

राष्ट्रीय राजमार्ग एवं अवसंरचना विकास निगम लिमिटेड

सड़क परिवहन और राजमार्ग मंत्रालय, भारत सरकार
तीसरी मंजिल, पीटीआई बिल्डिंग, 4-संसद मार्ग, नई दिल्ली-110 001

National Highways & Infrastructure Development Corporation Limited

Ministry of Road Transport & Highways, Govt. of India

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सार्वजनिक क्षेत्र का उपक्रम

A PUBLIC SECTOR UNDERTAKING

NHIDCL/Manipur/ Maintenance/ Churachandpur-Tuivai/2016/Part-2/ 303 Date: 25.08.2017

To

M/s Garg sons Estate Promoters Pvt. Ltd.
260, Sector 9-C,
Email: racgarg@yahoo.com

M/s Bhartia Infra Projects Limited,
201, Royal Arcade 2nd Floor, Dr. Baruah road,
Ulubari Guwahati, Assam-781007
Email: info@bhartiainfra.com

Sub: Rehabilitation of existing Churachandpur-Singhat- Tuivai road on NH-102 B between km. 103.10 to Km. 161.48 (length 58.38 km.) in the state of Manipur on EPC basis (2nd call))- Financial Bid Opening-Reg.

Ref: Your bid submitted on 01.05.2017.

Sir

Please refer to your bid submitted for the subject cited above. The following is the final list of technical responsive bidders, whose financial bid shall be opened on 04.09.2017 at 1530 hrs in NHIDCL, HQ, 3rd floor, PTI building, 4, Parliament Street, New Delhi-110001.

Sr. No.	Name of Bidder	Status of eligibility
1.	M/s Garg sons Estate Promoters Pvt. Ltd.	Responsive
2.	M/s Bhartia Infra Projects Limited,	Responsive

2. The legal opinion is hereby enclosed and the bidders may submit their representations/ suggestions before 01.09.2017.

Yours Sincerely

Col Rajeev Sood (Retd)
GM (T)
gm5@nhidcl.com

(Encl. as mentioned above)

NHIDCL/Manipur/Maintenance/Churachandpur-Tuivai-/2016/Part-2

National Highways & Infrastructure Development Corporation Ltd

(Legal Cell)

Pursuant to my opinion dated 23.06.2017, the ROC, Chandigarh has provided a certificate which reads as follows:

"The shareholders of M/s GARG SONS ESTATE PROMOTERS PRIVATE LIMITED having passed Special Resolution in the Annual/Extra Ordinary General Meeting held on 27-03-2017 altered the provisions of its Memorandum of Association with respect to its objects and complied with the Section 13(1) of the Companies Act, 2013.

I hereby certify that the said Special Resolution together with the copy of the Memorandum of Association as altered has this day been registered.

Given under my hand at Chandigarh this Twenty day of May Two thousand seventeen."

A letter dated 08.08.2017 has also been given by ROC Chandigarh which reads as follows:-

"Please refer to your letter dated 20.07.2017 addressed to ROC, Delhi. In this connection, it is stated that the company M/s Garg Sons Estate Promoters Private Limited is registered with this office and the documents filed by the company and available at Ministry's website www.mca.gov.in online for inspection. Moreover, it is mentioned in your letter that the said documents have been enclosed with the bid submitted by the company. The Registrar of Companies can provide you the copy of documents submitted by the company but it is not for the Registrar of Companies to make interpretation of the information contain in the documents on your behalf. To make interpretation of the information in the documents submitted by the company with the bid may be examined as per the relevant provisions of the law. However, it appears that some of the documents mentioned in your letter have been filed with this office after submitting the bid with your office. We are not making any comment on the veracity of the events on which the forms have been filed with this office."

From the above mentioned certificate it appears that a special resolution was passed on 27.03.2017, whereby provisions

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of its MOA were altered under section 13(1) of the Companies Act 2013. The certificate goes on to ratify such special resolution on 12.05.2017. By the above mentioned letter dated 08.08.2017, the ROC has opined that it is not for the ROC to interpret the information in the documents submitted by the company and the bid has to be examined as per the relevant provisions of law. The ROC also stated in its letter that some documents have been filed with the office after the bid due date i.e. 01.05.2017.

It is an admitted fact and it is not in dispute that the special resolution passed in the general meeting held on 27.03.2017 was only filed with the ROC on 12.05.2017 and thereby 12 days after the bid due date. The only question that survives is whether the bidder was eligible on the bid due date.

As stated above the special resolution was passed under section 13(1) of the Company Act 2013. Section 13(9) of the Companies Act 2013 says as follows:-

"The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution in accordance with clause (a) of sub-section (6) of this section."

It is therefore clear that a company is given 30 days to file a resolution with the ROC and once filed the section is couched in mandatory terms that the Registrar "shall" register the alteration which has been done in this case. The filing and ratification is therefore a formality only. Section 117 of the Companies Act 2013, further stipulates a time period of 30 days for filing of such special resolution and further reference is drawn to section 403 of the Companies Act whereby any special resolution can be filed within a further time by paying an additional fee as may be prescribed. Section 403 prescribes a further period of 270 days from the date of passing of the special resolution by when it should have been submitted on such additional fee. It is therefore clear that the legislative intent is the grant of time to companies for filing of such resolutions and it is not mandatory that such a resolution has to be filed on the day they are passed.

Slight difficulty arises with reference to section 13(10) which reads as follows:-

"No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section."

A natural corollary of section 13(10) would appear to be that the alteration does not come into effect unless it has been Registered.

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In the present case the alteration was made on 27.03.2017, and thereafter, an agreement for the same was executed on 01.04.2017.

Going by section 13(9) read with section 117 read with section 403 of the Companies Act, the company would be well within its legal rights to file such resolution within 300 days thereafter. A situation is comprehensible that in the event a company does not file a resolution it may still carry out the purpose of the resolution and the objects of the resolution. However, when section 13(10) of the Companies Act 2013 stipulates that the alteration shall not have any effect it perhaps goes on to say that the document is not valid without the ratification of the ROC which in any event has to be mandatorily ratified as per section 13(9) of Companies Act 2013.

There is definitely an area of greyiness between section 13(9) and section 13(10). However, practically the situation may be different as described hereinabove. Therefore, in my considered opinion, in the interest of competition, fairness and to prevent further delay to the Project the bid cannot be rejected and the company is therefore eligible.

We may publish the result on the website for 7 days before opening the financials, if approved.


(Kabir Shankar Bose)
General Counsel
02.04.17