10. That both the contract orders for deployment of RSD machines were generated through the Government e-Market (GeM) Portal in the Product Category and not for the Service Category, Government e-Market (GeM) has automatically cancel list the contract orders due to non-supply of the machines within the stipulated and extended timelines. In view of the cancellation of contract orders by the Government e-Market (GeM), the State Board has also decided to cancel the Memorandum of Agreement (MoA) for both the Agencies.

11. That it is humbly submits that under the circumstances, the MoA between West Bengal Pollution Control Board and the Transport Department has been kept under suspension until further order.

12. That it is humbly submits that A letter to Member Secretary, WBPCB for procurement, and supply of at least 20 (twenty) RSD machines duly certified by Automotive Research Association of India (ARAI)/National Physical Laboratory (NPL)/International Centre for Automotive Technology (ICAT) to monitor and control pollution emission by moving vehicles in the



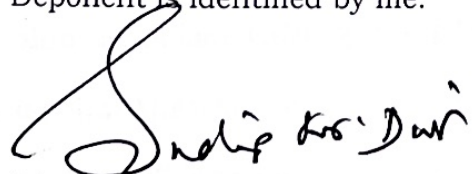
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non-attainment cities of Kolkata, Howrah, Asansol, Durgapur, Haldia and Barrackpore was sent under the signature of Secretary, Transport Department vide No. 3479-WT/TPT-16012/6/2018 dated 06.12.2024. However, the reply of the above letter is still awaited. Once, we receive the reply from WBPCB, Transport Department will take next course of action. The copy of the said letter vide no. 3479-WT/TPT-16012/6/2018 dated 06.12.2024 is annexed herewith and marked as **Annexure-B**.

13. That since the directions passed by this Hon'ble Tribunal on 26.09.2024, 18.11.2024 and 13.01.2025 has been complied with, it is humbly prayed that this Hon'ble Tribunal may graciously be pleased to pass necessary order or orders as it deem fit and proper in the interest of justice.

4. The statements made in paragraphs 1 to 13 are based on information derived from the record which are usually kept and maintained by this answering respondent in the ordinary course of business and which I believe to be true and rest thereof are my humble submission before this Hon'ble Tribunal.

Deponent is identified by me.


Advocate



Deponent

Abdur Rakib Shaikh, WBCS (Exe.)
Additional Secretary
Transport Department
Government of West Bengal



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Verification

I, Abdur Rakib Shaikh, son of Late Abdul Mazid Mian, Aged about 54 years, by faith – Islam, by occupation – service, now posted as Additional Secretary, Transport Department, Government of West Bengal do hereby solemnly affirm and verify that the contents of the statements made in the above paragraphs of the affidavit are true and correct to the best of my knowledge and belief. No part of the same is false and nothing material has been concealed therefrom.

Verified at Kolkata, on this the 03rd day of March, 2025.

Deponent is identified by me.

Sudip Das
Advocate

Abdur Rakib Shaikh

Abdur Rakib Shaikh (Exe.)
Deponent
Additional Secretary
Transport Department
Government of West Bengal



SOLEMNLY AFFIRMED AND DECLARED
BEFORE ME ON IDENTIFICATION

(Signature)

PADMA DAS
NOTARY

03 MAR 2025



महाराष्ट्र MAHARASHTRA

2020

BA 362864



AGREEMENT

This Agreement is made and entered into on the 5th day of October 2020, by and between

The Transport Department, Government of West Bengal through the Additional Director (K.Z.), Transport Directorate, Government of West Bengal, PVD Buildings, 38 Beltala Road, Kolkata 700 020 (Hereinafter referred to as the "First Party")

AND

Environmental Systems Products India Pvt. Ltd., a company registered under the Companies Act 1956 of India having its registered office address as 306, Galleria, Hiranandani Gardens, Powai, Mumbai 400076 Maharashtra (hereinafter referred to as "Second Party") with PAN No. AABCE6298E and GST No. 27AABCE6298E1ZH.



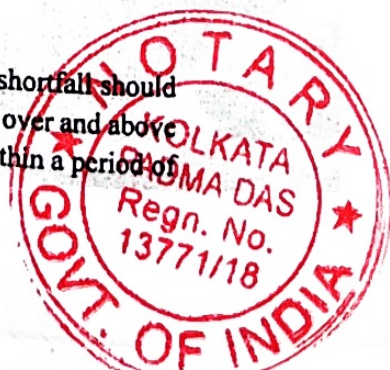
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Whereas, the **First Party** published notice inviting E-Tender No.- 116/T.Dte/RSD/2019 2nd Call dated 02.01.2020 through The Director, Transport Directorate, Transport Department, Government of West Bengal Paribahan Bhaban II, Kasba, Kolkata - 700107 Phone: 033 24420278, Email: transportdte.wb@gmail.com for operations and maintenance of 01 (One) Remote Sensing Devices (RSD) owned by the Transport Department.

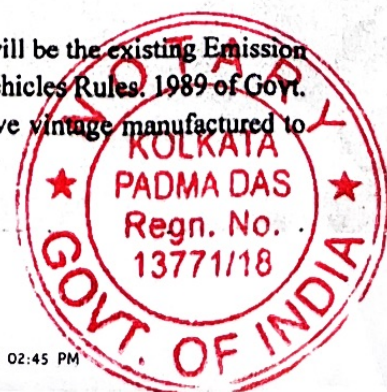
Whereas, the **Second Party** participated in the tender, submitted the bid, which has been accepted and approved by the First Party through the letter of intimation Memo No.: PVD/24(CON) dated 14.08.2020 which has constituted the formation of the contract.

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth, the parties hereby agree as follows:

1. The **Second Party** will Operate & Maintain the RSD set-up along with a mobile van for a period of 36 (Thirty Six) months, which may be extended for 01 (one) more year.
2. The machine and the vehicle (mobile van) will be handed over to the **Second Party** by the **First Party** on as-is-where-is basis, and, shall be received by the First Party in as-is-where-is basis at the end of the term of this agreement. The Second Party, within the time limited will initiate action to transfer the ownership of the vehicle to the first party.
3. The cost of fuel and all other allied expenses of spares, software, hardware (including all Taxes and import duties, custom duties, and work permit, etc.) required to operate the RSD set-up along with the mobile van will be borne by the **Second Party**.
4. Human Resources (HR) required for operation of the RSD, would have to be arranged by the **Second Party** in compliance with the extant Labour Laws, and the **First Party** shall not in any case be held responsible for any lapses in the matter, if any.
5. The **Second Party** will maintain the RSD set-up and operate it with its own experienced staff in the city of Kolkata, suburbs of Kolkata and Howrah. It is recognised that existing machine is more than 10 (Ten) years old and finding spare parts may be difficult, therefore, if required the **Second Party** will make alternative arrangements with another RSD unit of a make and model with equivalent accuracy of existing RSD unit for the period during which the existing machine is not functional for any reason.
6. The **Second Party** will remain responsible for data collection, data processing, data matching with standard parameters of vehicular emission and generation of reports from its own resources including software and hardware.
7. The RSD set up should be deployed for not less than 20 (twenty) days in each month, at location(s) to be determined by the **First Party** in consultations with the **Second Party** such that at least 5,000 (five thousand) vehicles pass during the 08 (eight) hours of day light to maximise use of the RSD set-up. The program shall be planned and given one month in advance to the **Second Party**.
8. If the days of deployment is below 20 days in any particular month, such shortfall should be made good within the following 3 (three) months, by rendering services over and above 20 days in the following month(s). If the shortfall cannot be made good within a period of



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9. No penalty will be levied on **Second Party** if the deployment below 20 days is due to conditions or factors beyond the control of **Second Party** like war, epidemic, pandemic strikes, bandh, traffic restrictions, rains, road processions, damage to equipment during storage or fire, water, wind, lightning or other natural causes; accident or adverse environmental conditions, including, without limitation, excessive heat, moisture, rains, corrosive elements, or dust or other air contaminants; radio frequency interference; unusual physical, electrical or electro-magnetic stress; and/or any other condition outside of equipment's environmental specifications.
 10. The **Second Party** has to identify a minimum of 4,000 (four thousand) polluting vehicles plying on the road per month which exceed Emission Standard as per CMVR for idling emissions checks. Out of these polluting vehicles, notices have to be prepared for the Gross Polluting vehicles by applying certain conditions on limits for Pass / Fail criteria as elaborated in clause (16), (17), and (18) of this agreement.
 11. The computer-generated notices for Gross Polluting vehicles have to be prepared in the existing format along with photograph of the vehicle and emission data would have to be prepared in duplicate and dispatched by the **Second Party**. One copy of the Notice would have to be sent to the Registered Owner of the Polluting Vehicle and the other copy to the concerned RTO/ARTO electronically. Simultaneously, a system generated SMS alert will have to be sent to the owner of the offender vehicle daily by the **Second Party**, on next working days, of the measurements done on the previous day.
 12. The RSD unit with van will be parked every night under a garage with shed at PVD, Kasba, Kolkata.
 13. **First Party** will pay Rs. 8,73,279.00 (Rupees Eight Lakhs Seventy-Three Thousand Two Hundred Seventy-Nine Only) per month + GST as applicable, will pay every month, to the **Second Party** during the period of 36 (thirty-six) months against the operation and maintenance of 01 (One) Remote Sensing Device (RSD) fitted in a vehicle (mobile van) and the services offered for performing the job.
 14. No interest will acquire to be payable on the Security Deposit and Earnest Money Deposit. Earnest Money Deposit of Rs. 4,00,000.00 (Rupees Four Lakhs Only) paid by the **Second Party** will be retained by the **First Party** as Security deposit towards any liability of **Second Party** under this agreement and will be refunded after end of contract period.
 15. A penalty of Rs. 20 per vehicle shall be deducted from the bill of any particular month, if less than 4,000 polluting vehicles are screened through the RSD in the said month. If for any reason number of vehicles on the road goes down significantly due to **Force Majeure** or order of any competent authority restricting plying of vehicles in area of operation, then, Parties will mutually agree for a revision in this requirement.
 16. Reference limits to identify 4,000 polluting vehicles by RSD will be the existing Emission Standard as of August 2020 prescribed in the Central Motor Vehicles Rules, 1989 of Govt. of India for Petrol / Diesel / CNG / LPG vehicles of respective vintage manufactured to meet BSII / BSIII / BSIV/ BSVI norms.



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18. During generation of notices for Gross Polluting Vehicles, care should be taken such that only one notice is issued to vehicle measured multiple times i.e. no repetition of vehicles arises in a single month for the Gross Polluting vehicle.
19. 10% (Ten Percent) of the O&M Charges will be attributed to cost of POL, and the price of POL being variable, yearly adjustment (increase or decrease) limited to the extent of 10% of the Monthly Consideration, depending on the market prices of POL would be allowed every year.
20. 10% (Ten Percent) of the O&M Charges can be attributed to cost of HR, and the price of HR being variable depending on the Minimum Wages notified by the Labour Department, yearly adjustment (increase) limited to the extent of 10% of the Monthly Consideration, depending on the enhancement of Notified Minimum Wages would be allowed every year.
21. Any extra work / assistance required by the **First Party** beyond the Scope of Work listed in clause (1) to (18) of this agreement, or, increase in Scope of Work like night operations, analysis of data, change in format of notice, inclusion of additional RTO, change in fail limits of pollutants, etc. i.e. any changes resulting in cost to **Second Party**, shall be mutually agreed at extra payment to **Second Party**.
22. From the **First Party**, Assistant Director Technical, of Transport Directorate will liaison with **Second Party** for the day-to-day operations, including identification of suitable measurement sites, informing monthly schedule to Traffic Police, Kolkata & coordinating to get a Traffic Guard posted at the site of measurement, in the absence of Traffic Guard, the **First Party** will provide a Security Guard for Traffic Management & onlookers/public control, during rallies, VIP movements, festivals, etc.
23. The **First Party** will coordinate with NIC to provide correct data of vehicle registration in SQL format every 03 (three) months to the **Second Party**.
24. **Confidentiality:**
- a) Neither Party shall, without the prior written consent of the other Party, use or disclose any information whatsoever relating to any vehicular data or any other critical information obtained during the subsistence of this Agreement, to any other person or otherwise use any information acquired by it in relation to the emission parameters other than for the purposes of this Agreement, unless such information is required to be disclosed by a statutory or regulatory authority of competent jurisdiction.
- b) This confidentiality condition pertaining to the data shared by the **First Party** shall continue to be in force even after the termination of this Agreement.
25. **Information/Data Security**
- (a) The parties will mutually work for implementing the mechanism for secured data transmission and will abide by the relevant security standards/ regulations / requirements / guidelines which would be applicable to the conduct of Electronic data transfers contemplated under this Agreement. In terms of Data Transmission, **Second Party's** scope of work is limited to sending SMS to the mobile number of owners of gross polluting



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- (b) The parties will take all commercially reasonable precautions as may be feasible to ensure that there is no breach of security and integrity of the operation and maintenance of RSD as well as e-Vahan data as supplied by Transport Department. M/s Environment System Products India Pvt. Ltd will also ensure that it will only respond the requests received in writing from Transport Department, GoWB, duly approved by competent authority in Transport Department, GoWB.

Both the parties may apply such technology as it deems fit to ensure the security and prevent unauthorized access to the respective website.

26. Severability:

If any of the provisions of the agreement is found to be or becomes illegal, void or unenforceable under any applicable law, the other provisions shall continue in force, so that such illegal, void or unenforceable provisions shall be deemed to have been deleted from the agreement. Parties may, through agreement replace the provisions by similar provisions, which are enforceable in law and for achieving the same purpose.

27. Authority:

By signing this Agreement, the parties represent that the signatory hereof has full authority to do so and execution of this Agreement by the signatory hereof creates a fully binding obligation on both the parties.

28. Force Majeure

Neither party to this agreement shall be liable to the other for any losses or damage which may be suffered by other due directly to the extend and for the duration of any cause beyond the control of party unable to perform (force majeure) events such as but not limited to acts of God not confined to the premises of party claiming the force majeure, flood, drought, lightning, pandemic, or fire, earthquakes strike, lockouts beyond its control, labour disturbances not caused at the instance or limited to, the party claiming Force Majeure, acts of Government or other competent authority, war, terrorist activities, military operations, Riots, epidemics, civil commotions etc.

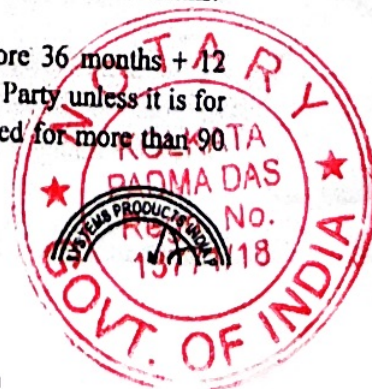
29. Termination:

The Parties understand that RSD set-up and mobile van are already eleven (11) years old.

Whereas, **First Party** is required to monitor the pollution from the in-use vehicles using RSD set-up as per the directives of Hon. High Court of West Bengal and air pollution matter monitored by the NGT Eastern Zone Kolkata.

Whereas, as per tender the **Second Party** is required to make alternative arrangements to continue operations for a period of 36 months extendable by a period of 12 more months.

In view of the above, premature termination of the agreement before 36 months + 12 months that is a total of forty-eight months is not permitted by either Party unless it is for breach of the provisions of this Agreement, which remains unrectified for more than 90 days as per the terms of this Agreement.



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Therefore. this agreement may be terminated on the happening of the following:

a) **Non-Performance:**

If any party does not carry out its part of the responsibility under this agreement, the other party may choose to terminate the agreement, if no action is taken by any Party within ninety days from receiving in writing of such breach by the aggrieved Party. This will be subject to conditions agreed upon in para 7,8,9,10,11 and 15 above.

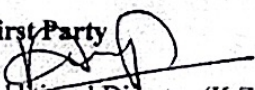
30. **Effect of Termination:**

Upon the expiration or termination of this agreement, all rights granted by one party to the other party in this agreement shall cease other than payment obligations of the **First Party** to the **Second Party** for the period of work done up to the date of termination, which shall be paid forthwith before the expiration or termination of this Agreement.

Neither party shall be liable or obliged to the other party for any deed happening after the date of termination and the **Second Party** shall return all the documents, papers, Stored Data, electronic devices, instruments, movable and immovable property handed over to the **Second Party** for the purpose of operation maintenance etc. in as-is-where-is basis to Additional Director (K.Z.), Transport Directorate, Government of West Bengal, PVD Buildings, 38 Beltala Road, Kolkata 700 020 or any other authority as directed by the competent authority in the Department.

31. **Notices:**

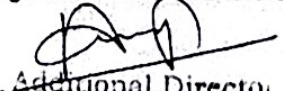
Any Notice issued will be deemed to have been properly sent to the other party, if the sending party sends the notice by post, courier(or) facsimile to the under noted address:

For First Party

The Additional Director (K.Z.),
Transport Directorate,
Government of West Bengal,
PVD Buildings, 38 Beltala Road,
Kolkata 700 020

For Second Party
The Director
Environmental Systems Products
India Pvt Ltd.
307, Galleria, Hiranandani Gardens,
Powai, Mumbai 400076

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the 5th day of October 2020.

**The Transport Department,
Government of West Bengal
through the Additional Director**

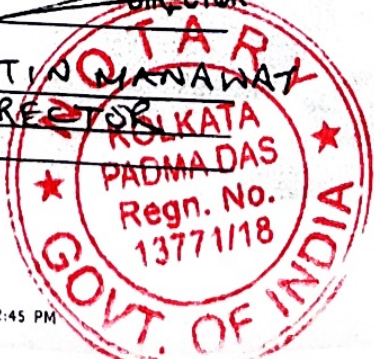

Additional Director,
Transport Directorate
PVD, Kolkata Zone

**Environmental Systems Products
India Pvt Ltd
through the Director**


FOR ENVIRONMENTAL SYSTEMS PRODUCTS
INDIA PRIVATE LIMITED
DIRECTOR

By: AMITABHA SENAPATI
Title: ADD, Transport Dir (KZ)
Date: _____

By: NITIN MANAWAT
Title: DIRECTOR
Date: _____





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Ann ex. we - B

Government of West Bengal Transport Department

12, R.N. Mukherjee Road, Paribahan Bhawan, Kolkata- 700 001, Phone No:- 033-2262-5415, E-mail :- transportdeptt.wb@gmail.com

No:- 3479- WT/ TPT-16012/6/2018

Date :- 06/12/2024

To,
The Member Secretary,
West Bengal Pollution Control Board,
Paribesh Bhawan,
10A, Block LA, Sector-II, Salt Lake
Kolkata- 700 106

Subject :- Suspension and cancellation for hiring of Remote Sensing Devices (RSD) services.

Ref :- Memo No. 2637/1K-5/2007 (Part-I) dated 23/10/2024 of Dr. Debashis Chakraborty, Senior Scientist & In-charge, Air Quality Monitoring Cell, West Bengal Pollution Control Board.

Sir,

In continuation of your office vide Memo No. 2637/1K-5/2007(Part-I) dated 23/10/2024, it is learnt that the contract orders for procurement of 20 Remote Sensing Devices have been cancelled and MOA signed between WBPCB and Transport Department has been kept under suspension, for specific reasons.

However, in view of the order passed by the Hon'ble National Green Tribunal on 26/09/2024, you are requested to issue necessary instructions for procurement and supply of, at least, 20(twenty) Remote Sensing Devices duly-certified by the Automotive Research Association of India (ARAI/National Physical Laboratory(NPL)/International Centre for Automotive Technology(ICAT) to monitor and check the emission levels of the moving vehicles in the non-attainment cities of Kolkata, Howrah, Asansol, Durgapur, Haldia and Barrackpore.

We shall be thankful if the necessary initiative to this effect is taken early.

Encl: As stated

Yours faithfully,

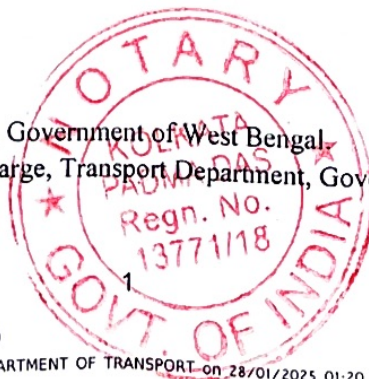
Dr. Saumitra Mohan, IAS
Secretary

No:- 3479/1(2)-WT/TPT-16012/3/2019

Date :- 06/12/2024

Copy forward for information to:-

1. Director, Transport Directorate, Government of West Bengal
2. P.S. to Hon'ble Minister-in-Charge, Transport Department, Government of West Bengal



Dr. Saumitra Mohan, IAS
Secretary