

**BEFORE THE NATIONAL GREEN TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI  
ORIGINAL APPLICATION No. 112/2024**

**IN THE MATTER OF:**

CHAUDHARY YASHWANT SINGH

...APPLICANT

Versus

UNION OF INDIA & ORS

...RESPONDENTS

**INDEX**

SL. NO.	PARTICULARS	PAGE NO.
1.	COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO. 8 [M/S ACP TOLLWAYS PVT. LTD.] IN REPLY TO THE ORIGINAL APPLICATION FILED BY THE APPLICANT.	1-13
2.	<b>ANNEXURE R - 8/1</b> A COPY OF THE EXTRACTS OF THE SAID BOARD RESOLUTION.	14
3.	<b>ANNEXURE R- 8/2</b> A COPY OF THE SAID ORDER DATED 20.09.2016.	15-29
4.	<b>ANNEXURE R-8/3</b> A COPY OF THE SAID ORDER DATED 11.11.2020	30-31
5.	<b>ANNEXURE R-8/4</b> The said letter dated 05.07.2011	32-34
6.	<b>ANNEXURE R-8/5</b> THE SAID NOTIFICATION DATED 30.10.2015.	35-38
7.	<b>ANNEXURE R-8/6</b> STAGE 1 AND STAGE 2 PERMISSIONS BY THE MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE FOR DIVERSION OF FOREST LAND	39-45

*(Signature)*

8.	ANNEXURE R-8/7 (Copy) THE COPIES OF THE PCOD'S AND COMPLETION CERTIFICATED DATED 08.04.2016	46-50
9.	ANNEXURE R-8/8 A COPY OF THE LETTER DATED 08.03.2022.	51-52
10.	ANNEXURE R-8/9 THAT THE RELEVANT CLAUSES OF THE CONCESSION AGREEMENT.	53-74

11. ANNEXURE R-8/10  
NEW DELHI COPY OF ORDER DATED 02.09.2024 - 75 (B) 75  
DATED 23.09.2024 THROUGH RESPONDENT NO 8

*Ravi Krishan Chandna*  
RAVI KRISHAN CHANDNA  
CHAMBER NO 602, BLK - III,  
DELHI HIGH COURT,  
NEW DELHI 110003  
9711752002 / 9711754002

**BEFORE THE NATIONAL GREEN TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI  
ORIGINAL APPLICATION No. 112/2024**

**IN THE MATTER OF:**

CHAUDHARY YASHWANT SINGH

...APPLICANT

Versus

UNION OF INDIA & ORS

...RESPONDENTS

**COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO. 8  
[M/S ACP TOLLWAYS PVT. LTD.] IN REPLY TO THE  
ORIGINAL APPLICATION FILED BY THE APPLICANT.**

I, BHARAT CHAND YADAV S/O SH. P. C. YADAV AUTHORIZED SIGNATORY OF THE RESPONDENT NO. 8, ACP TOLLWAYS PVT LTD HAVING ITS OFFICE AT B-9, VIBHUTI KHAND, GOMTI NAGAR, LUCKNOW, UTTAR PRADESH.

I, THE ABOVE-NAMED DEPONENT DO HEREBY SOLEMNLY AFFIRM AND DECLARE AS UNDER: -

1. That the present short counter affidavit is being filed in behalf of the Respondent No. 8. The Deponent herein is the authorized representative of the Respondent No. 8 duly authorized vide board resolution dated 25<sup>th</sup> March 2024. A copy of the extracts of the said board resolution are annexed herewith as **ANNEXURE R - 8/1**.

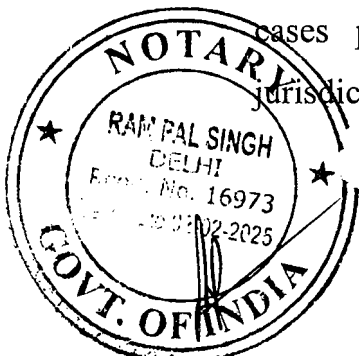
That the present application is an abuse to the process of this Hon'ble Tribunal and has been filed to mislead this Hon'ble Tribunal. That the present petition has been filed with malafide intentions. That the respondent no. 8 denies all the averments and

*B. C. Y.*

(2)

allegations being raised in the OA unless specifically admitted, as the same are without any material facts and basis. That the applicant has not approached this Hon'ble Tribunal with clean hands and is guilty of suppressing/concealing material facts.

3. The Applicant has no locus to file the present application and the same is liable to be rejected with heavy costs. The present project was started in the year 2011 and was substantially completed in year 2015 and the necessary Provisional Commercial Operation Date [PCOD] was declared in terms of the Concession Agreement by the concerned department and the authorities on 20.10.2016.
4. That the applicant is guilty of concealment of facts from this Hon'ble Tribunal. The applicant herein had earlier filed a similar petition in relation to the present project being OA No. 482 of 2015. The answering respondent had filed a detailed reply to the said petition along with relevant details and documents which are in power and possession of the Applicant. The said application was dismissed by this Hon'ble Tribunal vide order dated 20.09.2016. The said judgement has attained finality, and the said issues cannot be allowed to be reopened in the present case and the application as such is liable to be dismissed with heavy costs. It is pertinent to mention that the said petition and the orders have been concealed by the Applicant. A copy of the said order dated 20.09.2016 is annexed herewith as **ANNEXURE R-8/2**.
5. That the Applicant by way of the present petition is making an attempt to mislead this Hon'ble Tribunal by referring to various cases pending before the Hon'ble Courts having competent jurisdiction. The said cases are in relation to the ownership and

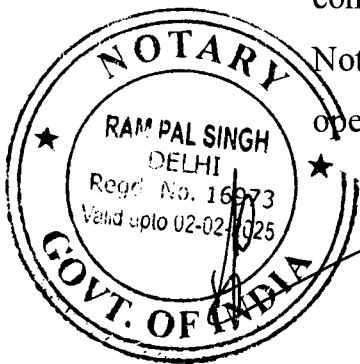


*(Signature)*

③

occupancy of the land on which the utility block set up for the purpose of servicing and maintenance of the project is situated. The said utility block was set up in the year 2012 and is running since then. It is pertinent to mention that the said property has been taken by the answering respondent on lease from the owner of the said property and the utility block was setup in the year 2011 - 2012. The name of the Lessor was duly recorded in the records of the land and revenue department as the owner of the said property.

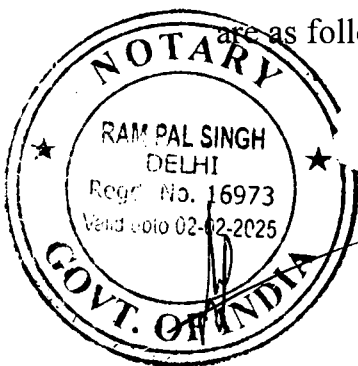
6. Admittedly neither the road nor the utility block is situated in the Eco-Sensitive Zone as alleged by the Applicant. The said fact has also been recorded in the Reply / Report submitted by the Forest Department before this Hon'ble Tribunal. The said dispute has no connection or relation whatsoever with the present case and frivolous averments have been made.
7. It is submitted that the allegations and averments as made in the present application are beyond the Jurisdiction of this Hon'ble Court. The dispute of title of the property cannot be agitated before this Hon'ble Court and even otherwise, the present applicant has no locus to raise any dispute or rely on any detail of documents in relation to the dispute to which he is not a party.
8. It is further submitted that the project in question was completed in the year 2015 and no new construction has been carried out in the project since then. The present petition has been filed after almost 9 years of the issuance of the PCOD and putting the project in commercial operation. It is pertinent to mention that the Gazette Notification was issued for putting the project in Commercial operation and is published for public at large, The present petition



as such is liable to be dismissed on the ground of concealment of facts, the principles of res-judicata and the Law of Limitation.

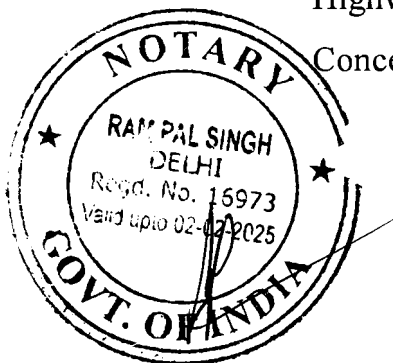
9. It is pertinent to mention that the utility block for the purpose of Operation and Maintenance under the concession agreement for maintain the project has been set up on the land taken on lease. Certain disputes in relation to the ownership of the said land are pending between the Lessor of the Answering respondent with the concerned department and the same is sub-judice before the Hon'ble High Court of Allahabad and the Hon'ble Civil Courts having the competent Jurisdiction in the State of Uttar Pradesh. The Hon'ble Court was pleased to pass orders thereby directing the parties to maintain status quo in relation to the title and possession of the said land in question. It is pertinent to mention that the said orders are operative as on date. A copy of the said order dated 11.11.2020 is annexed herewith as **ANNEXURE R - 8/3**. The Hon'ble Court was pleased to appoint the Court Commissioner for the purpose of demarcation of the portion which is the subject matter of the said case. It is pertinent to mention that the said disputes have no relation with the allegations and averments made in the present application and the same have been referred to in order to mislead this Hon'ble Court.
10. That the applicant has filed the present application with malafide intention to blackmail and extort money from the Respondent no. 8. The brief true and correct facts in relation to the present petition

are as follows;



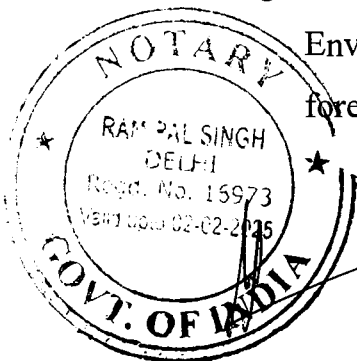
A handwritten signature in black ink, appearing to be "R.P.S.", written over the notary seal.

- a. The present application has been filed seeking various reliefs in relation to the State Highway project in the state of Uttar Pradesh awarded by the Uttar Pradesh State Highway Authority (UPSHA) for Four Laning (with paved shoulders) of Varanasi-Shaktinagar road upto Hathi Nala (SH-5A) in the state of Uttar Pradesh on Design, Build, Finance, Operate and Transfer Basis (DBFOT).
- b. That the Applicant has made allegations that the alleged construction has been raised on the Forest Land and the said construction and Utility block set up for the purpose of servicing the construction and maintenance of the said road are causing pollution and are not in conformity with the rules and regulations applicable. The said averments are false and contrary to the records of the present case and the records of project in question.
- c. That the project in question is a State Highway and the Uttar Pradesh State Highway Authority (UPSHA) as Employer invited bids for Four Laning (with paved shoulders) of Varanasi-Shaktinagar Road upto Hathi Nala (SH-5A) in the state of Uttar Pradesh on Design, Build, Finance, Operate and Transfer Basis (DBFOT). After obtaining all bids, Respondent No. 8 (M/s ACP Tollways Pvt. Ltd.) was declared as successful bidder and the Concession Agreement dated 08.12.2011 was executed between the Uttar Pradesh State Highway Authority (UPSHA) and Respondent No. 8 as Concessionaire.



A handwritten signature in black ink, appearing to be 'Rampal Singh'.

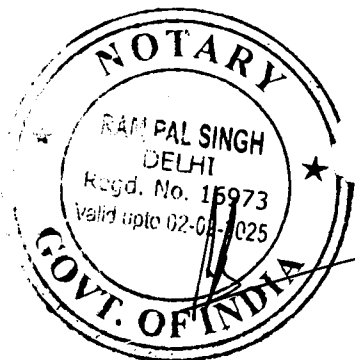
- d. That as per the Concession Agreement dated 08.12.2011 the Uttar Pradesh State Highway Authority (UPSHA) was required to obtain all clearances and sanctions from the Central Government and other Environmental clearances necessary for the abovementioned project and the same have been obtained and given to Respondent No. 8.
- e. That necessary clearance by the State Level Environment Impact Assessment Authority (SEIAA) and the Directorate of Environment Uttar Pradesh has also been duly granted to Uttar Pradesh State Highway Authority (UPSHA) vide letter dated 05.07.2011 wherein it is clearly mentioned that the aforesaid project does not fall within the purview of EIA Notification 2006 as amended in April 2011. The said letter dated 05.07.2011 has been attached herewith as **ANNEXURE R-8/4**.
- f. That the construction of Road for the Four Laning (with paved shoulders) of Varanasi-Shaktinagar road upto Hathi Nala (SH-5A) was commenced by the Concessionaire as per the terms of the Concession Agreement on 05.02.2013. The Toll Plaza was set up on 30.10.2015 and the Toll collection commenced on the same date as per Notification dated 30.10.2015 issued by the Authority. The said Notification dated 30.10.2015 has been annexed herewith as **ANNEXURE R-8/5**.
- g. That Stage 1 and Stage 2 permissions by the Ministry of Environment, Forest and Climate Change for diversion of forest land, and clearance from the State Government in favour



(P.S.O)

of Uttar Pradesh State Highway Authority (UPSHA) for widening/upgradation of Varanasi-Shaktinagar section of NH-5A in Mirzapur, Sonbhadra, Obra, Renukut Forest Divisions and Kaimur Wild life Sanctuary in the State of Uttar Pradesh was granted vide Notice dated 31.05.2013 and Notice dated 14.11.2013 respectively by the said Authority.

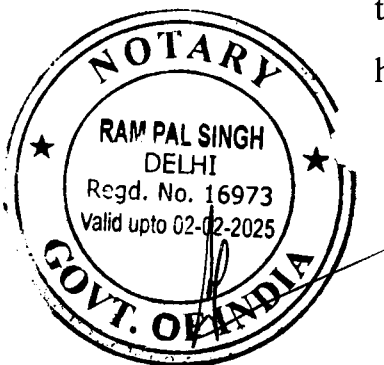
- h. It is further submitted that in terms of the agreement, Stage 1 and Stage 2 permissions by the Ministry of Environment, Forest and Climate Change for diversion of forest land and clearance from the State Government in favour of Uttar Pradesh State Highway Authority (UPSHA) have been annexed herewith as **ANNEXURE R-8/6**.
- i. The Respondent No. 8 as Concessionaire is required to construct the Toll Plaza and the Utility Block required for the implementation, construction and maintenance of the project at the location as determined by the Employer. The portion of land for setting up the utility block was taken on rent by the Respondent No. 8 and is in possession of the said land being a lessee. The specified and demarcated portion of land was handed over to the Respondent No. 8 and is in continuous possession of the same since year 2011.
- j. That the location of the Toll Plaza is predetermined by the UPSHA and M/s ACP Tollways Pvt. Ltd has no role to play in deciding the location of the same. It is further submitted that as per the Concession Agreement dated 08.12.2011 the Uttar Pradesh State Highway Authority (UPSHA) was to procure the



*(Signature)*

requisite clearances and sanctions and only after they were communicated to the Concessionaire the above said project was commenced.

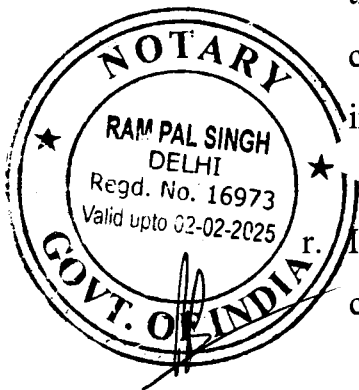
- k. That Concessionaire had no role to play in obtaining clearances from various authorities as alleged by the Applicant, and the Applicant has completed the project with due permission from the Ministry of Environment, Forest and Climate Change obtained by Uttar Pradesh State Highway Authority (UPSHA) the details of which have already been mentioned hereinabove.
- l. The Respondent No.8 is only a Concessionaire and has executed the work and is performing the obligations as per the Concession Agreement executed with Uttar Pradesh State Highway Authority (UPSHA). It is also submitted that invitation of bid by Uttar Pradesh State Highway Authority (UPSHA) is in public domain since the beginning of 31.05.2011 with request for qualified bidders. Request for Qualification (RFQ) and the construction of four laning of Highway as stated was undertaken as per the terms of the Concession Agreement.
- m. That neither any other person challenged the grant of Concession nor can the same be presently challenged as the Concessionaire has invested huge funds for the construction of the said Highway. It is further submitted that Respondent No.8 have been wrongly impleaded as it has not violated any Rules



*(Signature)*

and Regulations of any authority in the Construction of the Highway but has acted as per the instructions of the Employer.

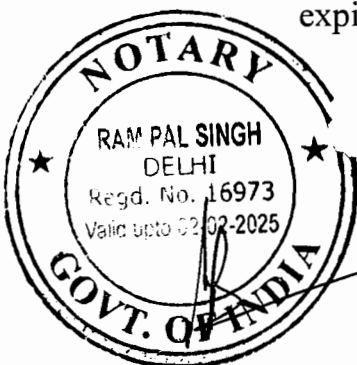
- n. After obtaining all bids, Respondent no. 8 (M/s ACP Tollways Pvt. Ltd.) was declared as successful bidder and the Concession Agreement dated 08.12.2011 was executed between the Uttar Pradesh State Highway Authority (UPSHA) and Respondent / M/s ACP Tollways Pvt. Ltd.) as Concessionaire.
- o. The letter for Provisional Commercial Operation Date was issued by the Independent Engineers appointed under the Concession Agreement on 20.10.2016. No objection was ever raised by any authority or department at any point of time or during the construction period
- p. It is submitted that no cause of action ever arose in favour of the applicant to file the present OA before this Hon'ble Tribunal and the application merits dismissal on this ground alone.
- q. That for the purpose of the implementation of the project, the land was demarcated, identified, acquired, and handed over to the concessionaire by the UPSHA for the purpose of construction of the State Highway and for the allied purposes in terms of the concession agreement.
- r. It is further submitted that on substantial completion of the construction work as laid down in the scope of the concession



*(Signature)*

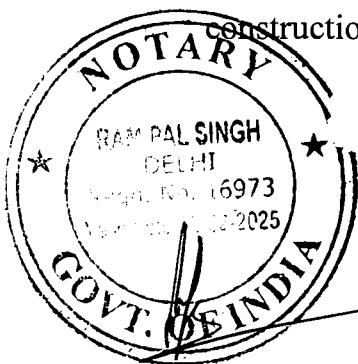
agreement, the Independent Engineer was notified for conducting of the necessary tests as per the clause 14 and all the necessary assistance was provided to the Independent Engineer. That upon completion of the said test as specified in the Schedule -I of the concession agreement, the Provisional completion certificate was issued as per the Schedule -J of the concession agreement and no violation has been committed by the answering respondent. The copies of the PCOD's and Completion Certificated dated 08.04.2016 are annexed herewith as **ANNEXURE R-8/7**.

- s. It is further pertinent to mention that the land has been acquired by the UPSHA in accordance with law. It is pertinent to mention that the Land once acquired and taken over by the UPSHA for a specific purpose cannot be termed as the forest land more specifically after the transfer of the non forest land in accordance with applicable laws and regulations and notification of the same by the UPSHA / state govt as the RF under section 4 of the Indian Forest Act 1927.
- t. Further in the records of the revenue department the name of the lessor of the answering respondent is duly reflected as the owner of the said property much prior to the taking of the land on lease and setting up of utility block in year 2012. As such, it is not open for the applicant herein for challenging the user of the property or setting up of the utility block and that too after expiry of more than 14 year.



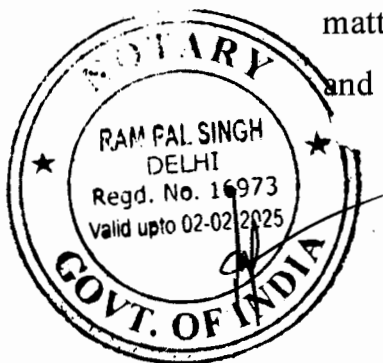
A handwritten signature in black ink, appearing to be "Rampal Singh".

- u. The petition has been filed with malafide intention and is liable to be rejected.
11. It is pertinent to mention here that cause of action if any arose in favour of the applicant on the date of raising of the said construction or issuance of the Provisional Commercial Operation Date by the competent authority / Independent Engineer. Neither any objection has been raised by any authority nor any action has been taken as the project as well as the utility block has been constructed in terms of the approval. Accordingly, the present application is barred by limitation and same shall be dismissed on this ground alone.
12. It is further submitted that the Respondent no. 8 has performed well within the contractual rights as granted in the Concession agreement for the construction of the utility block, and further all the necessary approvals for the same have been granted by the competent authority.
13. That the applicant in garb of the present OA is only trying to extort money from the respondent no. 8, as the applicant has miserably failed to showcase as to how the respondent no. 8 has not complied with the necessary rules and regulations.
14. It is further submitted that the no objection has ever been taken by the competent authority in respect to any sort of illegal construction that may have been done by the respondent.



*[Handwritten Signature]*

15. That neither any other person challenged the grant of Concession nor can the same be presently challenged as the Concessionaire has invested huge funds for the construction of the said Highway. It is further submitted that Respondent No. 8 has been wrongly impleaded as it has not violated any Rules and Regulations of any authority in the Construction of the Highway but has acted as per the instructions of the Employer.
16. It is submitted that the Applicant has further made an attempt to mislead this Hon'ble Tribunal by referring to the construction of 4<sup>th</sup> Toll Plaza beyond the permission of the Competent Authority for constructing 3 toll plazas on the project. It is submitted that no addition Toll plaza has been constructed by the concessionaire / answering respondent and only an addition to the existing toll plaza has been done in order to avoid the leakage of traffic without payment of the Toll Fees. The said leakage was causing huge revenue loss to the Govt. and the only purpose is to avoid the leakage. As is apparent from bare reading of the letter of granting permission, the toll is to be collected only at one plaza and not twice. The averments as made are against the records and cannot be looked into. A copy of the letter dated 08.03.2022 is annexed herewith as **ANNEXURE R - 8/8**. That the relevant clauses of the concession agreement are Annexed as **ANNEXURE R - 8/9**.
17. That a false statement with regard to the rejection of the case of the answering Respondent before the Hon'ble High Court of Allahabad has been made. It is pertinent to mention that the said matter was not dismissed on its merit but was dismissed in default and has now been restored to its original position vide order dated



*(Signature)*

02.09.2024. A copy of order dated 02.09.2024 is annexed herewith as ANNEXURE R-8/10.

18. That the present application has been filed without any basis and against the record of the present case. The application is without any merits and is liable to be dismissed with heavy costs.

*[Signature]*  
DEPONENT

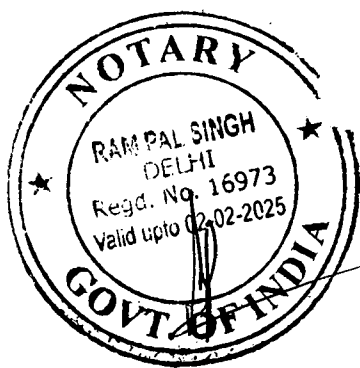
VERIFICATION:

23 SEP 2024

Verified at Delhi on this \_\_\_\_ day of September 2024 that contents of above affidavit are true to the best of my knowledge and nothing material has been concealed there from.

*[Signature]*  
I identify the Deponent who has signed the affidavit

*[Signature]*  
DEPONENT



CERTIFIED THAT  
Shri/Smt. *Bharat Chandra Yadav*  
S/o, W/o, D/o, *F. C. Yadav*  
R/o, *Ravi Chandras*  
Identified by me *[Signature]*  
has/have been *[Signature]*  
on *22* *Adh*  
that the contents of the affidavit *[Signature]*  
have been true and correct *[Signature]*

23 SEP 2024

Notary Public Delhi (INDIA)



ACP TOLLWAYS PRIVATE LTD.

SPV FOR VARANASI - SHAKTINAGAR HIGHWAY (SH-03A)

CIN NO: U45400UP2011PTCO47755

**CERTIFIED TRUE COPY OF THE RESOLUTION PASSED BY THE BOARD OF DIRECTORS OF ACP TOLLWAYS PVT. LTD. AT ITS MEETING HELD ON MONDAY, 25<sup>TH</sup> MARCH, 2024 AT ITS REGISTERED OFFICE AT B-9, VIBHUTIKHAND, GOMTINAGAR, LUCKNOW -226010, UTTAR PRADESH, INDIA**

**Resolution no. 1**

**"RESOLVED THAT** the consent of the Board be and is hereby given to authorize severally Mr. Bharat Chand Yadav and Ashish Tripathi, severally as its Authorised persons / lawful Attorney to attend the matter on behalf of the company to peruse the case titled "Chaudhary Yashwant Singh Vs. Union of India and Others (Original Application No. 112/2024)", pending before the National Green Tribunal Principal Bench, New Delhi.

**RESOLVED FURTHER THAT** the said Authorised person / lawful Attorney be and are hereby also authorized severally to sign and execute all the documents and papers related with the said matter and appear before the said Honourable Court and any other competent authority on the behalf of the Company, in this matter, and to do all such acts, deeds and things which they deem fit and necessary and incidental in the said matter including to file a written statement, application, and to sign the vakaltnama, and also to appoint an Advocate on behalf of the company.

**RESOLVED FURTHER THAT** the Company hereby ratifies and confirms all acts, deeds and things lawfully done or caused to be done by its said officials pursuant to and in exercise of the powers conferred by this Resolution and that all acts, deeds and things done by the said official in exercise of the powers hereby conferred shall and shall always be deemed to have done by the Company."

//Certified True Copy//

For ACP Tollways Pvt.Ltd.

For ACP Tollways Pvt. Ltd.

(DIRECTOR) Director

REGISTERED OFFICE

B-9, VIBHUTI KHAND, GOMTI NAGAR, LUCKNOW - 226 010 (U.P.)  
PHONE : +91-522-4036111, 2720 520/21, FAX : +91-522-4036100

BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

\*\*\*\*\*

ORIGINAL APPLICATION NO. 482 OF 2015

(M.A. NO. 574/2016)

**IN THE MATTER OF:**

Chaudhary Yashwant Singh  
Son of Late Sri Ratiram Singh  
Aged about 54 years  
R/o. Vikas Nagar, Ward No. 11  
Robertsganj, Sonebhadra



.....Applicant

Versus

1. State of Uttar Pradesh  
Through the Chief Secretary Government of U.P.  
at Lucknow U.P.
2. Member Secretary  
U.P. Pollution Control Board  
TC-12, Vibhuti Khand, Gomti Nagar  
Lucknow, U.P.
3. Managing Director  
U.P. Rajkiya Niman Nigam Ltd.  
Vibhuti Khand, Gomti Nagar, Lucknow
4. District Magistrate Sonebhadra U.P.
5. Member Secretary, Ministry of Environment,  
Forest and Climate Change Govt. of India  
New Delhi
6. State of Uttar Pradesh  
Through its Chief Forest Conservator  
Uttar Pradesh, Lucknow, U.P.  
Pin Code No. 226001
7. State of U.P.  
Through its Principal Secretary, Forest  
Uttar Pradesh, Lucknow, U.P.  
Pin Code No. 226001

8. Principal Secretary  
Mines and Mineral  
Uttar Pradesh, Lucknow, U.P.  
Pin Code No. 226001
9. District Mining Officer  
District Sonebhadra, U.P.  
Pin Code No. 231216
10. JAY PEE Industries Ltd. (J.P. Cements, Dala/Churk)  
Dala District Sonebhadra, U.P.  
Pin Code No. 231207
11. HINDALCO Industries Ltd.  
(Renusagar Power Division Renusagar)  
District Sonebhadra, U.P.  
Pin Code No. 231218
12. LANCO Anpara Power Ltd. Gate No. 3  
Anpara, Post Anpara  
District Sonebhadra, U.P.  
Pin Code No. 231225
13. CEO UPSHA  
(Uttar Pradesh State Highway Authority)  
Pin Code No. 226001
14. Project Manager Chetak Construction Co. / A.C.P. Tollyways  
Pvt. Ltd. Ahraura, District Mirzapur U.P.  
Pin Code No. 231301
15. HINDALCO Industries Ltd. Renukoot  
District Sonebhadra, U.P. 231217
16. NTPC Rihand Nagar, Bajipur  
District Sonebhadra, U.P. 231223
17. NTPC Singrauli Super Thermal Power Project  
Shakti Nagar District Sonebhadra-231222
18. Aditya Birla Chemicals Ltd  
Renukoot District Sonebhadra-231217
19. CMD Northern Coalfields Ltd.  
Singrauli District Singrauli, M.P.  
(NCL Kharia Project, NCL Krishna Shila Project, NCL Bina  
Project)
20. CGM Anpara Thermal Power Project  
Anpara District Sonebhadra-231225

21. CGM Obra Thermal Power Project  
Obra District Sonebhadra-231219
22. Oriental Micro Chemicals Factory  
Village Gadha Labhri, Vikas Nagar, Pipari  
District Sonebhadra-231208

.....Respondents

**COUNSEL FOR APPLICANT:**

Mr. Abhishek Kumar Chaudhary, Advocate

**COUNSEL FOR RESPONDENTS:**

Mr. Raman Yadav and Mr. Dalsner Singh, Advocates for Respondent No. 1, 4, 6 to 9

Mr. Pradeep Misra and Mr. Daleep Kumar Dhvani, Advocates for Respondent No. 2

Mr. Rajiv Mehta, Advocate for Respondent No. 3

Mr. Balendu Shekhar, Advocate for Respondent No. 5

Mr. Pawan Upadhyay and Ms. Anisha Upadhyay, Mr. K. Pathak, Advocates for Respondent No. 10

Mr. Sayed Shahid Hussain Rizvi, Ms. Zeeshan Razvi, Advocates for Respondent No. 11 & 15

Mr. Vivek Singh, Advocate for Respondent No. 12

Mr. M.R. Shamshad, AoR and Mr. Aditya Samaddar and Mr. Vaibhav Yadav, Advocates Respondent No. 13

Dr. Abhishek Atrey, Advocate, Mr. Ishan Khanna, Advocate for Respondent No. 14

ZMR. Bharat Sangal, Advocate, Mr. Vidhushi Garg, Advocate for Respondent No. 16 & 17

Mr. Rajat Jariwal, Advocate for Respondent No. 18

Ms. Anjali Chauhan and Mr. Vinayak Shukla and Mr. Anip Sachthey, Mr. Anip Chauhan, Ms. Roia Sachtheyey, Advocates for Respondent No. 19

Mr. Pradeep Misra, Advocate for Respondent No. 20 & 21

Mr. Vinod Kumar, Advocate for Respondent No. 22

Mr. Raj Kumar, Advocate for CPCE

**NGT**  
**JUDGMENT**

**PRESENT:**

**Hon'ble Mr. Justice Swatanter Kumar (Chairperson)**

**Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)**

**Hon'ble Mr. Bikram Singh Sajwan (Expert Member)**

**Hon'ble Mr. Ranjan Chatterjee (Expert Member)**

Reserved on: 9<sup>th</sup> September, 2016  
Pronounced on: 20<sup>th</sup> September, 2016

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

**JUSTICE SWATANTER KUMAR, (CHAIRPERSON)**

Chaudhary Yashwant Singh, Applicant has filed the present application under Section 18(1) read with Sections 14, 15, 16 and 17 of the National Green Tribunal Act, 2010 (for short 'Act of 2010'). The Applicant claims to be a social worker and regularly makes efforts to prevent air, water and environmental pollution in different areas of Uttar Pradesh.

2. The Applicant has pleaded that there are number of stone crushers running without consent of the Uttar Pradesh Pollution Control Board (for short 'the Board') and in violation of the provisions of the Air (Prevention and Control of Pollution) Act, 1981 (for short 'the Air Act') in the area of Singrauli/Sonebhadra and are causing serious pollution. According to the Applicant, these stone crushers are causing serious pollution and even the other heavy industries situated in the area are also causing pollution. Further, according to the Applicant there was a complete ban on establishment of new stone crushers from 2000 but still a number of stone crushers have been installed and emissions from these heavy industries and stone crushers are not regularly checked by the local authorities including the Board. It is averred by the Applicant that there is lack of technological knowhow and qualified staff in these Authorities, which is further aggravating the problem. The water of Rihand Dam is being polluted by the harmful and dangerous emissions by Aditya Birla Chemicals through Dogiya Nala situated at Pipari /Renukoot region and also discharge of hazardous wastes from HINDALCO Industries Limited into Renu River and Rihand Dam. The level of methyl,

mercury, lead and other harmful chemicals have already reached above the dangerous mark and it is adversely affecting human health, flora and fauna. The villagers had suffered from various diseases generated due to the pollution of air and water by release of these pollutants. The Govind Ballabh Pant Sagar is badly getting affected with silt and ash deposits from power projects, namely, NTPC, HINDALCO, LANCO and Andpara Thermal Power Projects.

3. HINDALCO is transporting the coal from NCL fields by road. The Transportation is done in an improper and undesirable manner causing air pollution and resultantly causing harm to human health. Some of these companies have also established their coal yards adjacent to the densely populated villages as a result of which the villagers are suffering from misery. M/s J.P. Associates Ltd. which is running a cement factory, has illegally encroached upon the forest area and has cut/felled thousands of trees for its under construction thermal power plant, cement unit and also a coal washing unit. This unit does not have clearance from the National Board for Wildlife and other respective departments. Rajkiya Nirman Nigam Ltd. had constructed many Government/semi Government projects in the eco-sensitive/restricted areas such as Churk, Musahl, Raup, Lodhi and places adjoining Kaimur Wildlife Sanctuary. These projects had been constructed without prior permission from the Ministry of Environment and Forests without following the prescribed procedures under the Forest (Conservation) Act, 1980.

4. All the Respondents in the application, which includes the State of Uttar Pradesh, Uttar Pradesh Pollution Control Board, District Authorities and all the industries which are responsible for the illegal activity and construction and resultantly causing water, air and environmental pollution. The Applicant filed various applications seeking information under the Right to Information Act, 2005 with regard to the above irregularities and wrong deeds from 15<sup>th</sup> January, 2014 to 20<sup>th</sup> August, 2014.

5. According to the Applicant some information had been furnished by the authorities vide different letters including the letter dated 28<sup>th</sup> August, 2012, 22<sup>nd</sup> March, 2013, 29<sup>th</sup> February, 2014, 17<sup>th</sup> June, 2014 and 20<sup>th</sup> November, 2014. Thereafter, the Applicant made certain representations to the various authorities, including the representations dated 28<sup>th</sup> July, 2014 and 20<sup>th</sup> November, 2014. In these representations, he had prayed for taking action against the defaulting officers besides various other reliefs. It is also stated by the Applicant that during that period even in the newspapers, news in that behalf was published and there was even a public agitation. Despite this, the authorities had taken no action. This resulted in issuance of the notice for demand of justice by the advocate on behalf of the Applicant on 1<sup>st</sup> December, 2014. This notice was received by the authorities and the only response the Applicant received was informing the Applicant, that the notice would be disposed of by Allahabad Branch of Uttar Pradesh Rajkiya Nirman Nigam Ltd. However, no effective action was taken.

6. At this stage we may refer to the contents of the notice for demand of justice dated 1<sup>st</sup> December, 2014. In this, the facts, as already noticed, had been stated. It was emphasised that the rights of the people under Article 21 of the Constitution of India as well as the Precautionary Principle were being violated. After referring to the above industries and the Government Departments, it was stated that there are various violations of different laws in force. Finally in the notice, the following reliefs were asked for:-

"I, therefore, call upon all of you by this notice for demand of justice and request you to take strict action against all above companies/authorities, direct them to strictly follow the rules and regulations, make a survey of damages and losses caused to local people and pay suitable compensation to them and direct them to work under the relevant law, rules and guidelines in the manners development without destruction and also take suitable action against the responsible officers/employees who failed to discharge their duties to prevent the aforesaid illegality and irregularity within a period of 15 days, failing which I have instructions from my client to take appropriate legal action against all of you which will be entirely at your costs and risk."

7. All the Respondents filed their respective replies to this application on merits while raising a preliminary issue in regard to the maintainability of the application on the ground of limitation and mis-joinder of cause of action.

8. As the issue in relation to limitation and mis-joinder of the cause of action did not require any evidence or further filing of affidavits by the respective parties, arguments on this issue were heard treating it to be a preliminary issue. We may notice here that the application was heard on this issue on the plea of demurrer. In other words, the averments made in the application had to be taken on their face value

and are undisputed for the purpose of their hearing of the application in regard to the issue of limitation and mis-joinder of the action.

In order to examine the merit or otherwise of the contentions raised before us it will be necessary to refer to the reliefs claimed by the Applicant in the present application. The Prayer Clause reads as under:-

"It is, therefore, most respectfully prayed that this application may kindly be allowed and the Hon'ble Tribunal may please to direct the respondents to immediately take appropriate action in the matter and to take strict action against all above companies, direct them to strictly follow the rules and regulations, make a survey of damages and losses caused to local people and pay suitable compensation to them under Section 15 of National Green Tribunal Act, 2010 and direct them to work under the relevant law, rules and guidelines in the manners development without destruction and also take suitable action against the responsible officers/employees who failed to discharge their duties to prevent the aforesaid illegality and irregularity.

Further the respondents may be directed to fix responsibility of the Officers who have failed to ensure the compliance of the statutory rules and to furnish a detailed compliance report before the Hon'ble Tribunal.

Pass any other order and direction which this Hon'ble Tribunal may deem fit and proper in the interest of justice.

Cost of the litigation may kindly be awarded to the Applicant."

9. The bare reading of the above prayer clause, shows that the Applicant is claiming a relief covered under Section 14 of the Act of 2010 in so far as it relates to prevention and control of pollution and requiring compliance of the regulatory provisions by the authorities concerned to act in accordance with law as well as to take action against the defaulting officers/officials. The other relief is with regard to the payment of suitable compensation in terms of Section 15 of the

Act of 2010. The limitation prescribed under Section 14 for an action to be brought before the Tribunal is 6 months from the date on which the cause of action for such dispute first arose. The Tribunal is vested with the power to entertain an application beyond the prescribed period of 6 months if a sufficient cause is shown for filing the application beyond the prescribed period but that should not exceed the period of 60 days. In other words the total period for which the delay can be condoned by the Tribunal upon sufficient cause being shown is 6 months plus 60 days. Beyond that the Tribunal will have no jurisdiction even to condone the delay. In relation to Section 15 of the Act of 2010 the application for relief, compensation and restitution can be filed within a period of 5 years from the date on which the cause for such compensation or relief first arose.

10. Even under proviso to Section 15 (3) proviso the Tribunal can entertain an application beyond a period of 5 years but not exceeding 60 days thereafter. As far as the Tribunal is concerned this proposition of law is no more *res integra* and stands settled by different larger bench judgments of the Tribunal which state that beyond the prescribed period of limitation including the period of 60 days, the Tribunal has no jurisdiction to condone the delay. The Tribunal can only condone the delay if an application is filed beyond 6 months or 5 years but not exceeding 60 days thereafter as the case may be. The Tribunal loses its jurisdiction to condone the delay beyond that period.

It will be relevant to refer to the following Judgments of the Tribunal in the case of *M/s Bharat Stone Crusher v. Rajasthan State Pollution Control Board* (O.A. No. 216 of 2014)

"In the alternative, even if we treat this application as an application under Section 16(g) of the NGT Act, even then, this application would be barred by time in terms of Section 14 of the NGT Act. An application has to be filed within 6 months from the date of which cause of action for such dispute first arose. The Tribunal is vested with the powers of condoning the delay in excess but not exceeding 60 days in terms of proviso to Section 14(3) of the NGT Act. This application as already noticed has been filed after more than two years. It would even be barred by limitation under Section 14 of the NGT Act. Even in this case, the appellant has not filed any application for Condonation of delay. Prayer for Condonation of delay even if made now would be in vain and Tribunal would not be able to grant such relief."

And in the case of *Amit Maru v. Secretary, Ministry of Environment & Forest* 2015 ALL (I) NGT REPORTER (2) (PUNE) 1

"21. Reliance is placed on the observations in "Aradhana Bhargav & Ors. V. MoEF & Ors" [Application No.11 of 2013], decided by the Hon'ble Bench of NGT on 12.8.2013. The observations in relevant paragraphs of the said Judgment are as below:  
"23. From the very reading, it would be quite clear that the Tribunal has jurisdiction over all civil cases only where a substantial question relating to the environment including enforcement of any legal right related to environment is involved and also the said substantial question should also arise out of the implementation and is included in one of the seven enactments specified under the Schedule - I. Even, if the applicant is able to satisfy the above requisites, the Tribunal can adjudicate the disputes only if it is made within a period of six months from the date on which the cause of action in such dispute first arose and the Tribunal for sufficient cause can condone the delay for a period not exceeding 60 days in making the application. 24. Under Section, 15 of the Act, an application for relief and compensation to the victims of pollution and other environmental damage under the enactments specified in Schedule-I or for restitution of the property damage or for restitution of environment

for such area or areas, the applicant could be filed within a period of five years from the date of which the cause of action for such compensation or reliefs first arose. Also, if sufficient cause was shown, the Tribunal is empowered to condone the delay for a period not exceeding 60 days."

11. From the record before the Tribunal and in light of the facts afore- noticed it is clear that the Applicant has not stated as to when and from which date the limitation would trigger. In fact, under the para of limitation, as prescribed under Rules, the Applicant has stated "there is no limitation". This averment is contrary to law and, therefore, cannot be further taken notice of. All applications must be filed within the prescribed period of limitation or within the extended period if stipulated under the statute. In the entire application there is no reference as to when the cause of action first arose. However, during the course of arguments the Ld. Counsel appearing for the Applicant submitted that the Applicant is claiming or referring to his rights from the year 1971 when the industrialisation in the area of Singrauli/Sonebhadra was stated. In the application the Applicant unambiguously has emphasised that the Applicant was aware of the efforts and the existing pollution in the area in the year 2014 when he made various applications to the authorities, received the responses and then submitted representations dated 28<sup>th</sup> June, 2014, 20<sup>th</sup> November, 2014 and the notice for demand of justice dated 1<sup>st</sup> December, 2014. Once the cause of action arose in the year 2014 and the compensation claimed is with effect from the year 1971 (of course there is no mentioning of that period in the application) but admittedly the industrialisation and establishment of these industries

started during that period or subsequent thereafter. For the reliefs claimed under Section 14 of the Act of 2010 if the limitation is triggered with effect from July, 2014 when the Applicant made his first representation then the present application is much beyond the prescribed period of limitation (6 months plus 60 days) and hopelessly barred by time. According to the Applicant, it is a case of continuing cause of action and therefore, every continuing violation would give a fresh cause of action and hence, the application would be within time. This argument is without any merit. A continuing cause of action would not provide a fresh period of limitation for the expression 'cause of action first arose' used by the framers of the law under both Section 14 and 15. The expression 'cause of action first arose' is in contradistinction to the continuing cause of action.

In a continuing cause of action, the limitation would trigger from the date the cause of action first arose, unlike in the case of a reoccurring cause of action, where each subsequent violation which is a complete cause of action in itself would give fresh period of limitation, as held by a larger bench of the Tribunal. [Reference can be made to the judgment in the case of *The Forward Foundation & Ors v. State of Karnataka & Ors.* 2015 ADR (1) NGT Reporter (2) Delhi 81.] The present case is certainly not a case of reoccurring cause of action but as pleaded by the Applicant itself, is a case of continuing cause of action.

12. Similarly, the compensation as per the application of the Counsel is being claimed with effect from 1971 and for the period subsequent

thereto, is neither averred in the application nor argued during the course of arguments, that the compensation is being claimed for a period within 5 years of filing of the present application that is 2011 onwards. Thus, the relief claimed under Section 15 would also be hopelessly barred by time. In addition to this, we may notice that despite a specific position being taken by the Respondents the Applicant has filed this application without any application for condonation of delay and even subsequently made no effort to file such an application. Thus, the application is hopelessly barred by time and in any case there being no application for condonation of delay the question of condoning the delay does not even arise.

13. Coming to the other ground of mis-joinder of cause of actions, it needs to be noticed that the Applicant has made very vague allegations in the application without giving specific facts in relation thereto. Further, the Applicant has joined various cause of actions independent of each other and not consequential to one another. One aspect relates to air pollution by emission from industries while the other relates to transportation of coal and discharge of coal dust by different set of companies and thirdly the project constructed by the Departments of the Government in violation of the laws in force and without obtaining the requisite clearances and lastly awarding of compensation to the people of different villages falling in the area of Singrauli/Sonebhadra.

14. The application does not give any particular fact in relation to any particular incident and makes very generalised statement. How,

when, by whom and the extent of pollution has not been referred to at all in the application. The application adds multifarious parties, multifarious causes of action which are neither interdependent nor consequential to each other. In fact, they are different and distinct causes of action against different parties and relate to different backgrounds and distinct prayers in that behalf. Rule 14 of the National Green Tribunal (Practise and Procedure) Rules, 2011 reads as under:-

"An application or appeal, as the case may be, shall be based upon a single cause of action and may seek one or more relief provided that they are consequential to one another."

15. The plain reading of the above Rule shows that it is not permissible to bring plural and different causes of action in one and the same application/petition. The application has to be based upon a single cause of action and may seek one or more relief provided that they are consequential to one another. In other words, various reliefs can be claimed by an Applicant in an application provided they arise from a single cause of action. Mis-joinder of multifarious cause of action particularly when they are different and distinct is not permissible under the rules. The Applicant has claimed different reliefs against different parties on different grounds and for different defaults or irregularities that are nowhere interconnected or consequential to each other. Entertaining this application in the form in which it has been presented would be in complete violation of Rule 14 of the above Rules. Besides all this, the Application is vague, uncertain and unspecific to the extent that it is difficult for the Tribunal to deal with it on merits. It is not just and fair to the

Respondents if the application is proceeded with further in the form in which it has been filed. In fact, it does not even comply with the basic form prescribed under the Rules for the filing of an application. Despite specific objections in this behalf, the Applicant has failed to take any remedial measures though the matter is now pending for a considerable time before the Tribunal. Thus, this application is liable to be dismissed on the ground of limitation and mis-joinder of cause of action and being in violation of Rule 14 of the National Green Tribunal (Practice and Procedure) Rule, 2011. However, we would make it clear that dismissal of this application is without prejudice to the rights and contentions of the respective parties in the connected applications and would not in any manner prejudice the contentions raised in other connected matters relating to the same area and similar questions of environment.

16. The Application is hereby dismissed without any order as to costs.

**Swatanter Kumar**  
Chairperson

**Raghuvendra S. Rathore**  
Judicial Member

**Bikram Singh Sajwan**  
Expert Member

**Ranjan Chatterjee**  
Expert Member

New Delhi  
20<sup>th</sup> September, 2016



प्रकीर्ण सिविल अपील सं०-11 सन् 2020  
ए०सी०पी० टोलवेज बनाम क्षेत्रीय वनाधिकारी आदि

दिनांक: 11.11.2020

पत्रावली पेश हुई। पुकार कगयी गयी। उभय पक्ष के विद्वान अधिवक्ता न्यायालय में उपस्थित आए।

पत्रावली आज सुनवाई हेतु नियत है, परन्तु विपक्षी के विद्वान अधिवक्ता की ओर से स्थगन प्रार्थना-पत्र 15 घ इस आधार पर प्रस्तुत किया गया है कि प्रभागीय वनाधिकारी भीरजापुर के सेवानिवृत्त होने के कारण आज तक शासन द्वारा किसी अन्य अधिकारी की नियुक्ति नहीं हो पायी है, जिससे मुकदमा उपरोक्त में आपत्ति दाखिल कर पाना व बहस कर पाना सम्भव नहीं है। अतः आपत्ति व बहस हेतु कोई अन्य तिथि नियत की जाय। उक्त स्थगन प्रार्थना-पत्र का विरोध अपीलार्थी के विद्वान अधिवक्ता द्वारा किया गया है एवं यह कथन किया गया है कि यदि विवादित सम्पत्ति के संरक्षण के सम्बन्ध में कोई स्थगन आदेश पारित न किया गया तो अपील का मकसद विफल हो जाएगा।

मैंने उक्त स्थगन प्रार्थना-पत्र 15 घ पर उभय पक्ष के विद्वान अधिवक्ता को सुना एवं पत्रावली का विस्तारपूर्वक अवलोकन किया।

पत्रावली के अवलोकन से यह स्पष्ट है कि अपील प्रस्तुत करने की तिथि दिनांक 22.05.2020 को ही अपीलार्थी की ओर से अधीनस्थ न्यायालय के प्रश्नगत आदेश के क्रियान्वयन व प्रभाव को स्थगित करने हेतु एक प्रार्थना-पत्र 5 ग प्रस्तुत किया गया था, परन्तु मेरे प्रभारी अधिकारी के द्वारा दिनांक 22.05.2020 को अधीनस्थ न्यायालय के द्वारा पारित प्रश्नगत आदेश के क्रियान्वयन व प्रभाव को इस आधार पर स्थगित नहीं किया गया था कि विपक्षीगण लोक अधिकारीगण हैं और उन्हें सुनवाई का अवसर दिया जाना न्यायोचित होगा। अब विपक्षीगण पत्रावली में हाजिर आ चुके हैं और उनकी तरफ से आपत्ति व बहस न करके स्थगन प्रार्थना-पत्र 15 घ प्रस्तुत किया गया है। अतः न्यायहित में स्थगन प्रार्थना-पत्र 15 घ इस शर्त पर स्वीकार किया जाता है कि उभय पक्ष दिनांक 30.11.2020 तक मौके पर यथास्थिति बनाए रखेंगे तथा नियत तिथि 30.11.2020 तक अधीनस्थ न्यायालय द्वारा पारित प्रश्नगत आदेश दिनांकित 27.02.2020 का क्रियान्वयन व प्रभाव स्थगित रहेगा।

पत्रावली वास्ते आपत्ति एवं निस्तारण दिनांक 30.11.2020 को पेश हो।



जनपद न्यायालय, भीरजापुर  
 सं. 11-11-2020 - 150-1

Seen  
 11-11-2020

सत्य प्रतिलिपि

प्रधान प्रतिलिपिक

जनपद न्यायालय-भीरजापुर

जनपद न्यायाधीश,

भीरजापुर

11-11-20



True Typed Copy

33

State level Environment Impact Assessment Authority, Uttar Pradesh

Directorate of Environment, U.P.  
Dr. Bim Rao Ambedkar....  
Vinet Khand-I, Gomtinagar,  
Lucknow-226010  
Phone: 91-522-2305541.

Ref: 1641/.../SEAC/784/2011/JDCA.

Date: 05/07 June, 2011

To

Mr. Isht Dev Prasad Rai,  
Chief Executive Officer,  
UP State Highways Authority,  
4<sup>th</sup> Floor, Kisan Mandi Bhavan,,  
Vibhuti Khand, Gomti Nagar,  
Lucknow-226010.

Subject: Regarding the Environmental Clearance for the Upgradation, Rehabilitation and widening of the existing Varanasi-Shaktinagar section of SH-SA (km 0.00 to km 115.00) to four-line with paved shoulders of the project state Highway in the state of U.P.

Dear Sir,

Please refer to your letter dated 13-04-2011 addressed to the Secretary, State Level Expert Appraisal Committee, UP on the subject as above. This is to inform you that the above said project had been taken up in the SEA meeting held on 29.04.2011. The SEAC observed that the project did not come under the purview of EIA Notification 2006 as amended on April, 2011. Hence the project need not be considered by the SEAC and the project proponent may be informed accordingly.

The State Level environment Impact Assessment Authority (SEAC) conducted the case and to held on 19.5.11 and agreed with the above recommendations of SEAC.

In the light of decision taken by SEIAA, it is being informed that your project does not come under purview of EIA notification, 2006 as amended on April, 2011.

Yours Sincerely,

Sd/-  
Dr. C.S. Bhatt)  
Member Secretary  
SEIAA, U.P.

Copy for necessary....

1. the Secretary, Environment, U.P. Govt. Lucknow,.
2. Dr. Nalini Bhatt, Advisor, Ministry of Environment & Forests, Govt. of India, Paryavaran Bhavan, CGO Complex, Lodhi Road, New Delhi.
3. Chief Conservator, Ministry of Environment & Forest, Regional Office (Central Region), Kendriya Bhavan, 5<sup>th</sup> Floor, Sector-8, Aligarh, Lucknow.
4. The Member Secretary, U.P. Pollution Control Board, PICUP Bhawan, Gomti Ngar, Lucknow.

Yours Sincerely,

(Dr. Yashpal Singh)  
Secretary SEAC and  
Director, Environment Directorate  
Govt. of U.P.)

## उत्तर प्रदेश राज्य राजमार्ग प्राधिकरण

चतुर्थ तल, किसान मण्डी भवन, विभूति खण्ड,  
गोमती नगर, लखनऊ- 226010

फोन/फैक्स नं० : 0522-4150311/377  
वेबसाइट- <http://www.upsha.in>

पत्रांक: 1865/प्रावि0-18(4 सी.ए.)/2015-16/उपशा/लखनऊ  
सेवा में,

दिनांक: 30 अक्टूबर, 2015

मेसर्स एफ़ो-चेतक-पटेल टॉलवेज प्रा0लि0,  
एफ़ो हाउस, बी.-9, विभूति खण्ड,  
गोमती नगर, लखनऊ-226010

विषय:- वाराणसी-शक्तिनगर मार्ग (एस0एच0-5ए) पर टोल कलेक्शन के दर के अनुमोदन के सम्बन्ध में।

सन्दर्भ:- निजी विकासकर्ता का पत्रांक-ACPTPL/UPSHA/CAMP/2015/390, dt. 29.10.2015.

महोदय,

उपरोक्त सन्दर्भित पत्र के क्रम में अवगत कराना है कि वाराणसी-शक्तिनगर मार्ग, लं0-115.00 किमी0 का निर्माण सार्वजनिक-निजी- सहभागिता (पी.पी.पी.-बी.ओ.टी.) पद्धति पर 75 प्रतिशत पूर्ण हो जाने के उपरान्त टीम लीडर, स्वतन्त्र अभियन्ता मेसर्स सी.एम.ई.सी. कंसल्टिंग इंजीनियर्स, भुवनेश्वर के पत्र संख्या-CMEC/V-S/IE-1228, दिनांक 29.10.2015 द्वारा मार्ग को Commercial Operation हेतु उपयुक्त पाए जाने के कारण मार्ग के किमी0 3.970 से किमी0 4.970(टोल प्लाजा-1), किमी0 67.275 से किमी0 68.275(टोल प्लाजा-2) एवं किमी0 108.054 से किमी0 109.990(टोल प्लाजा-3) पर स्थित टोल प्लाजा पर विभिन्न प्रकार के वाहनों से टोल टैक्स एकत्रित करने हेतु दिनांक 31 अक्टूबर, 2015 के 0.00 Hour से अधिकृत किया जाता है। स्वतन्त्र अभियन्ता द्वारा Provisional Completion Certificate के साथ संलग्न Punch List Items को अनुबन्ध के आर्टिकल-14.4 के अनुसार पूर्ण करना सुनिश्चित करें। टोल टैक्स की दरें संलग्न सूची के अनुसार है।

टोल कलेक्शन हेतु कार्यवाही टोल अधिसूचना संख्या-62/23-02-2011-11(Sa)/09 Lucknow, Dated 12 January, 2011 की शर्तों के अधीन की जानी है।

इस नियमावली के प्रस्तर-12 के अनुसार प्रत्येक प्रकार के वाहनों से टोल टैक्स की धनराशि हेतु Press Notice सम्बन्धित क्षेत्रों में वृहद् प्रसारित समाचार पत्रों के अंग्रेजी एवं हिन्दी संस्करणों में दिनांक 31 अक्टूबर, 2015 के पूर्व प्रकाशित कराना सुनिश्चित करें।

संलग्नक:- यथोक्त।

भवदीय,

  
(नवनीत सहगल)

आई.ए.एस.

मुख्य कार्यपालक अधिकारी

पत्रांक एवं दिनांक उपरोक्तानुसार।

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित:-

- 1) प्रमुख सचिव, लोक निर्माण विभाग, उ०प्र० शासन, लखनऊ।
- 2) प्रमुख अभियन्ता (विकास) एवं विभागाध्यक्ष, लोक निर्माण विभाग, उ०प्र०, लखनऊ।
- 3) आयुक्त, मिर्जापुर।
- 4) जिलाधिकारी/वरिष्ठ पुलिस अधीक्षक, मिर्जापुर/सोनभद्र।
- 5) मुख्य अभियन्ता, वाराणसी क्षेत्र, लोक निर्माण विभाग, वाराणसी।
- 6) सदस्य (प्रशासन)/सदस्य (वित्त)/सदस्य (तकनीकी), उपशा, लखनऊ।
- 7) टीम लीडर, सी.एम.ई.सी. कंसल्टिंग इंजीनियर्स, भुवनेश्वर।

(नवनील सहगल)

आई.ए.एस.

मुख्य कार्यपालक अधिकारी



**U.P. STATE HIGHWAYS AUTHORITY (UPSIA)  
Under Public Works Department, Govt. of U.P.**

**ACP Tollways Pvt., Ltd., Lucknow**

**PUBLIC NOTICE ON USER FEE TOLL RATES**

At Toll Plaza No.-1 located between km. 3.970 to Km 4.970 in section I from CH 0.00 to Ch 64.00, Toll Plaza No.-2 located Between km. 67.275 to Km 68.275 in section II from CH 64.00 to Ch 97.00, and Toll Plaza No.-3 located Between km. 108.054 to Km 109.990 section III from CH 97.00 to Ch 115.00, of Varanasi-Shaktinagar Road SH-5A.

The public are hereby informed that pursuant to Concession Agreement dated 11<sup>th</sup> August, 2011 and Notification for levying of Toll Tax published in the Gazette vide No 1854/XXIII-II-2013-18SA/2013 dated August 16, 2013 by Uttar Pradesh Shashan Lok Nirman Anubhag-2, Toll Fee Notification No.-62/23-02-2011-11(Sa)/09 Lucknow, Dated 12 January, 2011 issued by Govt. of U.P. and recommendation received from Independent Engineer vide letter CMEC/V-S/IE-1228, dt. 29.10.2015 for putting completed length of Project Road on commercial operation, the user fee for the use of section from design Chainage Km. 0.000 to Km. 113.440 (length 113.440 km.) section of Varanasi-Shaktinagar Road (SH-5A) is as below and levying of Toll tax will be started w.e.f. 31.10.2015 at: 0:00 Hr.

**Toll Plaza No.-1 (Km. 3.970 to Ch. 4.970)**

Category of Vehicle	Fee for Single Journey	Fee for Return Journey within 24 Hours	For Monthly Pass valid for maximum 50 journeys
Car, Jeep, Van or Light Motor Vehicle	95	140	3115
Light Commercial Vehicle, Light Goods or Mini Bus	140	210	4670
Bus or Truck (Two Axle)	280	420	9340
Heavy Construction Machinery (HCM) or Earth Moving Equipment (EME) or Multi Axle Vehicle (Three to Six Axles)	445	665	14785
Oversized Vehicles (Seven or more Axles)	560	840	18680

**Toll Plaza No.-2 (Km. 67.275 to Km. 68.275)**

Category of Vehicle	Fee for Single Journey	Fee for Return Journey within 24 Hours	For Monthly Pass valid for maximum 50 journeys
Car, Jeep, Van or Light Motor Vehicle	85	125	2805
Light Commercial Vehicle, Light Goods or Mini Bus	125	190	4225
Bus or Truck (Two Axle)	255	380	8420
Heavy Construction Machinery (HCM) or Earth Moving Equipment (EME) or Multi Axle Vehicle (Three to Six Axles)	390	580	12925
Oversized Vehicles (Seven or more Axles)	505	760	16845

**Toll Plaza No.-3 (Km. 108.054 to Km. 109.990)**

Category of Vehicle	Fee for Single Journey	Fee for Return Journey within 24 Hours	For Monthly Pass valid for maximum 50 journeys
Car, Jeep, Van or Light Motor Vehicle	20	30	665
Light Commercial Vehicle, Light Goods or Mini Bus	30	45	1000
Bus or Truck (Two Axle)	60	90	2000
Heavy Construction Machinery (HCM) or Earth Moving Equipment (EME) or Multi Axle Vehicle (Three to Six Axles)	100	150	3335
Oversized Vehicles (Seven or more Axles)	120	180	4005

1. The rate for monthly pass applicable for local non-commercial vehicle residing within a distance of 20 km from the toll plaza shall be Rs. 260/-


2. The following concessions are available in the rates as mentioned in above Table

- (i) Return Journey within 24 hours from time of payment for all categories of vehicle.
- (ii) For maximum number of 50 single journeys in a month from date of payment for all categories of vehicles.
- (iii) Pass at the rate of Rs 260/- per month for a person who owns a non-commercial vehicle residing within 20 km from Toll plaza.

3. The scheme of giving concession may be viewed at Customer care (Point of Sale) at Toll plaza.

4. The list of exempted vehicles is as per UPSHA's letter no:- 1832/Pravi-18(4A)/2015-16/UPSHA/Lucknow, dt. 28.10.2015.

5. The driver or owner or a person in-charge of the mechanical vehicle shall be liable to pay fee for entering the overloaded vehicle, which is applicable for next higher category of mechanical vehicles on this project road to the toll collecting agency.

  
(Navneet Sehgal)  
Chief Executive Officer,  
UPSHA

F. No. 8-86/2012-FC  
Government of India  
Ministry of Environment & Forests  
(F.C. Division)

Paryavaran Bhawan,  
CGO Complex, Lodhi Road,  
New Delhi-110003  
Dated: 31 May, 2013

To

The Principal Secretary (Forests),  
Government of Uttar Pradesh,  
Lucknow.

Sub: Diversion of 129.251 ha of forest land in favour of Uttar Pradesh State Highway Authority (UPSHA) for widening / upgradation of Varanasi-Shaktinagar section of NH-5A in Mirzapur, Sonbhadra, Obra, Renukut Forest Divisions and Kaimur Wild life Sanctuary in the State of Uttar Pradesh -- regarding.

Sir,

I am directed to refer to the State Government's letter no. 2636/14-2-2012-800(70)/2012 dated 12<sup>th</sup> October, 2012 and D.O. letter no. 664/Forest Conservation Act dated 25<sup>th</sup> March, 2013 on above mentioned subject seeking prior approval of the Central Government under Section-2 of the Forest (Conservation) Act, 1980 and to say that the proposal has been examined by the Forest Advisory Committee constituted by the Central Government under Section-3 of the said Act.

After careful examination of the proposal of the State Government and on the basis of the recommendations of the Forest Advisory Committee, the Central Government hereby conveys the 'in-principle' approval for diversion of 129.251 ha of forest land in favour of Uttar Pradesh State Highway Authority (UPSHA) for widening / upgradation of Varanasi-Shaktinagar section of NH-5A in Mirzapur, Sonbhadra, Obra, Renukut Forest Divisions and Kaimur Wild life Sanctuary in the State of Uttar Pradesh subject to fulfilment of the following conditions:-

1. Legal status of the diverted forest land shall remain unchanged.
2. (i) The Compensatory Afforestation (CA) over double degraded forest land as proposed shall be undertaken at the cost of the User Agency.  
(ii) The area identified for Compensatory Afforestation shall be clearly depicted on SOI toposheet of 1:50,000 scale.  
(iii) The User Agency shall transfer the cost (incorporating the current wage structure) for raising and maintaining Compensatory Afforestation to the State Forest Department.
3. User Agency shall deposit the Net Present Value (NPV) of the diverted forest land with the State Forest Department as per the orders of the Hon'ble Supreme Court dated 30.10.2002, 01.08.2003 and 28.03.2008 in I.A. No. 566 in WP(C) No.

MP

2002/1995 and the guidelines issued by this Ministry vide letter No. 5-1/94-2001 in dated 18.09.2003 and 22.09.2003 in this regard.

4. Additional amount of the NPV of the diverted forest land, which, following the finalization of the same by the Hon'ble Supreme Court of India on receipt of the report from the Expert Committee, shall be shared by the State Government and the User Agency. The User Agency shall transfer the same to the State Government.
5. All the funds collected from the User Agency under the project shall be transferred to Ad-hoc CAMPA in saving accounts pertaining to the State concerned.
6. The User Agency shall arrange to plant strip plantation on either side of the road and

7. The User Agency shall arrange to plant strip plantation on either side of the road and

9. Overburden shall not be dumped outside the width of the road. The truck generated in the earth cuttings will be dumped off at the dumping ground as per road and the truck debris will be allowed to roll down for all debris.

10. The User Agency shall undertake comprehensive soil conservation measures at the project site in consultation with the State Forest Department.

11. The User Agency shall ensure that the project site is ecologically sound and the forest land is protected from degradation. Particular attention will be particularly given to providing safe crossing and corridors for wildlife species and protecting sensitive habitats like riparian, grasslands and woodlands from degradation. Where necessary, continuity of ecological particular species, special measures shall be provided by the CWLW for providing crossing points. Where certain habitats for nesting/roosting of species like, etc. of peey, herons, stocks, hornbills, etc. are to be destroyed, alternative structure shall be provided and the trees transplanted.

12. The User Agency shall not collect any toll from the vehicles carrying forest produce on duty.

13. The dumping of debris/soil/rock over the road shall be avoided.

14. Approval shall be obtained from the State Forest Department and all the work shall be done in accordance with the guidelines of the State Forest Department.

15. No labor camp shall be established on the forest land. The User Agency shall also provide facility preferably alternate facility to the labourers and staff working at the site so as to avoid any damage to the forest land.

16. The boundary of the diverted forest land shall be demarcated on the ground with four feet high cement concrete pillar with the serial number and forward and back bearing inscribed on it.

17. The layout and plan shall not be changed without prior approval of the Central Government.

- 41
19. This is subject to the requisite Environmental Clearance and other consequential clearances, if required.
  20. Ex-situ conservation of endemic species of flora/fauna lost/disturbed in the process of execution of the project may be ensured.
  21. No damage to the flora and fauna of the area shall be caused.
  22. The user agency in consultation with the State Government shall create and maintain alternate habitat/home for the avifauna, whose nesting trees/area to be cleared in this project. Birds nests artificially made out of eco-friendly material shall be used in the area including forest area and human settlements adjoining the forest area being diverted for the project.
  23. The forest land shall not be used for any purpose other than that specified in the proposal and shall, under no circumstances, be transferred to any one without prior approval of the Central Government.
  24. All other conditions proposed by the State Government at the time of submission of the proposal to the Central Government shall be complied with by the User Agency.
  25. The provisions of the Scheduled Tribe and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 shall be complied with in accordance with relevant Guidelines issued by the MoEF.
  26. Rehabilitation of project affected families, if any, shall be done as per the National Rehabilitation policy / State Rehabilitation policy whichever is better in consultation with the State Forest Department at the cost of user agencies.
  27. Any other condition that the Addl. PCCF (Central), Regional Office, Lucknow may impose from time to time for the protection and improvement of flora and fauna in the forest area.
  28. All other conditions under different rules, regulations and guidelines including environmental clearance shall be complied with before transfer of forest land.
  29. The transfer of forest land to the User Agency shall not be affected by the State Government till formal orders approving the diversion of forest land are issued by the Central Government.
  31. The User Agency shall submit the annual self-compliance in respect of the above conditions to the State Government and to the concerned Regional Office of the Ministry regularly.

Over and above conditions, the following additional conditions as recommended by the Forest Advisory Committee and accepted by the Central Government shall be fulfilled before Stage-II approval:-

- (i) The user agency shall submit a revised scheme for creation and maintenance of compensatory afforestation (CA) over 106.391 hectares of non-forest land free from encroachments/encumbrance and 45.72 hectares of degraded forest land. The CA scheme shall *inter alia* contain a Survey of India toposheet, in original, in 1:50,000 scale indicating location and boundary of forest land identified for creation of CA and suitability/non-encumbrance certificate duly signed by competent authority. In case estimated cost for creation and maintenance of CA as per the revised scheme is less than the same indicated in the original proposal, detailed reasons for the same may also be provided.
- (ii) The user agency shall acquire additional non-forest land (except for the portion of highways passing through Reserved Forest) and provide funds to raise strip plantation along both sides of road so as to ensure that average width of right of way of the highways is 45 meters. In case it is not feasible to acquire entire

additional non-forest land along right of way of the highways, the shortfall may be met by acquiring non-forest land elsewhere to raise plantations in lieu of the strip plantations required to be raised along the highways.

(ii) The State Government shall raise penalty compensation for forest land covered degraded forest land equal in extent to the forest land situated in the Public Works Department to the U.P.S.A. within the Government of Uttar Pradesh.

(iv) The User Agency shall provide funds for establishment of a forest nursery having the capacity to raise 1 lakh plants per annum in each of the Block Divisions in which the forest land is to be raised, to be used for raising strip plantations along the highways.

After receipt of the compliance report on fulfillment of the conditions mentioned above, the proposal shall be considered for final approval under Section 2 of the Forest (Conservation) Act 1980. Till receipt of the said final State Government approval of the Central Government from this Ministry, transfer of the said forest land to the User Agency shall not be affected by the State Government.

Yours faithfully,

(B. K. Singh)

Director

Copy to

1. The Principal Chief Conservator of Forests, Government of Uttar Pradesh, Lucknow.
2. The Addl. Principal Chief Conservator of Forests (Central), Regional Office, Lucknow.
3. The Nodal Officer, Forest Department, Government of Uttar Pradesh, Lucknow.
4. User Agency.
5. Monitoring Cell, FC Division, MoEF, New Delhi.
6. Guard file.

(B. K. Singh)

Director

~~ANNEXURE~~

F. No. 8-86/2012-FC  
 Government of India  
 Ministry of Environment and Forests  
 (FC Division)

\*\*\*

Paryavaran Bhawan,  
 CGO Complex,  
 Lodhi Road, New Delhi - 110510  
 Dated: 14<sup>th</sup> November, 2013

To  
 The Principal Secretary (Forests),  
 Government of Uttar Pradesh,  
 Lucknow.

Sub: Diversion of 129.251 ha of forest land in favour of Uttar Pradesh State Highway Authority (UPSHA) for widening/ upgradation of Varanasi-Shaktinagar section of NH-5A in Mirzapur, Sonbhadra, Obra, Renukut Forest Divisions and Kaimur Wild life Sanctuary in the State of Uttar Pradesh.

Sir,

I am directed to refer to the State Government of Uttar Pradesh's letter no. 2636/14-2-2012-800 (70)/2012 dated 12.10.2012 on the above mentioned subject seeking prior approval of the Central Government under Section-2 of the Forest (Conservation) Act, 1980. After careful examination of the proposal by the Forest Advisory Committee (FAC) constituted under Section-3 of the said Act, 'in-principle' approval was granted vide this Ministry's letter of even number dated 31.05.2013 subject to fulfilment of certain conditions prescribed therein. The State Government has furnished compliance report in respect of the conditions stipulated in the 'in-principle' approval and has requested the Central Government to grant final approval.

In this connection, I am directed to say that on the basis of the compliance report furnished by the State Government vide Nodal Officer (FCA) Forest Department, Uttar Pradesh's letter No. 477/11/C-Lucknow dated 3.09.2013, final approval of the Central Government is hereby granted under section-2 of the Forest (Conservation) Act, 1980 for Diversion of 129.251 ha of forest land in favour of Uttar Pradesh State Highway Authority (UPSHA) for widening/ upgradation of Varanasi-Shaktinagar section of NH-5A in Mirzapur, Sonbhadra, Obra, Renukut Forest Divisions and Kaimur Wild life Sanctuary in the State of Uttar Pradesh subject to fulfilment of the following conditions:

- (i) Legal status of the diverted forest land shall remain unchanged;
- (ii) Compensatory afforestation over the degraded forest land of 45.72 ha i.e. twice in extent to the forest land being diverted (22.86 ha; ownership of which rests with UPSHA) and over equivalent non-forest land in lieu of 106.391 ha of forest land being diverted (ownership of which rests with the State Forest Department), shall be raised and maintained by the State Forest Department from the funds already deposited by the User Agency;
- (iii) The non-forest land transferred and mutated in favour of the State Forest Department shall be notified by the State Government as RF under Section-4 or PF under Section-29 of the Indian Forest Act, 1927 or under the relevant Section(s) of the local Forest Act, 1927 latest within a period of six months from the date of issue of this letter. The Nodal Officer shall report compliance in this regard along with a copy of the original

A

notification declaring the non-forest land under Section 4 or Section 29 of the Indian Forest Act, 1927, as the case may be, within the stipulated period to the Central Government for information and record;

- (iv) The User Agency shall pay the additional amount of NPV, if so determined, as per the final decision of the Hon'ble Supreme Court of India;
- (v) Plantation should be raised and maintained over an area of 19.05 ha identified by the State Government in lieu of strip plantation as per the approved scheme from the funds already deposited by the user agency;
- (vi) Wherever possible and technically feasible, the user agency shall undertake afforestation measures along the road within the area diverted under this approval, in consultation with the State Forest Department at the project cost
- (vii) The layout plan of the proposal shall not be changed without the prior approval of the Central Government.
- (viii) No labour camp shall be established on the forest land;
- (ix) The forest land shall not be used for any purpose other than that specified in the proposal and under no circumstances be transferred to any other agency, department or person
- (x) The reclamation of quarry should be done and completed under the supervision of the State Forest Department and it shall be afforestation completely before the project is closed.
- (xi) Overburden shall not be dumped outside the width of the road. The musk generated in the earth cutting will be disposed off at the designate dumping sites and in no case the musk/debris will be allowed to roll down the hill slopes.
- (xii) The user agency will provide retaining walls, breast walls and drainage as per requirement to make the slope stable.
- (xiii) The user agency will undertake comprehensive soil conservation measures at the project cost in consultation with the State Forest Department.
- (xiv) The user agency will assist the State Government in conservation and preservation of flora and fauna of the area in accordance with the plan prepared by the Chief Wildlife Warden of the State. Attention will be particularly given to providing safe crossing and corridors for wildlife species and protecting sensitive habitat like wetlands, grasslands and woodlands from degradation. Where canopy continuity is required for particular species. Special measures shall be prescribed by the CWLW for proving crossing points. Where certain trees used for nesting/rookeries of species like 'birds' of prey, herons, storks, hornbills, etc. Are by be destroyed, alternative structure shall be provided and the trees transplanted.
- (xv) The user agency shall not collect any toll from the vehicles carrying forest officers on duty.
- (xvi) The designing of culverts/bridges, if any, over the natural streams/rivers/canals should be done in such a manner that it does not hamper the natural course of water, does not give rise to water-logging, and also does not hamper movement of wild animals.

- (xvii) Any tree shall be felled only when it becomes necessary and that too under strict supervision of State Forest Department, and at the cost of the User Agency.
- (xviii) No labour camp shall be established on the forest land. The User agency shall also provide fuels preferably alternate fuels to the labourers and staff working at the site so as to avoid any damage to the nearby forest areas.
- (xix) The boundary of the diverted forest land shall be demarcated on the ground with four feet high cement concrete pillar with its serial numbers and forward and back bearing inscribed on it.
- (xx) Ex-situ conservation of endemic species of flora/fauna lost/disturbed in the process of execution of the project may be ensured.
- (xxi) No damage to the flora and fauna of the area shall be caused.
- (xxii) The user agency in consultation with the State Government shall create and maintain alternate habitat/home for the avifauna, whose nesting trees area to be cleared in this project. Birds nests artificially made out of eco-friendly material shall be used in the area, including forest area and human settlements, adjoining the forest area being.
- (xxiii) The user Agency shall submit the annual self-compliance in respect of the above conditions to the State Government and to the concerned Regional Office of the Ministry regularly.
- (xxiv) Any other condition that the concerned Regional Office of this Ministry may stipulate, from time to time, in the interest of conservation, protection and development of forests & wildlife.
- (xxv) The User Agency and the State Government shall ensure compliance to provisions of the all Acts, Rules, Regulations and Guidelines, for the time being in force, as applicable to the project.

Yours faithfully,

(Priya Ranjan)

Sr. Assistant Inspector General of Forests

Copy to:-

1. The Principal Chief Conservator of Forests Government of Uttar Pradesh, Lucknow.
2. The Addl. PCCF (Central), Regional Office, Lucknow.
3. The Nodal Officer (FCA), O/o the PCCF, Government of Uttar Pradesh, Lucknow.
4. The Chief General Manager (Land Acquisition), National Highway Authority of India, Ministry of Road Transport & Highway, G-5 & 6, Sector-10, Dwarka, New Delhi - 110 0075.
5. User Agency (UPSHA 4<sup>th</sup> Floor Kisan Mandi Bhawan Vibhuti Khand Gomti Nagar Lucknow - 226010)
6. Monitoring Cell, FC Division, MoEF, New Delhi.
7. Guard file.

(Priya Ranjan)

Sr. Assistant Inspector General of Forests

ANNEXURE K-354 (COLLY)



(ISO 9001 : 2008 Certified)

# CMEC Consulting Engineers

(Independent Engineer for Upgradation of Varanasi-Shaktinagar Road (SH-5A) on DBFOT Basis)

96

Ref: CMEC/V-S/IE-934

Date: 07.02.2015

To

M/s ACP Tollways Pvt. Ltd.

B-9, Vibhuti Khand, Gomati Nagar,

Lucknow-226010(UP)

SUB: Four lane with paved shoulder of Varanasi-Shaktinagar Road of SH-05A from Km 0.00 to Km 117.65 in the State of Uttar Pradesh on Design, Built, Finance, Operate and Transfer ('DBFOT') basis:-Approval of GAD drawing for Toll Plaza No.02 at Ch.68+100

Ref: Your letter no. ACPTPL/CMEC/CAMP/2015/39 dated 04.01.2015.

Dear Sir,

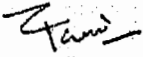
The following drawing of the Toll Plaza no.02 at Ch. 68+100 has been reviewed and found in order to Section.10 of IRC SP: 84-2009.

Sl NO.	Description	Drawing No.	Revision
1	GAD for Toll plaza no. 02 at Ch. 68.100	ACPTPL/VSRP/Toll/01	R1
2	Toll plaza Booth Details for Toll plaza no. 02 at Ch.68.100	ACPTPL/VSRP/Toll/02 & 2-A (Sheet 1 of 2)	R0
3	Canopy plan for Toll plaza no.02 at Ch.68.100	ACPTPL/VSRP/Toll/03 & 03-A (Sheet 1 of 2)	R0
4	Plan & profile for Toll plaza no. 02 at Ch.68.100.	BSC/VS/P&P-04(Sheet 1 of 1) BSC/VS/P&P-05(Sheet 2 of 2)	R2
5	Administrator Block (Ground floor, first floor & front elevation plan) Layout for Toll Plaza no. 02 at Ch.68.100	ACPTPL/VSRP/Toll/06 (Sheet 1 of 1) ACPTPL/VSRP/Toll/07 (Sheet 2 of 2) ACPTPL/VSRP/Toll/08 (Sheet 3 of 3)	R1 R0 R1

You are requested to submit Good for construction (GFC) drawings of the same at the earliest.

Thanking you & counting on your early compliance.

Truly yours

  
(U.K.Pani)

Team Leader

Encl: As stated above.

CC to - Member (Technical), UPSHA, 4<sup>th</sup> Floor, Mandi Bhawan, Vibhuti Khand, Gomati Nagar, Lucknow-226010, for information.

Encl: As stated above.

Received - No - 74  
Date - 9/2/15  
Yashpal

Project Office : 1st Floor, Plot No. 1065, Maruti Nagar, Vill - Sir Gobardhanpur, PO- Ramna, Lanka, Varanasi, Uttar Pradesh, PIN - 221005  
Mob. : 8601878209, 8601878210, E-mail : cmecvaranasi@gmail.com, cmecvaranasi@cmec.co.in  
Regd. Office : Plot No. 551/2417, Samantarapur Chhak, Old Town, Bhubaneswar, Odisha, PIN-751002, Website : www.cmec.co.in  
Telefax : 0674-2340541, Mob. : 9437001665, 9437286623, E-mail: cmecbbsr@rediffmail.com



(ISO 9001 : 2008 Certified)

# CMEC Consulting Engineers

(Independent Engineer for Upgradation of Varanasi-Shaktinagar Road (SH-5A) on DBFOT Basis)

47

Ref: CMEC/V-S/IE-941

Date 11.02.2015

To

M/s ACP Tollways Pvt. Ltd.

B-9, Vibhuti Khand, Gomati Nagar,

Lucknow-226010(UP)

SUB: Four lane with paved shoulder of Varanasi-Shaktinagar Road of SH-05A from Km 0.00 to Km117.65 in the State of Uttar Pradesh on Design, Built, Finance, Operate and Transfer ('DBFOT') basis:- GFC Drawing for Toll Plaza No.02 at Ch.68+100

Ref: Your letter no. ACPTPL/CMEC/CAMP/2015/39 dated 04.02.2015.

ACPTPL/CMEC/CAMP/2015/54 dated 11.02.2015.

Our letter no. CMEC/V-S/IE-934 dated 07.02.2015.

Dear Sir,

The following Good for Construction (GFC) drawings for Toll Plaza No.02 at Ch.68+100 has been signed and being returned herewith for your further necessary action.

Sl. NO.	Description	Drawing No.	Revision
1	GAD for Toll plaza no. 02 at Ch. 68.100	ACPTPL/VSRP/Toll/01	R1
2	Toll plaza Booth Details for Toll plaza no. 02at Ch.68.100	ACPTPL/VSRP/Toll/02 & 2-A (Sheet 1 of 2)	R0
3	Canopy plan for Toll plaza no.02 at Ch.68.100	ACPTPL/VSRP/Toll/03 & 03-A (Sheet 1 of 2)	R0
4	Plan & profile for Toll plaza no. 02 at Ch.68.100.	BSC/VS/P&P-04(Sheet 1 of 1) BSC/VS/P&P-05(Sheet 2 of 2)	R2
5	Administrator Block (Ground floor, first floor& front elevation plan) Layout for Toll Plaza no. 02 at Ch. 68.100	ACPTPL/VSRP/Toll/06 (Sheet 1 of 1) ACPTPL/VSRP/Toll/07 (Sheet 2 of 2) ACPTPL/VSRP/Toll/08 (Sheet 3 of 3)	R1 R0 R1

Thanking you & assuring our best co-operation at all the time.

Truly yours

(U.K.Pani)

Team Leader

Encl: As above

CC to – Member (Technical), UPSHA, 4<sup>th</sup> Floor, Mandi Bhawan, Vibhuti Khand, Gomati Nagar, Lucknow-226010, for information.

Encl: As above

Received - No - 83  
Date :- 12/2/15  
Yashpal

Project Office : 1st Floor, Plot No. 1065, Maruti Nagar, Vill.- Sir Gobardhanpur, PO- Ramna, Lanka, Varanasi, Uttar Pradesh, PIN - 221005  
Mob. : 8601878209, 8601878210, E-mail : cmeccvaranasi@gmail.com, cmeccvaranasi@cmecc.co.in

Regd. Office : Plot No. 551/2417, Samantarapur Chhak, Old Town, Bhubaneswar, Odisha, PIN-751002, Website : www.cmecc.co.in  
Telefax : 0674-2340541, Mob. : 9437001665, 9437286623, E-mail:cmeccbsr@rediffmail.com



**ACP TOLLWAYS PRIVATE LTD.**

SPV FOR VARANASI - SHAKTINAGAR HIGHWAY (SH-05A)

CIN No: U45400UP2011PTC047756

Ref No: ACPTPL/SH-05A/2016/541

Date: 08-04-2016

**TO WHOM THIS MAY CONCERN**

**COMPLETION CERTIFICATE**

In reference to Agreement No. NIL dated 23<sup>rd</sup> March 2012, This is to certify that **M/s. APCO INFRA TECH LTD.**, Address: Apco House, B-9, VibhutiKhand, Gomti Nagar, Lucknow - 226010 has been awarded the EPC Contract for work of "**Four/ Six Laning (with Paved Shoulders) of Varanasi - Shaktinagar Road upto HathiNala (SH-5A) In the State of Uttar Pradesh on Design, Build, Finance, Operate and Transfer (DBFOT) Basis**"

The total contract price for the entire EPC work is **Rs.1509, 59, 92,786/-** (Rupees One Thousand Five Hundred and Nine Crores, Fifty Nine Lacs, Ninety Two Thousand Seven Hundred and Eighty Six Only) and work amounting to **Rs. 1499,43,43,932/-** (Rupees Fourteen Hundred and Ninety Nine Crores Forty Three Lacs & Forty Three Thousand Nine Hundred Thirty Two Only) has been completed up to 31<sup>st</sup> March -2016 satisfaction.

Survey and Design Engineering was carried out as EPC requirement by M/s. APCO INFRA TECH LTD. in addition to construction of work.

Key items of work executed is as per details below:

Year	Item Description	Quantity Executed
2012-2013 (Month from April - March)	<b>Earth Work</b>	
	Excavation	8136 Cum
	Embankment / Subgrade	144910 Cum
	<b>Subbase and Base Courses</b>	
	GSB / WMM	NIL
	<b>Bituminous Work</b>	
	BM/DBM/SDBC/BC	NIL
	<b>Rigid Pavement Work</b>	
	DLC	NIL
	PQC	NIL
	<b>Concrete Work</b>	
	PSC	NIL
	PCC/RCC	2144 Cum
	<b>Pile Work</b>	
	1) Pile Diameter - 1000mm (Rmt)	NIL
	2) Pile Diameter - 1200mm (Rmt)	NIL
	3) Pile Diameter - 1500mm (Rmt)	NIL
	Reinforcement	200 MT
Structural Steel	NIL	

Year	Item Description	Quantity Executed
2013-2014 (Month from April - March)	<b>Earth Work</b>	
	Excavation	607012 Cum
	Embankment / Subgrade	1277470 Cum
	<b>Subbase and Base Courses</b>	
	GSB	270284 Cum
	WMM	188668 Cum
	<b>Bituminous Work</b>	
	BM/DBM/SDBC/BC	59562 Cum
	<b>Rigid Pavement Work</b>	
	DLC	NIL
	PQC	NIL
	<b>Concrete Work</b>	
	PSC	12062 Cum
	PCC/RCC	130271 Cum
	<b>Pile Work</b>	
	1) Pile Diameter - 1000mm (Rmt)	10690 Rmt
	2) Pile Diameter - 1200mm (Rmt)	NIL
	3) Pile Diameter - 1500mm (Rmt)	NIL
	Reinforcement	10010 MT
	Structural Steel	8350 MT

Year	Item Description	Quantity Executed
2014-2015 (Month from April - March)	<b>Earth Work</b>	
	Excavation	630113 Cum
	Embankment / Subgrade	862692 Cum
	<b>Subbase and Base Courses</b>	
	GSB	234019 Cum
	WMM	292730 Cum
	<b>Bituminous Work</b>	
	BM/DBM/SDBC/BC	56007 Cum
	<b>Rigid Pavement Work</b>	
	DLC	NIL
	PQC	NIL
	<b>Concrete Work</b>	
	PSC	906 Cum
	PCC/RCC	49089 Cum
	<b>Pile Work</b>	
	1) Pile Diameter - 1000mm (Rmt)	NIL
	2) Pile Diameter - 1200mm (Rmt)	NIL
	3) Pile Diameter - 1500mm (Rmt)	NIL
	Reinforcement	3872 MT
	Structural Steel	1875 MT

Year	Item Description	Quantity Executed
2015-2016 (Month from April - March)	<b>Earth Work</b>	
	Excavation	330809 Cum
	Embankment / Subgrade	261422 Cum
	<b>Subbase and Base Courses</b>	
	GSB	104008 Cum
	WMM	97577 Cum
	<b>Bituminous Work</b>	
	BM/DBM/SDBC/BC	41072 Cum
	<b>Rigid Pavement Work</b>	
	DLC	19380 Cum
	PQC	27570 Cum
	<b>Concrete Work</b>	
	PSC	NIL (Completed FY 14-15)
	PCC/RCC	26776 Cum
	<b>Pile Work</b>	
	1) Pile Diameter - 1000mm (Rmt)	NIL (Completed FY 14-15)
	2) Pile Diameter - 1200mm (Rmt)	NIL
	3) Pile Diameter - 1500mm (Rmt)	NIL
	Reinforcement	2112 MT
Structural Steel	2250 MT	

#### Structure Works Executed

Sr. No.	Type of Structure	Details	Remarks
1.	Major Bridge @ Ch. 27.288	200Mts/6Laning	
2.	Via Duct @ Ch. 27.388	375Mts/6Laning	
3.	Major Bridge @ Ch. 28.182	225Mts/6Laning	
4.	Major Bridge @ Ch. 29.084	100Mts/2Laning	
5.	Minor Bridge @ Ch. 55.427	45Mts/4Laning	
6.	<b>Culverts</b>		
a)	Box Culvert	32Nos. (4/6Laning)	
b)	Slab Culvert	64Nos. (4/6Laning)	
c)	Hume Pipe Culvert	85Nos. (4/6Laning)	

#### Project- Key Dates

Sr. No.	Event	Date
1.	Project Appointed Date	05-Feb-2013
2.	Project Completion Date	25-July-2015 (900 days -From Appointment Date) Interim/Adhoc extension has been accorded by the Authority for 232 Days i.e. till 14-March-2016. Further EOT applied for vide ACP letter no. 510, dated 04.03.2016 is under process.

This certificate is issued on request of M/s. APCO INFRATECH LTD. for purpose of Prequalification / Bidding for Govt. or Private Sector projects.

For, APCO Infratech Pvt. Ltd.

  
(Authorized Signatory)  
(R. Mark Concessions)



## Uttar Pradesh State Highways Authority

4<sup>th</sup> floor, Kisan Mandi Bhawan

Vibhuti Khand, Gomti Nagar, Lucknow-226010.

Phone/Fax: 0522-4150311/377

Letter No.: 921/Pravi-18(4-T. Booth)/(V-S)/2021-22/Lko, Dated: 08.03.2022

To

M/s ACP Tollways Pvt. Ltd.,  
B-9, Vibhuti Khand, Gomtinagar,  
Lucknow.

**Sub:- Regarding Installation of additional temporary Toll Booth on Varanasi-Shaktinagar Road Project.**

**Ref:** Your letter no. ACPTPL/CMEC/CAMP/2021-22/112 Dt. 28.02.2022

2. Your letter no. ACPTPL/CMEC/CAMP/2021-22/072 Dt. 06.11.2021

3. IE letter no. CMEC/V-S/IE/O&M-499 Dt. 13.11.2021.

Dear Sir,

In reference to above subject matter, the proposal for establishing Temporary Fee Collection Booth (TFCB) at Km. 23+700 has been approved in 26<sup>th</sup> meeting of Executive Committee of UPSHA held on date 28.02.2022. The approval is being granted with the following terms and conditions:-

SOP (Standard Operating Procedure) to be adopted:-

- A. The Concessionaire may establish Temporary Fee Collection Booth (TFCB) at Km. 23+700 on both side carriageway which shall be treated as a part of Toll Plaza No. 1 (TP-1) and shall be known as Temporary Fee Collection Booth No. 1A (TFCB-1A).
- B. The rate of toll fee as approved for TP-1 is applicable for this TFCB-1A.
- C. The vehicle moving on the left carriageway in Varanasi to Shaktinagar direction, if pays at TP-1 shall not pay again any toll fee at TFCB-1A. Similarly, if any vehicle moving on the right carriageway in Shaktinagar to Varanasi direction, pays fees at TFCB-1A shall not pay any fee at TP-1 again.
- D. To ensure the above arrangement, Concessionaire has to mention this information on the Plaza fee notification sign board at Toll Plaza/Booth and as well on the fee collection receipt provide to user. It should also be displayed at each Toll Booth at a convenient place which should be visible to the drivers clearly. Also it shall be integrated in such a manner that the boom automatically lifts up on the approach of already paid vehicle.
- E. Temporary Fee Collection booth shall have the facility of FASTag at all lanes with the own cost of the Concessionaire.

Terms and conditions:-

- i. The Concessionaire shall give an undertaking to UPSHA that the Concessionaire shall establish the Temporary Fee Collection booth with risk and cost of the Concessionaire without giving any liability to the Authority and without creating any inconvenience to the road users.
- ii. Concessionaire should provide an undertaking clearly mentioning that no inconvenience shall occur to the road users in the process of collection of Toll Fee at new proposed location. Utmost care shall be taken by the Concessionaire to minimise the waiting time at proposed fee collection booths.
- iii. Concessionaire should provide an undertaking clearly mentioning that they will not claim anything in this account from the Authority in future.

52

- iv. No additional land shall be procured by the Authority for establishment of Temporary Fee Collection Booth at the said location. Concessionaire has to establish the same within available ROW of the project.
- v. If any additional land is required, Concessionaire has to arrange/ procure that with his own cost without any additional financial burden to the Authority.
- vi. Pertaining to Clause 27.9 of the Concession Agreement, Collection of Fees at these proposed Temporary Fee Collection Booth shall be at risk and cost of the Concessionaire.
- vii. Additional manpower and security personnel shall be deployed by the Concessionaire to maintain the smooth flow of traffic through the proposed Fee Collection Booth.
- viii. Concessionaire has to ensure the proper road safety arrangement including road signage and proper highway lighting at the Temporary Booth area and both side approaches.
- ix. The volume of Traffic which will pass through these Temporary Fee Collection Booths shall also be computed during annual traffic sampling and be taken into consideration for determining the actual traffic on the project highway as explained in Clause 22.3.1 of the CA.
- x. The Authority shall reserve its right to withdraw the permission at any time if observed any inconvenience to the road user or any law & order problem arises at TFCB-1A location without any financial burden to the Authority. No claim from Concessionaire, whatsoever, shall be entertained by the UPSHA in this regard.
- xi. Due intimation to be given to the Authority & Independent Engineer after completion of the installation & permission should be taken before commencement of the fee collection.
- xii. Temporary Fee Collection booth shall have the facility of FASTag at all lanes with the own cost of the Concessionaire.
- xiii. If due to any administrative order or litigation or any judgment of the competent Court, the operation of the Temporary Fee Collection booth is held up/suspended, or terminated. UPSHA will not be responsible for any loss to the Concessionaire because of the reasons there in or what so ever the reason may be.
- xiv. The Concessionaire shall notify well in advance the information regarding operation of additional Temporary Fee Collection booth in news papers published from District Varanasi/Mirzapur/ Sonbhadra for public information on its own cost.
- xv. Before commencement of the operation of the additional Temporary Fee Collection Booth, the Concessionaire is required to provide an undertaking, stating that all the above terms and conditions would be abided by the Concessionaire and all necessary logistic arrangements have been made at the Booth site.

Thanking you,

Your's faithfully,



(Awanish Kumar Awasthi)

I.A.S.

Chief Executive Officer

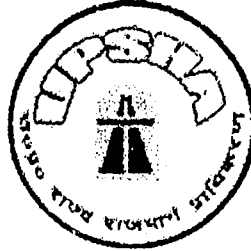
Copy to: M/s CMEC Consulting Engineers Pvt. Ltd., 1st Floor, Plot No. 1065, Near Daksh Group of ITI, Maruti Nagar, Madarawa, Po- Ramana Lanka, Varanasi, Uttar Pradesh-221005 for information and necessary action please-



Chief Executive Officer

ANNEXURE R-8/9

**UTTAR PRADESH STATE HIGHWAYS  
AUTHORITY**



**Government of Uttar Pradesh**

**FOUR LANING (WITH PAVED SHOULDERS) OF VARANASI-  
SHAKTINAGAR ROAD UPTO HATHI NALA (SH-5A) IN THE STATE  
OF UTTAR PRADESH ON DESIGN, BUILD, FINANCE, OPERATE  
AND TRANSFER  
(DBFOT) BASIS**

**CONCESSION AGREEMENT**

**Between**

**UTTAR PRADESH STATE HIGHWAYS AUTHORITY  
4th Floor, Kisan Madi Bhawan,  
Vibhuti Khand, Gomti Nagar, Lucknow-226010**

**And**

**M/s ACP Tollways Pvt. Ltd.,  
B-9, Vibhuti Khand, Gomti Nagar Lucknow-226010**

**8 December, 2011**

54

## ARTICLE 12

**CONSTRUCTION OF THE PROJECT HIGHWAY****12.1 Obligations prior to commencement of construction**

Prior to commencement of Construction Works, the Concessionaire shall:

- (a) submit to the Authority and the Independent Engineer its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule-G;
- (b) appoint its representative duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
- (d) make its own arrangements for quarrying of materials needed for the Project Highway under and in accordance with the Applicable Laws and Applicable Permits.

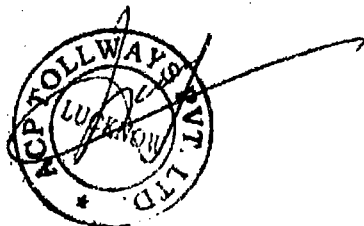
**12.2 Maintenance during Construction Period**

During the Construction Period, the Concessionaire shall maintain, at its cost, the existing lane(s) of the Project Highway so that the traffic worthiness and safety thereof are at no time materially inferior as compared to their condition 7 (seven) days prior to the date of this Agreement, and shall undertake the necessary repair and maintenance works for this purpose; provided that the Concessionaire may, at its cost, interrupt and divert the flow of traffic if such interruption and diversion is necessary for the efficient progress of Construction Works and conforms to Good Industry Practice; provided further that such interruption and diversion shall be undertaken by the Concessionaire only with the prior written approval of the Independent Engineer which approval shall not be unreasonably withheld. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of the Project Highway.

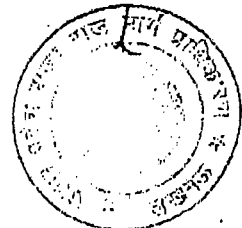
**12.3 Drawings**

In respect of the Concessionaire's obligations relating to the Drawings of the Project Highway as set forth in Schedule-H, the following shall apply:

- (a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three copies each of all Drawings to the Independent Engineer for review;



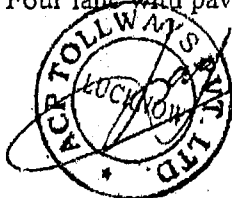
000034



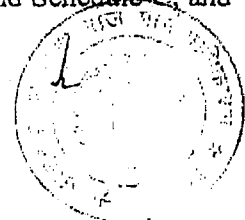
- (b) By submitting the Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Scope of the Project and the Specifications and Standards;
- (c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Engineer on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk;
- (d) If the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;
- (e) No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner;
- (f) Without prejudice to the foregoing provisions of this Clause 12.3, the Concessionaire shall submit to the Authority for review and comments, its Drawings relating to alignment of the Project Highway, finished road level, location and layout of the Toll Plazas and general arrangement drawings of major bridges, flyovers and grade separators, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings. The provisions of this Clause 12.3 shall apply *mutatis mutandis* to the review and comments hereunder; and
- (g) Within 90 (ninety) days of the Project Completion Date, the Concessionaire shall furnish to the Authority and the Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form or in such other medium as may be acceptable to the Authority, reflecting the Project Highway as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Project Highway and setback lines, if any, of the buildings and structures forming part of Project Facilities.

#### 12.4 Four lane with paved shoulder of the Project Highway

- 12.4.1 On or after the Appointed Date, the Concessionaire shall undertake construction of Four lane with paved shoulder as specified in Schedule-B and Schedule-C, and



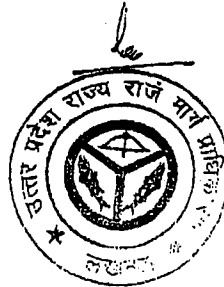
000035



in conformity with the Specifications and Standards set forth in Schedule-D. The 900th (nine hundredth) day from the Appointed Date, shall be the scheduled date for completion of Four lane with paved shoulder (the "Scheduled Four lane with paved shoulder Date") and the Concessionaire agrees and undertakes that Four lane with paved shoulder shall be completed on or before the Scheduled Four lane with paved shoulder Date.

12.4.2 The Concessionaire shall construct the Project Highway in accordance with the Project Completion Schedule set forth in Schedule-G. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 90 (ninety) days from the date set forth for such Milestone in Schedule-G, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Four lane with paved shoulder Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-G has been amended as above; provided further that in the event Project Completion Date is achieved on or before the Scheduled Four lane with paved shoulder Date, the Damages paid under this Clause 12.4.2 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.4.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

12.4.3 In the event that Four lane with paved shoulder is not completed within 270 (two hundred and seventy) days from the Scheduled Four lane with paved shoulder Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.



000036

## ARTICLE 14

## COMPLETION CERTIFICATE

57

## 14.1 Tests

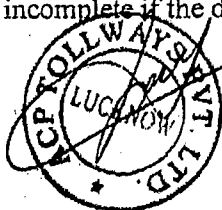
- 14.1.1 At least 30 (thirty) days prior to the likely completion of the Project Highway, the Concessionaire shall notify the Independent Engineer of its intent to subject the Project Highway to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days notice to the Independent Engineer.
- 14.1.2 All Tests shall be conducted in accordance with Schedule-I. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Project Highway with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the Project Highway or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project Highway with Specifications and Standards.

## 14.2 Completion Certificate

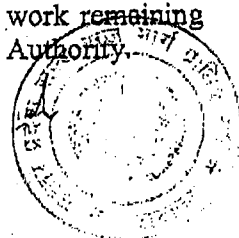
Upon completion of Construction Works and the Independent Engineer determining the Tests to be successful, it shall forthwith issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule-J (the "Completion Certificate").

## 14.3 Provisional Certificate

- 14.3.1 The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule-J (the "Provisional Certificate") if the Tests are successful and the Project Highway can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the "Punch List"); provided that the Independent Engineer shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Authority.



300740



14.3.2 The Parties hereto expressly agree that a Provisional Certificate under this Clause 14.3 may, upon request of the Concessionaire to this effect, be issued for operating part of the Project Highway, if at least 75% (seventy five per cent) of the total length of the Project Highway has been completed. Upon issue of such Provisional Certificate, the provisions of Article 15 shall apply to such completed part.

#### 14.4 Completion of Punch List items

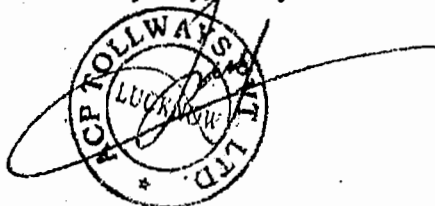
14.4.1 All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed, at the lower of (a) 0.1% (zero point one per cent) of the Performance Security, and (b) 0.2% (zero point two per cent) of the cost of completing such items as estimated by the Independent Engineer. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 120 (one hundred and twenty) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Independent Engineer in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 14.4.1.

14.4.2 Upon completion of all Punch List items, the Independent Engineer shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 14.4.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Authority, shall entitle the Authority to terminate this Agreement.

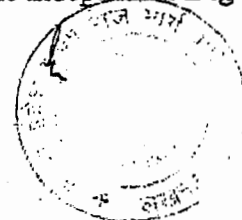
#### 14.5 Withholding of Provisional Certificate

14.5.1 If the Independent Engineer determines that the Project Highway or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Concessionaire. Upon receipt of such a report from the Independent Engineer and after conducting its own inspection, if the Authority is of the opinion that the Project Highway is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Project Highway and direct the Independent Engineer to withhold issuance of the Provisional Certificate. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

14.5.2 Notwithstanding anything to the contrary contained in Clause 14.5.1, the Authority may, at any time after receiving a report from the Independent Engineer



000041

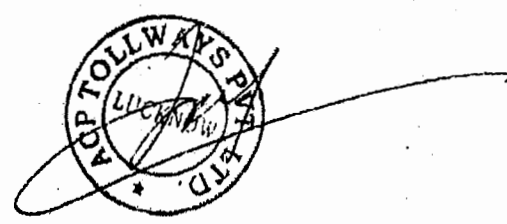


59

under that Clause, direct the Independent Engineer to issue a Provisional Certificate under Clause 14.3, and such direction shall be complied forthwith.

**14.6 Rescheduling of Tests**

If the Independent Engineer certifies to the Authority and the Concessionaire that it is unable to issue the Completion Certificate or Provisional Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Concessionaire shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.



000042

## ARTICLE 23

**INDEPENDENT ENGINEER****23.1 Appointment of Independent Engineer**

The Authority shall appoint a consulting engineering firm from a panel of 10 (ten) firms or bodies corporate, constituted by the Authority substantially in accordance with the selection criteria set forth in Schedule-P, to be the independent consultant under this Agreement (the "Independent Engineer"). The appointment shall be made no later than 90 (ninety) days from the date of this Agreement and shall be for a period of 3 (three) years. On expiry or termination of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint another firm from a fresh panel constituted pursuant to Schedule-P to be the Independent Engineer for a term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment.

**23.2 Duties and functions**

23.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule-Q.

23.2.2 The Independent Engineer shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions set forth in Schedule-Q.

**23.3 Remuneration**

The remuneration, cost and expenses of the Independent Engineer shall be paid by the Authority and subject to the limits set forth in Schedule-P, one-half of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

**23.4 Termination of appointment**

23.4.1 The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 23.1.

23.4.2 If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is



000001



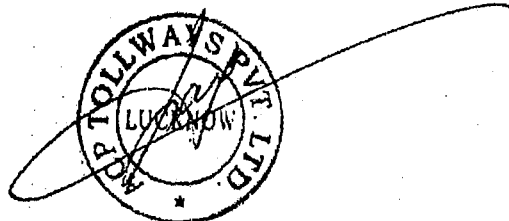
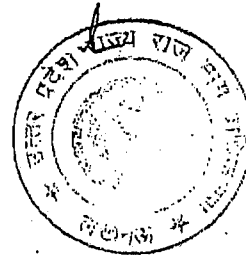
terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 23.1.

### 23.5 Authorised signatories

The Authority shall require the Independent Engineer to designate and notify to the Authority and the Concessionaire up to 2 (two) persons employed in its firm to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Independent Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

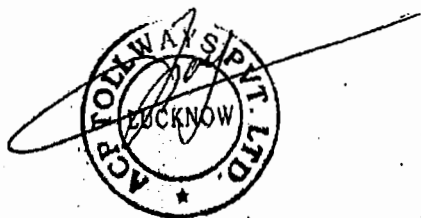
### 23.6 Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Engineer, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.



000062

**Schedules**



000141

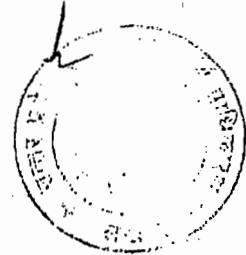
## SCHEDULE - A

(See Clause 10.1)

## SITE OF THE PROJECT

## 1 The Site

- 1.1 Site of the Four-Lane with paved shoulder Project Highway shall include the land, buildings, structures and road works as described in Annex-I of this Schedule-A.
- 1.2 An inventory of the Site including the land, buildings, structures, road works, trees and any other immovable property on, or attached to, the Site shall be prepared jointly by the Authority Representative and the Concessionaire, and such inventory shall form part of the memorandum referred to in Clause 10.3.1 of the Agreement.
- 1.3 Additional land required for construction of works specified in the Change of Scope Order issued under Clause 16.2.3 of this Agreement shall be acquired in accordance with the provisions of Clause 10.3.6 of this Agreement. Upon acquisition, such land shall form part of the Site and vest in the Authority.



000142

Annex - I  
(Schedule-A)

## Site for Four-Laning

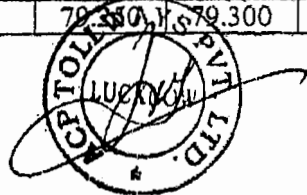
## 1. Site

The Site of the Four-Lane with paved shoulder Project Highway comprises the section of State Highway -5A commencing from Km 0.00 to Km 117.65 i.e. the Varanasi- Shaktinagar section in the State of Uttar Pradesh. The land comprising the Site are described below:

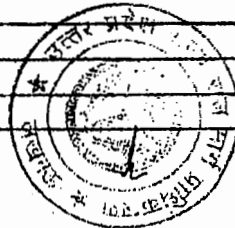
## 2. Land

The Site of the Project Highway comprises the land described below:

Sr. No.	Chainage (In Km)		Total ROW (In m)	Remarks
	From	To		
1	0.0	1.000	28	
2	1.000	1.850	15	Town Portion & the land for 4-laning is to be acquired
3	1.850	2.400	30	
4	2.400	2.500	28	
5	2.500	3.650	25	
6	3.650	5.400	28	
7	5.400	7.700	30	
8	7.700	12.700	32	
9	12.700	15.100	12	
10	15.100	17.050	32	
11	17.050	17.900	16,20	
12	17.900	20.150	28,32	
13	20.150	23.250	30	
14	23.250	40.150	34	
15	40.150	42.100	32,36	
16	42.100	43.800	32	
17	43.800	44.400	32	
18	44.400	44.550	32	
19	44.550	45.650	32	
20	45.650	47.400	32	
21	47.400	50.200	26	
22	50.200	63.400	28	
23	63.400	69.500	28	
24	69.500	70.100	28	
25	70.100	70.350	28	
26	70.350	70.500	29	
27	70.500	71.750	25	
28	71.750	76.450	25	
29	76.450	79.250	30	
30	79.250	79.300	24	



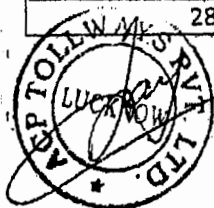
000143



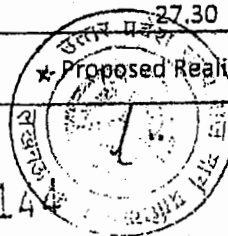
Sr. No.	Chainage (In Km)		Total ROW (In m)	Remarks
	From	To		
31	79.300	80.300	26	
32	80.300	80.850	25	
33	80.850	83.950	28	
34	83.950	84.650	20	
35	84.650	85.150	30	
36	85.150	85.550	24	
37	85.550	86.900	22	
38	86.900	88.750	32	
39	88.750	92.500	24	
40	92.500	94.600	30	
41	94.600	98.750	44	
42	98.750	117.650	30	

However, the details of design chainage and existing chainage is also given below:

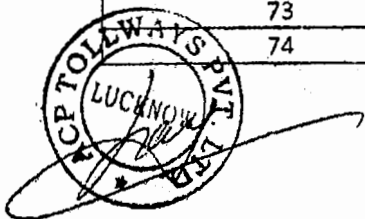
Existing KM	Design KM
1	0.00
2	1.00
3	1.95
4	2.95
5	3.95
6	4.95
7	Proposed Bypass
8	
9	
10	
11	12.10
12	13.10
13	14.10
14	15.10
15	16.05
16	17.05
17	18.05
18	19.05
19	20.05
20	21.05
21	22.05
22	23.05
23	24.05
24	25.00
25	26.00
26	27.30
27	* Proposed Realignment
28	



00014



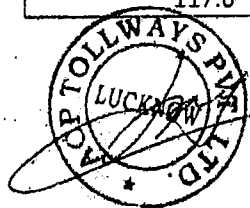
Existing KM	Design KM
29	
30	
31	
32	
33	
34	
35	31.35
36	32.35
37	33.35
38	34.35
39	35.35
40	36.35
41	37.35
42	38.35
43	39.35
44	40.35
45	41.35
46	42.35
47	43.35
48	44.35
49	45.35
50	46.35
51	47.35
52	48.35
53	49.35
54	50.35
55	51.35
56	52.35
57	53.35
58	54.35
59	55.35
60	56.35
61	57.30
62	58.30
63	59.30
64	60.30
65	61.25
66	62.30
67	63.30
68	64.30
69	65.30
70	66.30
71	67.30
72	68.30
73	69.25
74	70.30



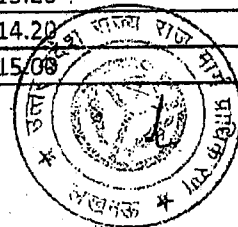
000145



Existing KM	Design KM
75	71.30
76	72.30
77	73.40
78	74.50
79	75.65
80	76.65
81	77.70
82	78.70
83	79.70
84	80.90
85	81.95
86	82.95
87	83.95
88	84.95
89	85.95
90	86.95
91	87.95
92	88.95
93	89.95
94	90.95
95	91.90
96	92.90
97	93.90
98	94.90
99	95.90
100	97.25
101	98.25
102	99.25
103	100.25
104	101.25
105	102.25
106	103.25
107	104.25
108	105.25
109	106.25
110	107.25
111	108.25
112	109.25
113	110.25
114	111.25
115	112.20
116	113.20
117	114.20
117.6	115.08



000146



**3. Carriageway**

The present carriageway of the Project Highway is a 2-lane carriageway with earthen shoulders in its entire length, except for the 4 lane sections falling under urban stretches which are described below:

Sr. No.	Chainage (In km)		Total Length(km)	Name of Village / Town
	From	To		
1	64.50	67.50	3.0	Robertsganj City
2	88.00	89.00	1.0	Chopan
	91.00	92.00	1.0	
3	94.00	95.00	1.0	Dala

**4. Major Bridges**

The Site includes the following Major Bridges:

Sr. No.	Existing Chainage (In Km)	Type of Structure	No. of Spans	Width (In m)
1	87.150	PSC Girder	22x45	11+8.5

**5. Railway Over Bridges**

The Site includes the following Railway Over Bridges:

Sr. No.	Existing Chainage (In Km)	Type of Structure	No. of Spans	Width (In m)
1	0.200	RCC GIRDER	2x15	10.0
2	81.60	RCC SLAB	1x6	10.0 (RUB)
3	86.10	RCC SLAB	1x6	10.0
4	94.20	RCC SLAB	1x6	10.0

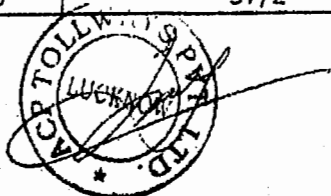
**6. Grade Separators**

No Grade Separators lies on the above road.

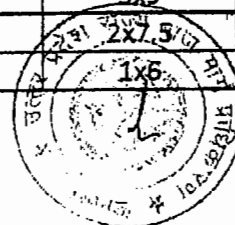
**7. Minor Bridges**

The Site includes the following Minor Bridges:

S. No.	Existing Chainage (In Km)	Type of Structure	No. of Spans	Width (In m)
1	10/3	Minor Bridge	3x4	10.0
2	25/3	Minor Bridge	2x5	10.0
3	28/2	Minor Bridge	1x7	10.0
4	30/3	Minor Bridge	3x9	10.0
5	31/2	Minor Bridge	2x5	10.0
6	37/2	Minor Bridge	1x6	10.0



000147



S. No.	Existing Chainage (In Km)	Type of Structure	No. of Spans	Width (In m)
7	38/3	Minor Bridge	4x3	10.0
8	57/1	Minor Bridge	6x2.5	10.0
9	59/3	Minor Bridge	2x3	10.0
10	60/1	Minor Bridge	5x10	10.0
11	64/1	Minor Bridge	2x3.5	10.0
12	69/2	Minor Bridge	2x4	10.0
13	85/1	Minor Bridge	2x7	10.0

#### 8. Total number of structures

The total number of structures on the Site is noted below:

(a)	No. of Major Bridges	-	01
(b)	No. of Railway Over Bridges	-	04
(c)	No. of Grade Separators	-	00
(d)	No. of Minor Bridges	-	13
(e)	No. of Vehicular and Non Vehicular Underpasses	-	00
(f)	No. of Box Culverts	-	00
(g)	No. of Pipe Culverts	-	58
(h)	No. of Slab Culverts	-	110

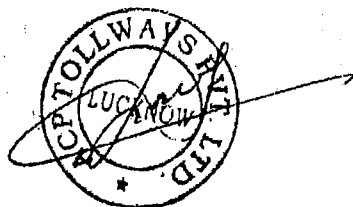
#### 9. Bus bays and Truck Lay byes

Nil

#### 10. Permanent Bridge, Bye Pass or Tunnel costing Rs. 10 crore or more

The Site includes the following permanent bridge/ bypass/ tunnel which was constructed at the cost noted below:

- (a) Bridge at km 88/6 of SH-5A costing Rs.59.40 crore
- (b) Bypass - Nil
- (c) Tunnel - Nil



000148

SCHEDULE - B  
(See Clause 2.1)

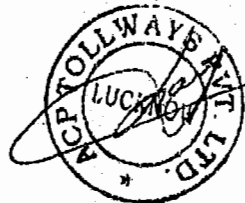
70

**DEVELOPMENT OF THE PROJECT HIGHWAY****1 Development of the Project Highway**

Development of the Project Highway shall include construction of Four-Lane with paved shoulder from Ch. Km.0.00 to Ch. Km. 64.00 & from Ch. Km.97.00 to Ch. Km. 115.00; and Six-Lane from Ch. Km.64.00 to Ch. Km. 97.0 Project Highway comprises the section of State Highway 5A i.e. the Varanasi - Shaktinagar section in the State of Uttar Pradesh as described in this Schedule-B and in Schedule-C.

**2 Four-Laning**

Four-Lane with paved shoulder and Six-Laning shall include the Project Highway as described in Annex-I of this Schedule-B and Annex-I of Schedule-C and shall be completed by the Concessionaire in conformity with the Specifications and Standards set forth in Annex-I of Schedule-D.



000149

71 55

SCHEDULE -I  
(See Clause 14.1.2)

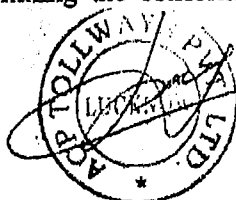
**TESTS**

**1 Schedule for Tests**

- 1.1 The Concessionaire shall, no later than 30 (thirty) days prior to the likely completion of Four-Laning, notify the Independent Engineer and the Authority of its intent to subject the Project Highway to Tests, and no later than 7 (seven) days prior to the actual date of Tests, furnish to the Independent Engineer and the Authority detailed inventory and particulars of all works and equipment forming part of Four-Laning
- 1.2 The Concessionaire shall notify the Independent Engineer of its readiness to subject the Project Highway to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Independent Engineer shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Engineer shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 14 and this Schedule-I.

**2 Tests**

- 2.1 Visual and physical Test: The Independent Engineer shall conduct a visual and physical check of Four lane with paved shoulder to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.
- 2.2 Test drive: The Independent Engineer shall undertake a test drive of the Project Highway by a Car and by a fully loaded Truck to determine that the quality of service conforms to the provisions of the Agreement.
- 2.3 Riding quality Test: Riding quality of each lane of the carriageway shall be checked with the help of a calibrated bump integrator and the maximum permissible roughness for purposes of this Test shall be 2000 (two thousand) mm for each kilometre.
- 2.4 Pavement Composition Test: The thickness and composition of the pavement structure shall be checked on a sample basis by digging pits to determine conformity of such pavement structure with Specifications and Standards. The sample shall consist of one pit in each direction of travel to be chosen at random in each stretch of 5 (five) kilometres of the Project Highway. The first pit for the sample shall be selected by the Independent Engineer through an open draw of lots and every fifth kilometre from such first pit shall form part of the sample for this pavement quality Test.
- 2.5 Cross-section Test: The cross-sections of the Project Highway shall be checked on a sample basis through physical measurement of their dimensions for determining the conformity thereof with Specifications and Standards. For the



000184



road portion, the sample shall consist of one spot to be selected at random in each stretch of 1 (one) kilometre of the Project Highway. The first spot for the sample shall be selected by the Independent Engineer through an open draw of lots and the spots located at every one kilometre from such first spot shall form part of the sample. For the bridge portion, one spot shall be selected at random by the Independent Engineer in each span of the bridge.

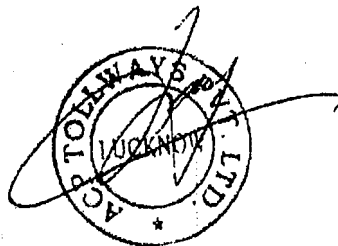
- 2.6 Structural Test for bridges: All major and minor bridges constructed by the Concessionaire shall be subjected to the Rebound Hammer and Ultrasonic Pulse Velocity tests, to be conducted in accordance with the procedure described in Special Report No. 17: 1996 of the IRC Highway Research Board on Non-destructive Testing Techniques, at two spots in every span, to be chosen at random by the Independent Engineer. Bridges with a span of 15 (fifteen) metres or more shall also be subjected to load testing.
- 2.7 Other Tests: The Independent Engineer may require the Concessionaire to carry out or cause to be carried additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project Highway with Specifications and Standards.
- 2.8 Environmental audit: The Independent Engineer shall carry out a check to determine conformity of the Project Highway with the environmental requirements set forth in Applicable Laws and Applicable Permits.
- 2.9 Safety review: Safety audit of the Project Highway shall have been undertaken by the Safety Consultant as set forth in Schedule-L, and on the basis of such audit, the Independent Engineer shall determine conformity of the Project Highway with the provisions of this Agreement.

### 3 Agency for conducting Tests

All Tests set forth in this Schedule-I shall be conducted by the Independent Engineer or such other agency or person as it may specify in consultation with the Authority.

### 4 Completion/Provisional Certificate

Upon successful completion of Tests, the Independent Engineer shall issue the Completion Certificate or the Provisional Certificate, as the case may be, in accordance with the provisions of Article 14.



300185

73 25

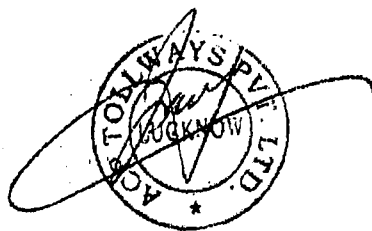
SCHEDULE -J  
(See Clause 14.2 & 14.3)

COMPLETION CERTIFICATE

- 1 I, ..... (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated ..... (the "Agreement"), for Four lane with paved shoulder of the Varanasi-Shaktinagar section (km 0.00 to km 115.00) of State Highway No. 05A (the "Project Highway") on design, build, finance, operate and transfer (DBFOT) basis, through M/s ACP Tollways Pvt. Limited hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been successfully undertaken to determine compliance of the Project Highway with the provisions of the Agreement, and I am satisfied that the Project Highway can be safely and reliably placed in commercial service of the Users thereof.
- 2 It is certified that, in terms of the aforesaid Agreement, all works forming part of Four lane with paved shoulder have been completed, and the Project Highway is hereby declared fit for entry into commercial operation on this the ..... day of ..... 20.....

SIGNED, SEALED AND DELIVERED  
For and on behalf of  
INDEPENDENT ENGINEER by:

(Signature)  
(Name)  
(Designation)  
(Address)



74

PROVISIONAL CERTIFICATE

- 1 I, ..... (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated ..... (the "Agreement"), for Four lane with paved shoulder of the Varanasi-Shaktinagar section (km 0.00 to km 115.00) of State Highway No. 05A(the "Project Highway") on design, build, finance, operate and transfer (DBFOT) basis through M/s ACP Tollways Pvt. Limited (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been undertaken to determine compliance of the Project Highway with the provisions of the Agreement.
- 2 Construction Works that were found to be incomplete and/or deficient have been specified in the Punch List appended hereto, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. (Some of the incomplete works have been delayed as a result of reasons attributable to the Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire,) I am satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Project Highway, pending completion thereof.
- 3 In view of the foregoing, I am satisfied that the Project Highway can be safely and reliably placed in commercial service of the Users thereof, and in terms of the Agreement, the Project Highway is hereby provisionally declared fit for entry into commercial operation on this the ..... day of ..... 20.....

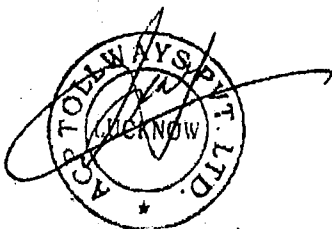
ACCEPTED, SIGNED, SEALED  
AND DELIVERED  
For and on behalf of  
CONCESSIONAIRE by:

SIGNED, SEALED AND  
DELIVERED  
For and on behalf of  
INDEPENDENT ENGINEER by:

(Signature)  
(Name and Designation)  
(Address)

(Signature)  
(Name and Designation)  
(Address)

Note: The text in the ( ) may be deleted, if not applicable.



000187

Court No. - 383

ANNEXURE R-8/10

Case :- WRIT - C No. - 19144 of 2004

75

**Petitioner :-** Sarswati Devi

**Respondent :-** State Of U.P. Thru D.M. And Others

**Counsel for Petitioner :-** K.C. Pandey, B. Lal, S.S. Shukla

**Counsel for Respondent :-** C.S.C., Anuj Kumar

**Hon'ble Neeraj Tiwari, J.**

**Ref:-Civil Misc. Restoration/Recall Application No.120274 of 2014**

This is an application for recalling the order dated 03.03.2014 dismissing the writ petition in default.

In view of the averments made in the affidavit filed in support of the application, the application is **allowed**. The order dated 03.03.2014 is recalled and the writ petition is restored to its original number.

List on 16.09.2024 before the appropriate Bench.

**Order Date :-** 2.9.2024

AKT