

राष्ट्रीय राजमार्ग एवं अवसंरचना विकास निगम लिमिटेड

सड़क परिवहन और राजमार्ग मंत्रालय, भारत सरकार
तीसरी मंजिल, पीटीआई बिल्डिंग, 4-संसद मार्ग, नई दिल्ली-110001

National Highways & Infrastructure Development Corporation Limited

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BHARATMALA
ROAD TO PROSPERITY



NHIDCL
BUILDING INFRASTRUCTURE - BUILDING THE NATION
CIN: U45400DL2014GOI269062

सार्वजनिक क्षेत्र का उपक्रम

A PUBLIC SECTOR UNDERTAKING

NHIDCL/BM/JAMMU & KASHMIR/DPR/03/2015/

Date: 29.05.2018

Office Order

Subject: Setting aside Termination order and foreclosing the consulting contract Agreement between National Highways & Infrastructure Development corporation Development Limited and L.N. Malviya Infra Projects Pvt. Ltd. for the work of "Consultancy Services for carrying out Feasibility Study, Preparation of Detailed Project Report and providing pre-construction services in respect of up-gradation to Two Lane with paved shoulder NH configuration of corridor under BHARATMALA Project, NH connectivity to BRT places of the country and ADB Funded Projects in the State of Jammu & Kashmir"

It is to inform all concerned that the Order No. NHIDCL/BM/JAMMU & KASHMIR/DPR/03/2015/440 dated 28.12.2017 terminating the consultancy Contract Agreement dated 20.12.2016 between National Highways & Infrastructure Development Corporation Limited (NHIDCL) and L. N. Malviya Infra Projects Ltd. has been set aside and the subject contract Agreement has been foreclosed in terms of Minutes of Meeting (Annexure-A) in the spirit of Amicable settlement.

Pradeep Sharma
General Manager (Tech.)

MINUTES OF MEETING HELD ON 02.04.2018 AT 1100 HRS IN NHIDCL, HQ, NEW DELHI,

Name of Work: Consultancy Services for carrying out Feasibility Study, Preparation of Detailed Project Report and providing pre-construction services in respect of up-gradation to Two Lane with paved shoulder NH configuration of corridor under BHARATMALA Project, NH connectivity to BRT places of the country and ADB Funded Projects in the State of Jammu & Kashmir.

The consultant M/s L.N. Malviya Infra Projects Pvt. Ltd. was engaged for the subject consultancy services vide Contract Agreement No. NHIDCL/BM-BRT/03/2016 dated 20.12.2016. Due to slow progress of work by the consultant, Notice of Suspension was issued on 24.05.2017 pursuant to Clause 2.8 of General Conditions of Contract (GCC) and the consultant was asked to remedy the failures. The suspension notice served on M/s L.N Malviya Infra Projects Pvt. Ltd. failed to elicit any response in terms of submission of deliverables under the contract agreement. The consultant subsequently vide this office letter dated 21.09.2017 and revised letter dated 06.10.2017, was issued Termination Notice in accordance with clause 2.9 and sub-clause 2.9.1 (a) of the Contract Agreement by putting him on notice for 30 days. No remedial steps were taken and the Authority terminated the Contract Agreement dated 20.12.2016 vide its letter dated 28.12.2017.

The Consultant impugned the termination letter dated 28.12.2017, before the Hon'ble High Court of Delhi by way of filing Writ Petition (C) No. 1888/2018 which was dismissed as withdrawn by the Counsel with liberty to file a fresh petition vide order dated 27.02.2018 passed by the Hon'ble High Court of Delhi. The contractor again approached the Hon'ble High Court by way of filing Writ Petition (C) No. 2511/2018, which is pending adjudication and the matter is fixed for hearing on 08.08.2018.

The Contractor vide its letter dated 03.03.2018, submitted a request for Amicable Settlement under clause 9 of the Contract Agreement. Further, in sequel to the Termination of the Contract Agreement, Show cause notice was issued to the consultant as to why the firm should not be debarred under clause 7.4.2 from taking part in future bidding process of NHIDCL. However, in compliance of the principles of natural justice, the consultant was given a personal hearing on 02.04.2018.

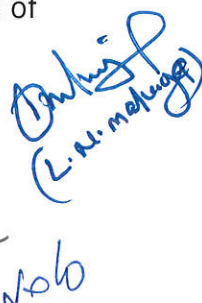
2. In order to resolve the issue, a meeting was held on 02.04.2018, at NHIDCL Hqrs. under the Chairmanship of Managing Director, NHIDCL. The following Officers of NHIDCL and the Managing Director of Consultant attended the meeting:-

- (a) Shri V.K.Rajawat, Director (Technical), NHIDCL
- (b) Shri Sanjeev Malik, Executive Director-III, NHIDCL








V.K. Rajawat
26/04

(c) Shri Pradeep Sharma, General Manager (Tech.), NHIDCL

(d) Mr. L. N. Malviya, Managing Director of M/s. L.N. Malviya Infra Projects Pvt. Ltd.

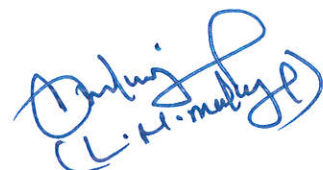
3. Mr. L.N. Malviya, MD of L.N. Malviya Infra Projects Pvt. Ltd. re-iterated his request for Amicable Settlement under the relevant clause of the Contract Agreement. The consultant during the submission agreed that though the firm has defaulted on the timeline as stipulated in the agreement for various deliverables but the same was also to some extent were influenced by the factors beyond the consultants' control. It was submitted that the firm will unconditionally withdraw the Writ Petition from the Hon'ble High Court at Delhi, if the Termination of the Contract Agreement is set aside and is also willing to pay penalty for delayed deliverables at the rate of 10% of the contract amount duly compensating the Authority for time and cost over runs as per clause 7.3.2 of the Contract Agreement. The consultant further requested that the eligible payments due to him for the services rendered in respect of the agreement should be paid by NHIDCL after proper scrutiny.

4. After due deliberations and discussions, it was resolved as follows:-

- (i) That M/s. L.N. Malviya Infra Projects Pvt. Ltd., in the spirit of Amicable Settlement, shall withdraw the Writ Petition No. 2511 of 2018 pending before the Hon'ble Delhi High Court.
- (ii) That M/s. L.N. Malviya Infra Projects Pvt. Ltd. shall make good the loss caused to NHIDCL due to delay in completion of Project by way of paying penalty stipulated under clause 7.3.2 of the Contract Agreement dated 20.12.2016.
- (iii) That the termination order dated 28.12.2017 2017 with regard to Contract Agreement No. NHIDCL/BM-BRT/03/2016 dated 20.12.2016 and the Show Cause Notice for debarment dated 22.03.2018, stands set aside and the Project would be foreclosed, as the consultant is ready and willing to make good the loss caused to the NHIDCL.
- (iv) That the issue of the eligible payments to the consultants shall be considered and the payment, if any, due to the consultants shall be paid in accordance with the provisions of the Contract Agreement.
- (v) That the Amicable Settlement under clause 9 shall constitute the final settlement and M/s. L.N. Malviya Infra Projects Pvt. Ltd. shall indemnify and hold harmless 'The Authority' against any and all suits, proceeding, actions, demands and claims from itself and from any third party for any loss damage cost and expense of whatever kind and nature arising out of this final settlement.







L.N. Malviya

- (vi) That the Amicable Settlement shall be final and binding on both the parties viz. NHIDCL and M/s. L.N. Malviya Infra Projects Pvt. Ltd.
- (vii) Both NHIDCL and M/s. L.N. Malviya would make a joint application in the pending Writ Petition before the Hon'ble Delhi High Court thereby praying that the present minutes of meeting and the settlement reached between the parties be taken on record and be made an order of the Hon'ble Court.
5. Both parties are agreeable that in view of the above, the Writ Petition (C) No. 2511/2018 titled as *L.N. Malviya Infra Projects Pvt. Ltd. Vs National Highways & Infrastructure Development Corporation & Ors.*, pending adjudication before the Hon'ble Delhi High Court shall be withdrawn by submitting the joint application along with copy of this minutes in the Hon'ble Court.

The meeting ended with vote of thanks to the chair.

For M/s. L. N. Malviya Infra Projects Pvt. Ltd.



Shri L. N. Malviya
Managing Director

For NHIDCL



Shri N.N. Sinha
Managing Director



Shri V.K. Rajawat,
Director (Technical),



Shri Sanjeev Malik,
Executive Director -III



Shri Pradeep Sharma,
General Manager (T),

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 2511/2018

L.N. MALVIYA INFRA PROJECTS PVT. LTD..... Petitioner

Through: Ms. Nandadevi Deks, Adv

versus

NATIONAL HIGHWAY AND INFRASTRUCTURE DEVELOPMENT
CORPORATION AND ORS. Respondent

Through: Mr. Rajeev Bansal, Senior Advocate
with Ms. Suruchi Suri, Adv for
Respondent No. 1 and 2 with Mr.
Pradeep Sharma, General Mananger
(Tech.) and Mr. Anil Kumar Jha,
Junior Manager (Legal)
Ms. D Soumya Priyadarshinee, Adv
for NHAI

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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08.05.2018

CM APPL No. 18824/2018

1. This is a joint application moved by the writ petitioner and respondent no. 1 and 2.
2. To be noted, respondent no. 3 is represented by Ms. D Soumya Priyadarshinee.
3. The prayer made in the application is as follows:-
“ a) take on record the Minutes of Meeting dated 02.04.2018, and make the same an order of the Court.”

4. Ms. Nandadevi Deks, who appears for the petitioner and Mr. Rajeev Bansal, who appears on behalf of respondent no. 1 and 2 submit that the prayer made in the application be allowed and the Minutes of Meeting dated 02.04.2018 be taken on record.

5. It is ordered accordingly. The application is disposed of.

W.P.(C) 2511/2018

6. Ms. Nandadevi Deks, who appears for the petitioner says that in view of orders passed in CM. APPL. No. 18824/2018, she has instructions to withdraw the petition.

7. The petition is, consequently, dismissed as withdrawn.

RAJIV SHAKDHER, J

MAY 08, 2018

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