

Maharashtra State Road Development Corporation Ltd.

Name of Work :
Securitisation of Five Mumbai Entry Points along-
with maintenance of flyovers and allied structures

Volume III / III

1. Contract Agreement
2. Substitution Agreement
3. Escrow Agreement
4. Lumpsum Upfront Payment to MSRDC
5. Commencement Order

MEP Infrastructure Pvt. Ltd.

LENDERS

**Infrastructure Development
Finance Co. Ltd.**

Canara Bank

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CONTRACT AGREEMENT

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CONTRACT AGREEMENT

CONTRACT AGREEMENT

BETWEEN

MAHARASHTRA STATE ROAD DEVELOPMENT CORPORATION LTD.

AND

MEP INFRASTRUCTURE PVT. LTD.

AND

MEP TOLL ROAD PVT. LTD.

AND

IDEAL TOLL & INFRASTRUCTURE PVT. LTD.



सत्यमेव जयते

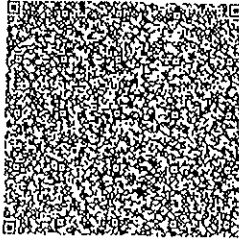
INDIA NON JUDICIAL

Government of Maharashtra

e-Stamp

Issued by :
Stock Holding Corporation of India Ltd.
Location : SHCIL-VIKHROLI
Signature : *[Signature]*
Details can be verified at www.shcilestamp.com

Certificate No. : IN-MH012216318842191
Certificate Issued Date : 30-Sep-2010 02:19:PM
Account Reference : SHCIL (FI)/mhshcil01/VIKHROLI/MHMSU
Unique Doc. Reference : SUBIN.MHMHSHCIL01012896117894901
Purchased by : MEP INFRASTRUCTURE PRIVATE LIMITED
Description of Document : Article 5(except g-a) Agreement
Description : SECURITIZATION OF 5 MUMBAI ENTRY POINTS WITH MAINTENANCE OF FLYOVERS, STRUCTURES AND TOLL COLLECTION
Consideration Price (Rs.) : 2,100,00,00,000
(Two Thousand One Hundred Crore only)
First Party : MEP INFRASTRUCTURE PRIVATE LIMITED
Second Party : MAHARASHTRA STATE ROAD DEVELOPMENT CORPORATION LTD
Stamp Duty Paid By : MEP INFRASTRUCTURE PRIVATE LIMITED
Stamp Duty Amount(Rs.) : 4,20,00,000
(Four Crore Twenty Lakh only)



COPY COPY COPY

Please write or type below this line

Statutory Alert:

1. The authenticity of the Stamp Certificate can be verified at Authorised Collection Centers (ACCs), SHCIL Offices and Sub-registrar Offices (SROs).
2. The Contact Details of ACCs, SHCIL Offices and SROs are available on the Web site "www.shcilestamp.com"

SHCIL-MAHARASHTRA

SHCIL, 301, CENTER POINT, DR. B. AMBEDKAR ROAD, PAREL, MUMBAI, MUMBAI, Maharashtra, INDIA, PIN CODE - 400012

Tel : 022-61778151
E-mail :

Mode of Receipt

Account.Id : mhshcil01 Receipt Id : RECIN-MHMHSHCIL0101143220806324I
Account Name : SHCIL-MAHARASHTRA Receipt Date : 30-SEP-2010

Received From : MEP INFRASTRUCTURE PRIVATE LIMITED	Pay To :
Instrument Type : RTGS	Instrument Date : 29-SEP-2010
Instrument Number : CNRBH10272515947	Instrument Amount : 42000000 (Four Crore Twenty Lakh only)
Drawn Bank Details	
Bank Name : CANARA BANK	Branch Name : PCB MUMBAI
Out of Pocket Expenses : 0.0 ()	



03



General Stamp Office, Mumbai
MAHARASHTRA
L.S.N. NO. 207
13 SEP 2010
 Proper Officer

१४४, पन. जी. रोड, एसासांद्र बंगला, काकोड
 मुंबई-२३..
 परवानाधारक: मुद्रिक विक्रेता
 परवाना क्रमांक नं. २०४
7541 दिनांक _____
 W/M/MC/MI _____
 अन्य अधिकारी मुद्रक केवल विभाग

DK 876533



SHRI. K. R. MADGE

[Signature]
 महाप्रबन्धक, ए. ए. विभाग

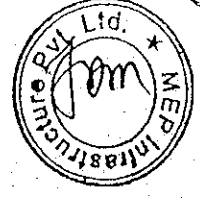
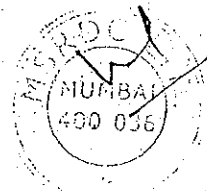
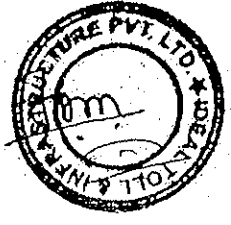
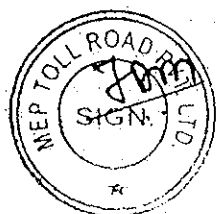
CONTRACT AGREEMENT

This Agreement is entered into on this the 19 day of November

BETWEEN

(1) **MAHARASHTRA STATE ROAD DEVELOPMENT CORPORATION LIMITED**, a corporation fully owned by the Government of Maharashtra and its nominees and incorporated as a limited company under the Companies Act 1956 and having its registered office at PWD Compound, Nepean Sea Road, Priyadarshini Park, Mumbai-400 036, Maharashtra, India, (hereinafter referred to as "MSRDC" which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns) of First Part,

AND



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- (2) **MEP Infrastructure Private Limited**, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at **410, boomerang, Chandivali Farm Road, Near Chandivali Studio, Andheri (East), Mumbai 400 072, Maharashtra** (hereinafter referred to as **SPV or Contractor** which expression shall unless repugnant to the context or meaning thereof include its successors and assigns) of the Second Part.

AND

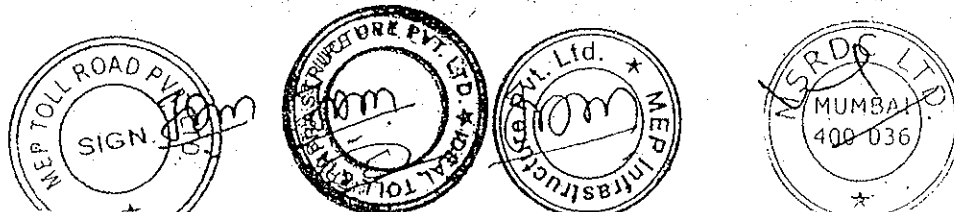
- (3) **MEP Toll Road Pvt. Ltd.**, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at **410, boomerang, Chandivali Farm Road, Near Chandivali Studio, Andheri (East), Mumbai 400 072, Maharashtra** (hereinafter referred to as the "Lead Member of Consortium" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted substitutes) of the Third Part.

AND

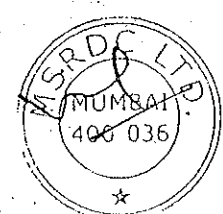
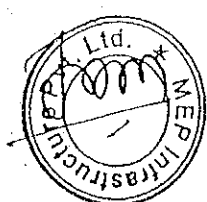
- (4) **Ideal Toll and Infrastructure Pvt. Ltd.** a company incorporated under the provisions of the Companies Act, 1956 and having its office at **408, 409, boomerang, Chandivali Farm Road, Near Chandivali Studio, Andheri (East), Mumbai 400 072, Maharashtra** (hereinafter referred to as the "Other Member of Consortium" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted substitutes) of the Fourth Part.

WHEREAS

- (A) MSRDC on behalf of Government of Maharashtra is authorized to do the **Securitization of Five Mumbai Entry Points along with maintenance of flyovers and allied structures and collection of toll** which includes operations, monitoring and maintenance.
- (B) MSRDC accordingly invited Bids from Bidders which could either be a single legally incorporated entity or a group of such entities coming together as a consortium for implementation of the **Securitization of Five Mumbai Entry Points along with maintenance of flyovers and allied structures** and thereafter evaluated the offers received.



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- (C) MSRDC, pursuant thereto selected the Consortium MEP-Ideal Toll Consortium, [Comprising MEP Toll Road Private Limited and Ideal Toll & Infrastructure Private Limited (collectively the "Consortium") with MEP Toll Road Private Limited as its Lead Member] as Successful Bidder for undertaking, inter alia, the work referred to in Recital 'A' above.
- (D) MSRDC thereafter issued a Letter of Acceptance No. MSRDC/ 02/ JMD/MEP/2010/1907 dated 28.10.2010 ("LOA") to the Consortium requiring, inter alia, the execution of this Contract Agreement within time period stipulated in the Bid Document.
- (E) Pursuant to the issuance of LOA, the Successful Bidder has promoted and incorporated the SPV namely M/s. **MEP Infrastructure Private Limited** as a limited liability company hereinafter referred to as the Contractor and provided its Maintenance Performance Security to enter into this Contract Agreement for undertaking, inter alia, financing, operations, monitoring and maintenance of the Project, as defined hereinafter referred to in Recital 'A' and to fulfill other obligations of the Successful Bidder and has requested MSRDC to accept the SPV as Contractor as the entity which shall undertake and fulfill and perform the obligations of the Successful Bidder and exercise the rights of the Successful Bidder under the LOA, including the obligation to enter into this Contract Agreement for the financing, operations, monitoring and maintenance of the Project. Notwithstanding anything contained herein, the Consortium Members agree and acknowledge that they shall remain jointly and severally liable for the successful implementation of the said Project in terms of this Agreement and shall comply with the requirement of the minimum equity and other obligations as stated in the Documents.
- (F) MSRDC has agreed to the said request of the Successful Bidder and has accordingly agreed to enter into this Contract Agreement with the Contractor pursuant to the LOA for, inter alia, the financing, operations, monitoring, maintenance of the said Project.



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It is deemed necessary and expedient to enter into this Agreement to record the terms of the said Agreement between the Parties:

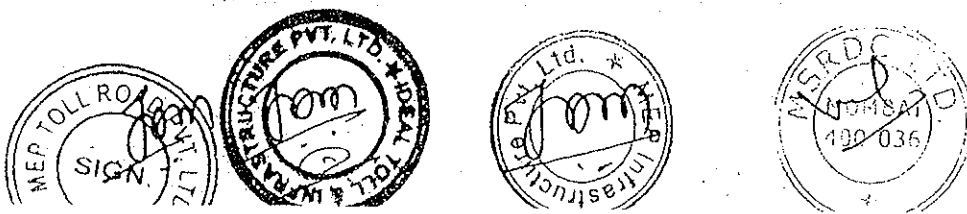
NOW THEREFORE THIS AGREEMENT WITNESSETH AS FOLLOWS:

The following documents shall form part of this Agreement.

Bid Document (Vol. I, Vol. II, Vol. III & Vol. IV) including Common Set of Deviations (CSD) issued by MSRDC.

General, Technical and Financial proposal submitted by **MEP-Ideal Toll Consortium** with the Bid.

1. MEP-Ideal Toll Consortium Letter No. Letter No.MEPIDL/OUT/139 dated 10.02.2010
2. Letter No.MEPIDL/OUT/714 dated 31.08.2010
3. Minutes of meeting of Cabinet Committee on Infrastructure dated 31.08.2010 issued vide Government letter No. Pasusa/ 2010/ F.No.41/ desk/ 1461 dated 14.09.2010
4. PWD, Government of Maharashtra's memorandum No. Kha Kshe Sa - 2005/Pra.Kra 108/LB 4/Raste-8 issued by Dy. Secretary dated 15.09.2010
5. MSRDC Letter No.MSRDC/01/JMD/MEP/2010/1725 dated 24.09.2010
6. MEP-Ideal Toll Consortium Letter No.Nil dated 24.09.2010
7. MSRDC Letter No.MSRDC/01/JMD/MEP/2010/1726 dated 24.09.2010
8. Hon'ble High Court Bombay's orders dated 28th October, 2010
9. MSRDC's Letter of Acceptance No. MSRDC/ 02/ JMD/MEP/2010/1907 dated 28.10.2010
10. MSRDC's Letter of Approval to SPV No. MSRDC/ 02/ JMD(I) /5MEP/1908 dated 28.10.2010
11. Intragroup Agreement signed between Successful Bidder and its SPV (Contractor) on 28.10. 2010.
12. OM & M Performance Security amounting to Rs. 25 Cr. in the form of Bank Guarantee No. 235 - 10 dtd. 29.10.2010 issued by Canara Bank, Prime Corporate Branch Mumbai and Bank Guarantee No. 236- 10 dtd. 29.10.2010 amounting to Rs. 6.25 Cr. as per Table No. 10.1 sr, no. 2 of



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Vol-III of the bid document.

13. Security for performance of maintenance activity of Rs. 7 Cr. in the form of Cheque No.887724 dtd. 30.10.2010, drawn on Canara Bank, Prime Corporate Branch Mumbai.

14. Ref : Hon'ble Supreme Court in petition Special Leave to appeal Sr No (31526) Dated 16.11.2010

The Contractor doth hereby agree and confirm that the Parties forming the SPV will be jointly and severally liable to MSRDC under this Agreement.

Above Contract Agreement is subject to the result of Special Leave Petition No(s) 31526/2010 as per order of the Supreme Court dated 16th November 2010.

IN WITNESS WHERE OF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THIS ^{19th} NINTENTH DAY NOVEMBER 2010 FIRST ABOVE WRITTEN.

SIGNED AND DELIVERED FOR AND ON BEHALF OF MSRDC BY

Name: Mr.Bipin Shrimali

Designation: Vice Chairman and Managing Director.

In the presence of:

1. Mr. S K Mukherjee
Joint Managing Director (I)

2. Mr. K S Pandav
Secretary & Financial Advisor

SIGNED AND DELIVERED FOR AND ON BEHALF OF MEP Infrastructure Private Limited (the Contractor)

BY:

Name: Jayant D. Mhaskar
Designation : Director

In the presence of:

1. Shridhas Phadke

2. Mandar Karandikar

For MEP Infrastructure Pvt. Ltd

Jayant D. Mhaskar
- Director

M. V. Karandikar
m.v. Karandikar



BIPIN SHRIMALI
Vice Chairman & Managing Director
MSRDC

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SIGNED AND DELIVERED FOR AND ON BEHALF OF MEP Toll Road Pvt. Ltd. (Lead Member of the Consortium)

BY:
Name:
Authorised Signatory

For MEP Toll Road Private limited
Jon Mathar
Director

In the presence of:

1. Sameer A Apte Apte

2. Sachin V. Ponkete Ponkete

SIGNED AND DELIVERED FOR AND ON BEHALF OF Ideal Toll and Infrastructure Pvt. Ltd. (Other Member of Consortium)

BY:
Name:
Authorised Signatory

For Ideal Toll & Infrastructure Pvt. Ltd.
Jon Mathar
Director

In the presence of:

1. Margash Narebhan Mandbhana

2. Londhe
Tejashree T. Londhe

For Ideal Toll & Infrastructure Pvt. Ltd.
Shamch
Director



MEP-IDEAL TOLL CONSORTIUM

2nd Floor, IRB Complex, Chandivli Farm, Chandivli Village, Andheri (East),
Mumbai - 400 072. Tel. - 91 22 66404200. Fax - 91 22 66751022



MEPIDL/OUT/139

Date: - 10th February 2010

To,
The Vice-Chairman & Managing Director,
Maharashtra State Road Development Corporation Ltd.
Nepean Sea Road, Priyadarshani Park,
Mumbai - 400 036

Subject: - Securitization of five Mumbai Entry Points along with maintenance of flyovers and allied structures.

Reference: - 1] Our Financial Bid submitted on 23rd July 2009
2] Your office letter no MSRDC/02/JMD(I)MEP/2010/722 dated 9th February 2010.
3] Meeting of Board of Directors of MSRDC dated 10th February 2010 held at Sahayadri Guest House.

Dear Sir,

With reference to the subject cited above and as agreed by us in the meeting of Board of Directors of MSRDC dated 10th February 2010 held at Sahayadri Guest House, we hereby confirm our final offer of revised concession period of 16 years 11 months and 0 days (Sixteen years Eleven months and Zero days) for above subject work.

We hope you find this in order and issue us Letter of Acceptance (LOA) at your earliest.

Thanking you,
Yours faithfully,

For MEP Ideal Toll Consortium

Jayant D Mhalskar
Authorised Signatory

Recd:





MEP-IDEAL TOLL CONSORTIUM

2nd Floor, IRB Complex, Chandivli Farm, Chandivli Village, Andheri (East),
Mumbai - 400 072. Tel. - 91 22 66404200. Fax - 91 22 66751022



MEPIDL/OUT/714

Date: - 31st August 2010

To,
The Vice Chairman & Managing Director,
Maharashtra State Road Development Corporation Ltd.
Nepean Sea Road, Priyadarshini Park,
Mumbai - 400 036.

Subject: - Securitization of five Mumbai Entry Points along with maintenance of flyovers and allied structures.

Reference: - 1] Our Financial Bid submitted on 23rd July 2009
2] Your office letter no MSRDC/01/JMD/MEP/2010/3863 dated 31st August 2010

Dear Sir,

With reference to the subject cited above, we are very much thankful to you for calling us for final negotiations on the above subject matter. Our negotiated concession period is 16 years and 11 months and zero days (Sixteen Years, Eleven Months and Zero Days)

With reference to your above referred letter, you have requested us to pay Rs 2100 crores lumpsum upfront.

With regards to your above referred letter, this is to inform that our cash flow does not permit us for upfront payment of Rs 2100 crores in one stroke since the net revenue will not be sufficient to service the interest component thereby the proposal becoming non bankable. However as per the your above referred letter the maximum upfront amount payable is as per details given below, which we agree to pay.

Amount payable in first year as per submitted financial bid	Rs 1350 Crores
Second Year	Rs. 160 Crores
Third Year	Rs. 200 Crores
Total	Rs. 1710 crores
Now first installment of Rs 1350 crores plus (upfront payment of Rs. 160 crores plus Rs. 200 crores) 360 crores payable along with the first installment.	Rs. 1710 Crores



31 AUG 2010

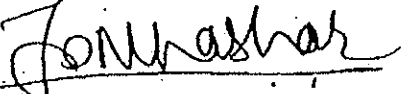
Remaining two installments of 4th and 5th year payable remain unchanged and will be paid as per the schedule mentioned in our Financial Bid.

We hope you will find this in order and issue us Letter of Acceptance (LOA) at your earliest.

Thanking you,

Yours faithfully,

For MEP - Ideal Toll Consortium



Jayant D Mhaiskar

Authorised Signatory

गुप्त

क्रमांक : पासुस-२०१०/प्र.क्र.४१/का.१४६१

महाराष्ट्र शासन, नियोजन विभाग

मंत्रालय, मुंबई ४०० ०३२.

दिनांक : १४ सप्टेंबर, २०१०

विषय : मंत्रिमंडळ पायाभूत सुविधा समितीची बैठक

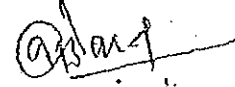
मंगळवार दिनांक ३१ ऑगस्ट, २०१० रोजी सायं. ७.०० वाजता

सहयाद्री, राज्य अतिथीगृह, मलबार हिल, मुंबई

येथे झालेल्या बैठकीचे कार्यवृत्त

मा.मुख्यमंत्री यांच्या अध्यक्षतेखाली मंगळवार दिनांक ३१ ऑगस्ट, २०१० रोजी सायं. ७.०० वाजता झालेल्या मंत्रिमंडळ पायाभूत सुविधा समितीच्या बैठकीचे कार्यवृत्त आवश्यक त्या कार्यवाहीसाठी सोबत पाठवित आहे.

उत्तर



(नि. बा. वाडेकर)

उप सचिव

(Rt-1)

प्रति,

मा.मुख्यमंत्री यांचे प्रधान सचिव, मंत्रालय, मुंबई (५ प्रती)

मा.उपमुख्यमंत्री यांचे सचिव, मंत्रालय, मुंबई (३ प्रती)

मा.मंत्री (वित्त व नियोजन)यांचे खाजगी सचिव, मंत्रालय, मुंबई

मा.मंत्री, उद्योग, रोजगार व स्वयंरोजगार यांचे खाजगी सचिव, मंत्रालय, मुंबई

मा.मंत्री, गृह यांचे खाजगी सचिव, मंत्रालय, मुंबई

मा.मंत्री, जलसंपदा (महाराष्ट्र कृष्णा खोरे विकास महामंडळ वगळून), (ऊर्जा) यांचे खाजगी सचिव, मंत्रालय, मुंबई

मा.मंत्री, परिवहन व बंदरे यांचे खाजगी सचिव, मंत्रालय, मुंबई

मा.मंत्री, सामाजिक न्याय, विमुक्त, भटक्या जमाती व इतर मागासवर्गीयांचे कल्याण व व्यसनमुक्ती कार्य यांचे खाजगी सचिव, मंत्रालय, मुंबई

मा.मंत्री, सार्वजनिक बांधकाम विभाग (सार्वजनिक उपक्रम) यांचे खाजगी सचिव, मंत्रालय, मुंबई

मा.राज्यमंत्री, सार्वजनिक बांधकाम विभाग, यांचे खाजगी सचिव, मंत्रालय, मुंबई

मा.मुख्य सचिव, महाराष्ट्र शासन, मंत्रालय, मुंबई

मा.प्रधान सचिव (वित्त), मंत्रालय, मुंबई

मा.प्रधान सचिव, विधी व न्याय विभाग, मंत्रालय, मुंबई

मा. सचिव (बांधकामे), सार्वजनिक बांधकाम विभाग, मंत्रालय, मुंबई

मा. सचिव (रस्ते), सार्वजनिक बांधकाम विभाग, मंत्रालय, मुंबई

मा. सचिव (विशेष प्रकल्प), सामान्य प्रशासन विभाग, मंत्रालय, मुंबई

मा. व्यवस्थापकीय संचालक, महाराष्ट्र राज्य रस्ते विकास महामंडळ, मुंबई.

मा.मुख्यमंत्री यांचे खाजगी सचिव, मुख्यमंत्र्यांचे सचिवालय, मुलाखत कक्ष, मंत्रालय, मुंबई

प्रधान सचिव (नियोजन) यांचे वरिष्ठ स्वीय सहाय्यक यांना माहितीसाठी अग्रेषित.

निवड नस्ती का.१४६१

दिनांक ३१ ऑगस्ट, २०१० रोजी सहयात्री अतिथीगृह, मलबार हिल, मुंबई
येथे झालेल्या मंत्रीमंडळ पायाभूत सुविधा समितीच्या बैठकीचे कार्यवृत्त

(शासन पत्र क्र.पासुस-२०१०/प्र.क्र.४१/का.१४६१, दि. १४ सप्टेंबर, २०१० चे सहपत्र)

मा.मुख्यमंत्री यांच्या अध्यक्षतेखालील मंत्रीमंडळ पायाभूत सुविधा समितीची बैठक दिनांक ३१ ऑगस्ट, २०१० रोजी सहयात्री अतिथीगृह, मलबार हिल, मुंबई येथे संपन्न झाली. सदर बैठकीस खालील सदस्य व अधिकारी उपस्थित होते.

- १) मा.मुख्यमंत्री,
- २) मा.उप मुख्यमंत्री,
- ३) मा.मंत्री, वित्त व नियोजन
- ४) मा.मंत्री, गृह
- ५) मा.मंत्री, जलसंपदा (महाराष्ट्र कृषि व खारे विकास महामंडळ वगळून), ऊर्जा
- ६) मा.मंत्री, परिवहन व बंदरे
- ७) मा.मंत्री, सामाजिक न्याय, विमुक्त, भटक्या जमाती व इतर मागासवर्गीयांचे कल्याण व व्यसनमुक्ती कार्य
- ८) मा.मंत्री, उद्योग, रोजगार व स्वयंरोजगार
- ९) मा.मंत्री, सार्वजनिक बांधकाम (सार्वजनिक उपक्रम)
- १०) मा.राज्यमंत्री, सार्वजनिक बांधकाम
- ११) मा.मुख्यसचिव
- १२) प्रधान सचिव, वित्त विभाग
- १३) प्रधान सचिव, नियोजन विभाग
- १४) मा. मुख्यमंत्री यांचे प्रधान सचिव
- १५) प्रधान सचिव, विधी व न्याय विभाग
- १६) सचिव, सार्वजनिक बांधकाम विभाग (बांधकामे)
- १७) सचिव, सार्वजनिक बांधकाम विभाग (रस्ते)
- १८) सचिव, सामान्य प्रशासन विभाग (विशेष प्रकल्प)
- १९) मा. मुख्यमंत्री यांचे सचिव
- २०) व्यवस्थापकीय संचालक, महाराष्ट्र राज्य रस्ते विकास महामंडळ, मुंबई

२. सदर बैठकीत सार्वजनिक बांधकाम विभागाचे उप सचिव यांचे यांनी बैठकीतील विषयांबाबत सादरीकरण केले. त्यानुषंगाने सदर बैठकीमध्ये पुढीलप्रमाणे सर्वसाधारण सूचना देण्यात आल्या.

अ) सदर बैठकीमध्ये BOT तत्वावर रस्ते विकासाच्या प्रकल्पांना मान्यता देतांना रस्त्यांच्या देखभाल-दुरुस्ती संदर्भात कांही सूचना करण्यात आल्या. यामध्ये BOT तत्वावरील रस्ते विकास प्रकल्पाची पथकर वसूली करणा-या संबंधित विकासकानेच रस्त्यांची देखभाल-दुरुस्ती करणे आवश्यक असल्याची सूचना करण्यात आली. यासंदर्भात दोष आढळल्यास त्याची जबाबदारी संबंधित विकासकाची राहिल. तसेच याबाबत स्थानिक सार्वजनिक बांधकाम मंडळाचा उपअभियंता यांच्यावर जबाबदारी निश्चित करण्यातबाबतही सूचना करण्यात आली. याव्यतिरिक्त BOT तत्वावरील रस्त्यांवर होणा-या शेतमाल वाहतूकीसंदर्भात पथकर सवलत देण्याच्या धोरणाचा विभागाने फेरआढावा घेण्याची सूचना करण्यात आली.

ब) रस्त्यांच्या देखभाल दुरुस्ती व व्यवस्थापनासंदर्भात रस्ते सुरक्षा उपाययोजना, वाहतूक नियोजन, क्रेन सारख्या सुविधा, वाहतूक सुरक्षा रक्षक, टोचन वाहने यासारख्या अपघातसमयी उपयुक्त ठरणा-या बाबी विकासकाने उपलब्ध करण्याची बाब निविदा प्रक्रियेच्या वेळेस करारपत्रांमध्ये समाविष्ट करण्याची सूचना करण्यात आली.

क) BOT तत्वावर रस्ते विकासाच्या प्रकल्पांना मान्यता देतांना निविदा सूचनेमध्ये / करारपत्रांमध्ये असलेली लवादाची तरतूद वगळण्यात यावी व त्याऐवजी एक सचिव समिती असावी ; तसेच विकासकास आर्थिक स्वरूपात नुकसान भरपाई देण्यात येऊ नये, अशी सूचना प्रधान सचिव (वित्त) यांनी केली.

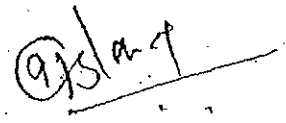
ड) पथकर नाक्याच्या ठिकाणी अतिरिक्त पथकर खिडक्यांची तरतूद करण्यात यावी , चौपदरी रस्त्यांवरती पथकर स्थानकासाठी ८+८ लेन देण्यात याव्यात, ज्यामुळे त्याठिकाणी होणारा वाहतूकीचा खोळंबा टाळता येऊ शकेल. तसेच पथकर नाक्याच्या ठिकाणी पोलीसांकरीता चौकी, पुरुष व महिला स्वच्छतागृह , त्यांच्या साफसफाईची उपाययोजना, वलोज सर्किट (CCTV) कॅमेरा यासारख्या सोयीसुविधा उपलब्ध करण्याची सूचना करण्यात आली

इ) बैठकीदरम्यान प्रधान सचिव (नियोजन) यांनी श्री गजेंद्र हल्दीया, केंद्रीय योजना आयोगाचे उपाध्यक्ष यांचे सल्लागार यांच्या सोबत दि. २७ ऑगस्ट, २०१० रोजी झालेल्या चर्चेच्या अनुषंगाने केंद्र

शासनामाफत प्राथम्याने उपलब्ध होऊ शकणा-या २० % वा तफावत निधीबाबत समितीच्या सदस्यांना अवगत केले. तसेच वाहतूक वर्दळीची गणना Daily Compounding आणि Weekly Compounding या पध्दतीने होणे अपेक्षित असल्याची सूचना केली.

फ) अपेक्षित वाहतूकीपेक्षा अधिक वाहतूक आढळल्यास राज्य शासनास मिळणारा हिस्सा सध्याच्या ५०% ऐवजी ७५ % करण्यात यावा.

३. याव्यतिरिक्त बैठकीत एकूण १३ विषयांबाबत चर्चा होऊन, घेण्यात आलेल्या निर्णयांचे इतिवृत्त सोबत जोडण्यात आले आहे.



(नि.बा.वाडेकर)

शासनाचे उप सचिव

क्रमांक : खाक्षेस-२००५/प्र.क्र.१०८/एल.बी.४/रस्ते-८

सार्वजनिक बांधकाम विभाग,

मंत्रालय, मुंबई- ४०० ०३२.

दिनांक : १५ सप्टेंबर, २०१०

विषय : मुंबई शहर व परिसरातील पाच पथकर नाक्यांवरील उत्पन्नाचे
सिक्विरिटायझेशन करणे.
निविदा मंजूरीचा प्रस्ताव.

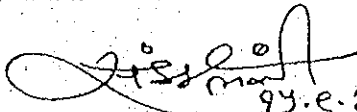
ज्ञापन-

उपाध्यक्ष व व्यवस्थापकीय संचालक यांचे पत्र क्रमांक १) एमएसआरडीसी/०१/जेएमडी-१/२१४४, दिनांक २०.०८.२००९, २) मरारविम/०२/जेएमडी/एमईपी/२०१०/३८०९, दिनांक २७.०८.२०१० ३) मरारविम/०२/जेएमडी/एमईपी/२०१०/१५३४, दिनांक २७.०८.२०१०, ४) मरारविम/मर्या/०१/जेएमडी/एमईपी/२०१०/१५३७, दिनांक ३१.०८.२०१० ५) मरारविम/मर्या/०१/जेएमडी/एमईपी/२०१०/३८६६, दिनांक ३१.०८.२०१० अन्वये सादर केलेल्या उपरोक्त विषयात उल्लेख केलेल्या प्रकल्पाकरीताच्या निविदा प्रस्तावाबाबत कळविण्यात येत आहे की, सादर कामाकरीता सर्वात कमी पथकर वसूली कालावधीच्या देकाराची मेसर्स एम.ई.पी.आयडियल टोल कन्सोर्सियम यांची सुधारित १६ वर्ष, ११ महिने इतक्या सवलतीच्या कालावधीची निविदा स्विकारण्यास या ज्ञापनाद्वारे खालील अटी व शर्तीच्या अधीन राहून शासन मान्यता देण्यात येत आहे.

- (१) व्यवस्थापकीय संचालक, महाराष्ट्र राज्य रस्ते विकास महामंडळ यांच्या दिनांक २७.०८.२०१० च्या पत्रानुसार रू.२१०० कोटी एकरकमी भरण्यास मेसर्स एम.ई.पी. आयडीयल टोल कन्सोर्सियम तयार असल्यास त्यांना निविदा स्विकृती पत्र देण्यात यावे व पुढील कार्यवाही करावी.
- (२) सादर कामाचे कंत्राट देण्याबाबतसहची संपूर्ण निविदा प्रक्रिया ही उच्च न्यायालयात दाखल केलेल्या रिट याचिकेबाबत न्यायालयाच्या निर्णयाच्या अधीन राहिल, असे आदेश आहेत. त्यामुळे उच्च न्यायालयात प्रलंबित असलेली जनहित याचिका व रिट याचिका याबाबत उच्च न्यायालयास आवश्यक ती सर्व माहिती, कागदपत्रांसह सादर करण्यात आली असल्याचे, तसेच उच्च न्यायालयाच्या आदेशांचे उल्लंघन/अवमान होणार नाही, याबाबत राज्याचे महाधिवक्ता (अॅडव्होकेट जनरल), प्रधान सचिव, विधी व न्याय यांचेकडून तपासून व खात्री केल्यानंतरच सादर कामाकरिता उद्योजकास निविदा स्वीकृतीचे पत्र देण्याबाबतची पुढील कार्यवाही करण्यात यावी.
- (३) निविदा व प्रकल्पाच्या अनुषंगाने येणा-या निविदा स्वीकृती पत्र देण्यासह इतर सर्व बाबींची अंमलबजावणी करण्यास महाराष्ट्र राज्य रस्ते विकास महामंडळाला संपूर्ण अधिकार देण्यास मान्यता देण्यात येत आहे.
- (४) उद्योजकासोबत मल्टीपार्टी करार करण्यास महाराष्ट्र राज्य रस्ते विकास महामंडळास मान्यता देण्यात येत आहे.

सादर ज्ञापन वित्त विभागाच्या अनौपचारिक संदर्भ क्र.४८/व्यय-११/१०, दिनांक ३०.०८.२०१० अन्वये दिलेल्या सुचनेप्रमाणे व मंत्रीमंडळ पायाभूत सुविधा समितीने दिनांक ३१.०८.२०१० रोजी झालेल्या बैठकीत दिलेल्या मान्यतेप्रमाणे निर्गमित करण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नांवाने.


१५.९.२०१०

(सं. श्री. सोलंकी)

उप सचिव, महाराष्ट्र शासन

प्रत,

उपप्रमुख व व्यवस्थापकीय संचालक, महाराष्ट्र राज्य रस्ते विकास महामंडळ (मर्या.), मुंबई
सहव्यवस्थापकीय संचालक (१)/ (२), महाराष्ट्र राज्य रस्ते विकास महामंडळ (मर्या.), मुंबई
सचिव वित्तीय सल्लागार, महाराष्ट्र राज्य रस्ते विकास महामंडळ (मर्या.), मुंबई
मुख्य अभियंता, सार्वजनिक बांधकाम प्रादेशिक विभाग, मुंबई.
मुख्य अभियंता (वि.प्र.), सार्वजनिक बांधकाम विभाग, मुंबई.
मुख्य अभियंता, महाराष्ट्र राज्य रस्ते विकास महामंडळ (मर्या.), मुंबई
महालेखापाल-१ (लेखापरीक्षा / लेखा व अनुज्ञेयता) महाराष्ट्र राज्य, मुंबई.
महालेखापाल-२ (लेखापरीक्षा / लेखा व अनुज्ञेयता) महाराष्ट्र राज्य, नागपूर.
वित्त विभाग, व्यय-११, मंत्रालय, मुंबई.
अधीक्षक अभियंता, मुंबई बांधकाम संडळ, चेंबूर.
कार्यासन अधिकारी, लेखापरीक्षा, सार्वजनिक बांधकाम विभाग, मंत्रालय, मुंबई.
कार्यासन अधिकारी, (रस्ते-८), (निवडनस्ती), सा. बां. विभाग, मंत्रालय, मुंबई.

No.:MSRDC/01/JMD/MEP/2010/1725
Date: 24.09.2010



Maharashtra State
Road Development
Corpn. Ltd.
(A Govt. of Maharashtra Undertaking)

To,
MEP Ideal Toll Consortium,
2nd Floor, IRB Complex, Chandivali Farm,
Chandivali Village, Andheri (E)
Mumbai – 400 072

Sub: Notice inviting Bid No. NIL dated 20.06.2009 for appointment as Contractor for the work of Securitization of five Mumbai Entry Points along with maintenance of flyovers and allied structures given in the Bid Document.

- Ref:** 1) Your Bid dated 23.07.2009 submitted pursuant to the said Notice Inviting bids.
2) Your Letter No. MEPIDL/OUT/139 dated 10.02.2010
3) Your Letter No. MEPIDL/OUT/714 dated 31.08.2010
4) Minutes of meeting of Cabinet Committee on Infrastructure Dated 31.08.2010 issued vide Government letter no. pasusa/2010/F.No41/desk/1461 dated 14.09.2010.
5) PWD, Govt. of Maharashtra's letter No. Kha Kshe Sa – 2005/ Pra. Kra. 108/ LB 4/ Rašte-8 issued by Dy. Secretary, dtd. 15.09.2010.

Dear Sir,

We are in receipt of your Bid dated 23.07.2009 submitted pursuant to the said Notice Inviting bids, your Letter No. MEPIDL/OUT/139 dated 10.02.2010 and your Letter No. MEPIDL/OUT/714 dated 31.08.2010.

Govt. of Maharashtra vide their letter under reference (4 & 5) above has directed MSRDC to get upfront payment of Rs. 2100 Cr. in single installment instead of three installments as agreed by you vide your letter no MEPIDL/OUT/714 dated 31.8.2010.

You are requested to give your consent for the same in writing.

Thanking you,

Yours Sincerely,

VICE CHAIRMAN & MANAGING DIRECTOR

Nepean Sea Road, Priyadarshini Park, Mumbai - 400 036.

Tel.: 2368 6112, 2369 6109 / 3671 / 3673 / 5614 • Fax : 2368 4943 • E-mail : msrdc@bom3.vsnl.net.in



MEP-IDEAL TOLL CONSORTIUM

2nd Floor, IRB Complex, Chandivli Farm, Chandivli Village, Andheri (East),
Mumbai - 400 072. Tel. - 91 22 66404200. Fax - 91 22 66751022

IDEAL

September 24, 2010

To
Vice Chairman and Managing Director
Maharashtra State Road Development Corporation Limited
PWD Compound,
Nepean Sea Road,
Priyadarshini Park
Mumbai 400 036.

- Ref: 1. Your Office letter No.MSRDC/01/JMD/MEP/2010/3863 dated 31.08.2010
2. Our Office letter.No.MEPIDL/OUT/714 dated 31.08.2010
3. Your Office letter No.MSRDC/01/JMD/MEP/2010/1725 dated 24.09.2010

Sub: Notice inviting Bid dated 20.06.2009 for appointment as Contractor for the work of
Securitization of five Mumbai Entry Points along with maintenance of flyovers and
allied structures given in the Bid Document.

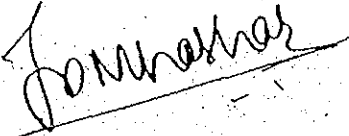
Respected Sir,

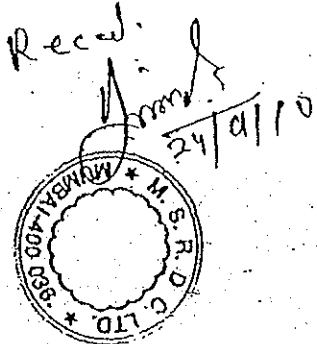
With reference to the above referred letters, we wish to inform you that we are ready to
pay upfront payment of Rs. 2100 Crores (Rupees Twenty One Hundred Crores Only) in
single installment as desired by you.

We hereby request you to issue us letter of acceptance.

Thanking You,

Yours Faithfully,
For MEP-IDEAL TOLL CONSORTIUM


Jayant D Mahiskar
Authorized Signatory



No.: MSRDC/01/JMD/MEP/2010/ 1726
Date: 24.09.2010



**Maharashtra State
Road Development
Corp. Ltd.**
(A Govt. of Maharashtra Undertaking)

To,

MEP Infrastructure Pvt. Ltd.,
(SPV of MEP – Ideal consortium)
Mumbai – 400 072

**Sub : - Securitization of toll at Five Mumbai Entry Points along with
maintenance of flyovers and allied structures.**

Ref : Termination Payment.

Dear Sir,

We hereby clarify and confirm that in case the Contract is terminated or repudiated for force majeure events or for no fault of the Contractor, the Termination payment to be made by MSRDC will cover the “Debt Due” to the Senior Lenders of the Project and the Contract Agreement will take care of this aspect.

Thanking You,

Yours Sincerely,


Vice Chairman & Managing Director

MSRDC Ltd., Mumbai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.1542 OF 2009

1. Reliance Infrastructure Limited,
a Company registered under the
Companies Act, 1956, having its
Registered Office at Reliance
Energy Centre, Santa Cruz (East),
Mumbai-400 055.
2. Reliance Infrastructure &
Consultants Limited, a Company
registered under the Companies Act,
1956, having its Registered Office
at 'H' Block, 1st Floor, Dhirubhai
Ambani Knowledge City (DAKC),
Navi Mumbai-400 710,
3. Shri Surendra R.Khot
of Mumbai, Indian Inhabitant,
having office at Reliance Centre,
Walchand Marg, Ballard Estate,
Mumbai.

Vs.



1. Maharashtra State Road Development
Corporation Limited, a Government
of Maharashtra Undertaking,
registered under the Companies' Act,
1956, having its Registered Office
at Near Priyadarshini Park, Napean
Sea Road, Mumbai-400 036, India.
2. The State of Maharashtra,
through the Principal Secretary,
Public Works Department,
Mantralaya, Mumbai-400 001.

3. MEP Toll Road Ltd.,
a Company registered under the Companies Act, 1956, having its registered office at 1RB Complex, Chandavilli Farm, Chandavilli Village, Andheri (East), Mumbai-400 072.
4. Ashoka Buildcon Ltd.,
a Company registered under the Companies' Act, 1956, having its registered office at Ashoka House, Ashoka Marg, Nasik-422 011.
5. IL & FS, a Company registered under the Companies' Act, 1956, having its registered office at IL & FS Financial Centre, Plot No.C-22, 'G' Block, Bandra-Kurla Complex, Bandra (East), Mumbai-400 050

..... Respondents.

Mr.J.J.Bhat, Senior Advocate with Mr.Janak Dwarkadas, Senior Advocate, Ms.Anjali Chandorkar, Mr.Naval Agarwal and Mr.D.J.Kakalia i/b. M/s.Mulla & Mulla & Co. for the Petitioners.

Mr.Rafique Dada, Senior Advocate with Mr.Prashant Chavan, Mr.J.Kapadia, Mr.F.Lakdawala and Mr.M.Bootwala i/b. Little & Co. for Respondent No.1.

Mr.D.A.Nalavade, Government Pleader for Respondent No.2.

Mr.Rohinton Nariman, Senior Advocate, Mr.Furdoon De'vitre, Senior Advocate, Mr.Aspi Chinoy, Senior Advocate, Mr.Rajev Kumar, Mr.Rudreshwar Singh, Mr.Deepak Y.Chitnis i/b. M/s.Chitnis-Chinparikar & Co. for Respondent No.3.

Mr.R.S.Apte, Senior Advocate i/b. Mr.Aniruddha A.Garge for Respondent No.4.

Ms.Savitha Kunder i/b. Negandhi, Shah & Himayatulla for

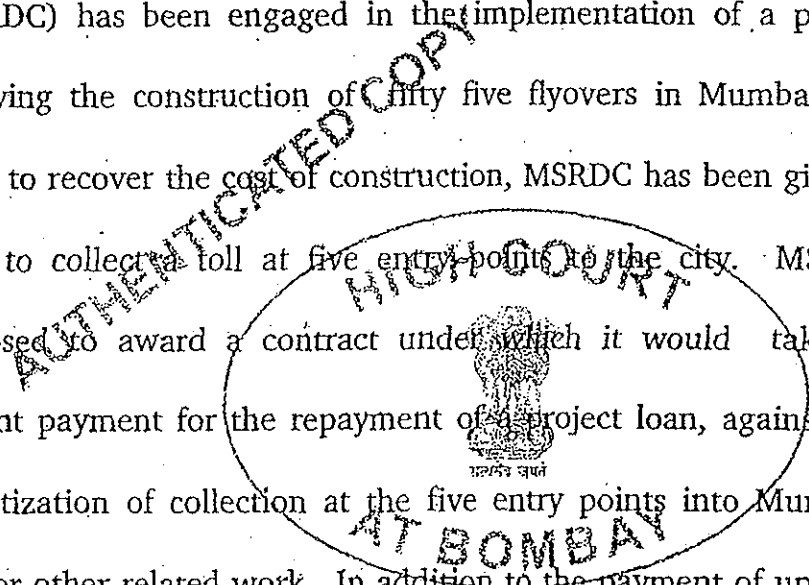
Respondent No.5.

.....
CORAM : SHRI MOHIT S.SHAH, C.J. AND
DR.D.Y.CHANDRACHUD, J.

October 28, 2010.

ORAL JUDGMENT (PER MOHIT S.SHAH, C.J.) :

1. The Maharashtra State Road Development Corporation (MSRDC) has been engaged in the implementation of a project involving the construction of fifty five flyovers in Mumbai. In order to recover the cost of construction, MSRDC has been given a right to collect a toll at five entry points to the city. MSRDC proposed to award a contract under which it would take an upfront payment for the repayment of a project loan, against the securitization of collection at the five entry points into Mumbai, and for other related work. In addition to the payment of upfront money to MSRDC, the proposal required (i) Operation and maintenance of flyovers and allied structures; and (ii) Collection of tolls at five entry points into Mumbai. In order to implement the project, MSRDC floated a tender inviting bids for the appointment of a contractor. The tender notice invited bids from Companies or



Consortia of not more than three members. An upfront payment of Rs.2,100/- crores was stipulated and there was a requirement of bid security in the amount of Rs.105 crores.

2. The eligibility criteria for bidders contained financial criteria and toll experience. The financial criteria stipulated that where the bidder was a consortium or a joint venture, the lead member must continue to hold at least a 26% equity stake at all times during the lock-in period and all members of the Consortium together must hold 51% of equity. The minimum annual turnover, including toll collection, in any one of the previous three years as per the audited balance sheet/profit and loss account for a period ending not earlier than 31 March 2008 was required to be Rs.125 crores for all the members of the consortium taken together. Of this, the Lead Member was required to have an average annual turnover towards toll collection of at least Rs.75 crores. The toll experience required was as follows:

- “ i) Individual Company/ at least one member of consortium shall have experience of operating minimum 20 automated – computerized toll lanes under one

contract for minimum 1 year. Certificate from competent authority not below the rank of Executive Engineer or equivalent shall only be accepted for this purpose.

-ii) The turnover and experience of octroi collection will not be considered for the above eligibility.”

3. Clause 5.5.1.1.2 of the bid document provided that where a bidder was a Consortium, each member shall furnish a Power of Attorney in favour of the lead member duly signed by an authorised representative of the members in accordance with a stipulated format. The bid was required to be signed by a duly authorised signatory of the lead member and was to be legally binding on all the members of the Consortium. Under clause 5.6, every bidder was required to submit or participate in only one bid in the bidding process either individually as a bidder or as a consortium partner in a joint venture. The draft contract appended to the bid stipulated that the first instalment of Rs.1350/- crores (out of a total payment of Rs.2100/- crores) was required to be paid within 90 days of the letter of allotment.

4. MSRDC had appointed an independent consultant for scrutinizing, evaluating and advising on the bid submitted by various bidders. Seven bidders including the Petitioners submitted their bids. The bids were required to be submitted in two covers, the first being the technical proposal and the second the financial proposal. Technical bids were opened on 23 July 2009. During the course of the scrutiny, clarifications were sought by the Consultants from bidders, including the Petitioner. A joint inspection was carried out of the Toll Plaza in Kolkata in respect of which the Petitioner had submitted a certificate of experience dated 31 August 2006 and a subsequent certificate dated 11 August 2009. The Consultant submitted a final report on 17 August 2009 of the technical scrutiny. The Board of Directors of MSRDC, at a meeting held on 17 August 2009, concluded that four bids, including that of the Petitioner were to be rejected as non-responsive.

5. The reasons for the rejection of the bid of the Petitioner were communicated by a letter dated 18 August 2009 addressed to the Lead Member of the Consortium, SMS Infrastructure Limited by

MSRDC. The grounds on which the bid submitted by the Petitioner was disqualified are as follows:

(i) The consortium of the Petitioners – SMSIL-Rel Infra-RICL had by a letter dated 17 August 2009 shown a turnover of Rs.34.45 crores from a Delhi based toll collection agreement for 2007-08. The work was executed by SMS Infrastructure Limited on behalf of Banas Sands TTC JV. The toll collection was on behalf of Banas Sands TTC JV with whom there was a Government toll collection contract. Banas Sands TTC JV is a member of another Consortium, Sadhav-Prakash, which was also one of the bidders for the present project. This breached the Anti-Collusion Certificate and was in violation of the eligibility criteria which specified that "Experience of any activity relating to a eligible project shall not be claimed by two or more members of the consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever";

(ii) One of the Consortium partners of the Sadhav-Prakash Consortium, is Banas Sands TTC JV, a partnership firm which

holds 33.34% of the capital of Valancia Construction Pvt.Ltd. ("Valancia"). Valancia has an 87.36% equity holding by Anil Sancheti and has been shown as an Associated Company in the annual report of SMS Infrastructure Ltd. Anil Sancheti is also a Director in SMS Infrastructure Ltd. The authorised signatory of Banas Sands TTC JV is an employee of SMS Infrastructure Ltd. Hence, the Consortium involving the Petitioner and the Sadhav-Prakash Consortium had a common interest in both the respective bids;

- (iii) The Consortium of the Petitioner claimed a toll collection experience of Rs.97.53 crores. The bidder had clarified on 17 August 2009 that the toll collection at Dethi was on behalf of the Banas Sands TTC JV. Hence, that could not be taken as valid experience of the Consortium of the Petitioner. If that turnover is excluded, the Consortium did not satisfy the eligibility criteria for toll collection turnover;

- (iv) The eligibility criteria of toll experience stipulates that at least one member of the Consortium must have experience of

operating a minimum of twenty automated computerized toll lanes under one contract for at least one year. In October 2008, SMS Infra while submitting a certificate, during the bidding process, for a six months' toll collection tender for five toll stations at the Entry Points to Mumbai had stated that the toll collection points at Vidyasagar Setu Kolkatta had eighteen toll lanes. Hence, the experience certificate submitted less than one year earlier showed that the number of lanes was less than twenty. As a result, the toll collection experience did not meet the stipulated criterion;

(v) The comfort letter of the State Bank of India had not been signed by a prescribed authority; and

(vi) The MoU between the members of the Consortium involving the Petitioner stated that SMS Infrastructure Ltd. would be a 34% equity partner in the Consortium as lead member of the Consortium. Reliance Infrastructure Ltd. (RIL) and Reliance Infrastructure Consultancy Ltd. (RICL) each held 33% equity, aggregating to 66%. Both these Companies are related Companies and RIL held 40.17% equity in RICL. Hence, the bid criteria that

the lead member should hold the maximum share would be defeated.

6. After receipt of the letter communicating that the bid submitted by the Petitioner's Consortium had been found to be non-responsive, the authorised signatory of the Consortium, by a letter dated 18 August 2009 applied to MSRDC for refund of the earnest money deposit of Rs.105 crores and the financial bid. The letter was signed by the authorised signatory of the Consortium. MSRDC returned the financial bid and refunded the earnest money deposit of Rs.105 crores to the authorised representative of the Consortium on 18 August 2009.

7. After the financial bids were opened, the Third Respondent was found to be the lowest bidder, having quoted a concession period of seventeen years and one month. By a letter dated 18 August 2009, the Superintending Engineer of MSRDC called the Third Respondent for negotiations in accordance with Clause 5.25 of Vol.I of the Bid Document. The Third Respondent by a letter dated 18 August 2009 reduced the concession period to

sixteen years, eleven months and twenty seven days.

8. In these proceedings under Article 226 of the Constitution, the Petitioner has inter alia, challenged the decision of MSRDC to reject its consortium bid and has sought a direction in the nature of Mandamus to the Corporation to award the contract for securitization of five entry points to Mumbai pursuant to the tender notice to the Petitioner or, in the alternative, to invite fresh bids.

9. The submissions which have been urged on behalf of the contesting parties can now be summarised.

ARGUMENTS OF THE COUNSEL FOR THE PETITIONERS:

-A) Mr.J.J.Bhat, learned counsel for the Petitioners has raised following contentions:-

(i) The Petitioners' technical bid has been held non-responsive on the basis of the grounds raised in the impugned communication but none of the grounds is germane to the matter;

(ii) The Petitioners' bid was for 11 years and 7 months which is a much shorter period than the offer of Respondent No.3 for 16 years 11 months and 27 days. Since the same amount has to be paid by the successful bidder i.e. Rs.2,100 crores, the length of period for which the successful bidder is to be permitted to collect the toll, should be the only determining criterion for deciding who should be awarded the contract;

(iii) By awarding the contract to Respondent No.3, MSRDC will suffer a loss of about Rs.10,000 crores as per the statement submitted before the Court at the hearing.

(iv) The CAG has made scathing remarks in respect of various contracts awarded by the Respondent-Corporation to Respondent No.3;

(v) In the past, this Court had also an occasion to examine the legality and bona fides of the decision of MSRDC in favour of Respondent No.3;

ARGUMENTS OF THE COUNSEL FOR RESPONDENT NOS.1 & 3:

(i) On the other hand, the learned Counsel Mr.Rafique Dada and Mr.Nariman appearing for the MSRDC and Respondent No.3 respectively opposed the petition and submitted that the Petitioner has been disqualified from the tender process and has no right to challenge the decision of MSRDC in awarding the contract to Respondent No.3;

(ii) The Petitioner has been held to be ineligible on five counts and this Court would not sit in appeal over the decision taken by the Respondent authorities. Judicial review under Article 226 of the Constitution of India does not contemplate a review of the decision itself but only a review of the decision making process. Since the tender notice was issued in daily newspapers; seven bidders had submitted their bids; after a detailed scrutiny only three bids were held to be qualified and the Petitioner was one of the four non-responsive bidders, no further judicial scrutiny is called for;

(iii) The petition has been filed by only two members of the consortium but the lead member, SMS Infrastructure Ltd. with a 34% share in the equity has not come forward to file the petition. After initial letters dated 12 August 2009 and 18 August 2009 the authorized signatory and constituted attorney for the consortium has not signed any document and, therefore, the other two members of the consortium have no locus standi to file the present petition;

(iv) Even otherwise, the present two Petitioners hold 66% share in the equity stake of the consortium (33% + 33%). Since Petitioner No.2 is holding 40% share in Petitioner No.1 company, they are inter-related and their total holding exceeds the holding of the lead member of the consortium;

(v) The calculations given by the Petitioners at the hearing today are given for the first time but there is no basis for such calculations;

(vi) The Petitioner having asked for a refund of the financial bid and the refund of the earnest money of Rs.105 crores, waived all its rights and, therefore, the Petition is not maintainable.

(vii) On account of various projects undertaken by the Corporation, the Corporation is in dire need of funds to the tune of Rs.2,100 crores to pay off its debts immediately. On this account, as per tender conditions, Rs.1,340 crores is required to be paid by the successful bidder within 90 days from the date of acceptance letter to be issued by the Respondent Corporation and the remaining amount in the 2nd to 5th years, but Respondent No.3 has, by a letter dated 31 August 2010, agreed to pay a substantial sum of Rs.1,710 crores within 90 days from the date of acceptance letter of the Respondent Corporation and the remaining amount in the 2nd to 5th Years. It is, therefore, submitted that the project should start as early as possible and any further litigation will only result into uncertainty and unbearable financial burden on the Respondent-Corporation;

-(viii) Without prejudice to the rights and contentions in this

petition, Mr.Nariman, the learned senior counsel appearing for Respondent No.3 has stated that Respondent No.3 is ready to pay the entire contract amount of Rs.2,100 crores up-front within 90 days from the date of the letter of acceptance by the Respondent-Corporation and Respondent No.3 is also agreeable to have the concession period reduced from 16 years 22 months and 27 days to 16 years.

10. The submissions can now be considered.

11. The eligibility criteria specified in clause 5.5.2.1 of the bid document stipulated a requirement of a minimum annual turnover in any one of the last three years as per the audited balance sheet/profit and loss account for a period starting not earlier than 31 March 2008. In the case of a consortium, the turnover had to be at least Rs.1250 million (Rs.125 crores) for all members taken together out of which, the lead member of the consortium was required to have an average annual turnover towards toll collection of at least Rs.750 million (Rs.75 crores).

On 13 August 2009, the Petitioners submitted a break up,

projectwise of the receipt of toll collection of the lead member, SMS Infrastructure Ltd. For financial year 2007-08 the lead member of the consortium claimed a turnover of Rs.97.53 crores in order to meet the requirement of a turnover of at least Rs.75 crores in one financial year. Of this, the lead member claimed a turnover of Rs.34.45 crores against a toll collection contract at New Delhi. However, it was found that for 2007-08, the work was executed by the lead member of the consortium on behalf of Banas Sands JV. This was clarified by the Petitioners in a letter dated 17 August 2009. In holding that the bid of the Petitioner was not responsive, MSRDC has found that the lead member of the consortium did not satisfy the eligibility criteria of a minimum toll turnover of Rs.75 crores in one financial year, upon the exclusion of an amount of Rs.34.45 crores for the Delhi toll contract where the project was executed on behalf of Banas Sands JV. Banas Sands JV is independently a consortium member of the Sadhav Prakash Consortium, which was one of the bidders for the contract in this case. This conclusion which has been arrived at by MSRDC cannot be regarded as perverse. The determination is consistent with the eligibility criteria. The rejection of the bid as non

responsive on this ground does not suffer from any illegality.

12. Clause 5.5.2.2 of the bid document stipulated as a condition of eligibility that at least one member of the consortium shall have experience of operating a minimum of twenty automated computerized toll lanes under one contract for at least one year. SMS Infrastructure Ltd., the lead member of the Petitioners' consortium, had participated earlier in what is described as a 'short tender' of twenty six weeks in 2008 floated by MSRDC. In connection with that tender, the lead member had produced a certificate from the Hooghly River Bridge Commissioner in respect of Vidyasagar Setu Toll Plaza which showed that there were eighteen lanes involved in the work under the contract. The Learned Counsel appearing on behalf of MSRDC has drawn the attention of the Court to the pre-qualification notice issued by the Hooghly River Bridge Commissioner which was to the effect that toll bars will have to be installed at eighteen toll gates of the toll plaza. Out of the eighteen lanes, one 'up' and one 'down' lane had been converted into four lanes dedicated for two wheeler traffic for safety and smooth movement. The position was verified

VBC

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by the consultants appointed by MSRDC in a second Report dated 18 August 2009, as stated in the affidavit in reply. A site visit was jointly conducted together with the representative of the Petitioners on 13 August 2009. MSRDC has stated in its affidavit in reply that in a certificate of October 2008 submitted by the lead member of the consortium for the earlier tender of twenty six weeks, it had claimed an experience of operating an eighteen lane facility for the Vidyasagar Setu. Later, in a subsequent certificate dated 11 August 2009, the experience claimed was of twenty lanes. In any event, from October 2008 until August 2009 when the fresh certificate of experience was produced, the experience of twenty lanes was for the period of less than one year. The material upon which reliance has been placed by MSRDC before the Court supports the finding of ineligibility of the Petitioners' consortium. This finding essentially turns upon an evaluation of facts by MSRDC. The conclusion which was drawn by MSRDC cannot be regarded as perverse or contrary to the weight of the evidence on record. In the exercise of the jurisdiction under Article 226 of the Constitution, this Court would not be justified in reappreciating a determination of fact based upon which an inference of ineligibility

has been drawn.

13. Finally, the attention of the Court has been drawn to the fact that on 18 August 2009, the consortium of the Petitioners was intimated of its tender being held to be non-responsive. Thereupon, Mr.D.V. Deshkar, who was the authorized representative of the consortium applied by his letter dated 18 August 2009 for refund of the earnest money deposit of Rs.105 crores and Envelope 2 containing a financial bid. By the letter, MSRDC was requested to issue a demand draft or cheque towards refund of the EMD, in favour of the First Petitioner. Accordingly, EMD of Rs.105 crores was returned to an authorized representative on 18 August 2009 together with the financial bid. Once the financial bid was returned on the request of the authorized representative together with the earnest money deposit, no valid bid remained in the field. This petition has been instituted by two members of the consortium. SMS Infrastructure Ltd., the lead member has not joined in the Petition.

14. It was urged on behalf of the Petitioners that the

Consultants had underestimated the revenue realization. The Consultants, while computing the estimated concession period adopted an IRR of 11.50% and a 5% traffic growth rate. On this basis, the concession period was worked out as fifteen years. We do not propose to examine the contentions assailing the working out of the period by the Consultants, which was done on the basis of upfront payment of only Rs.1350 crores to be made within ninety days of acceptance and the rest to be paid over a period of 2-3 years. Now that Respondent No.3 has agreed to pay the entire amount of Rs.2100 crores within ninety days, the contention pales into insignificance. In any event due consideration would now be given to the circumstance that the Third Respondent has agreed to make a payment of the entire amount of Rs.2100 crores upfront, while reducing the concession period to sixteen years.

15. For these reasons, we are of the view that MSRDC was justified in coming to the conclusion that the bid submitted by the Petitioners was not responsive on the ground that it did not meet the eligibility criteria. That apart, upon the communication of ineligibility by MSRDC, the earnest money deposit was withdrawn

and the financial bid was returned. The plea which was urged before the Court at the hearing was that if the financial bid of the Petitioners were to be opened, it would be found to be more favourable, in terms of the period of concession, than the bid which has been accepted. The submission is lacking in substance. Such an argument would have been open to a bidder who is found to be eligible and who had a grievance about the award of the contract. A bidder who does not meet the eligibility criteria, cannot complain of the award of the contract on the ground that its financial bid offers better terms. The question of comparing financial bids arises as between bidders who are eligible. The bid submitted by the Petitioners was non-responsive since the Petitioners did not fulfill the conditions of eligibility. There is hence no merit in the submission.

16. While we find that there is no substance in the petition, for the reasons noted earlier, Learned Senior Counsel appearing on behalf of the Third Respondent stated that the Third Respondent is ready and willing to pay the entire contract amount of Rs.2100 crores upfront within ninety days from the date of the letter of

acceptance of MSRDC and the Third Respondent has reduced the concession period from 16 years 11 months 27 days to 16 years.

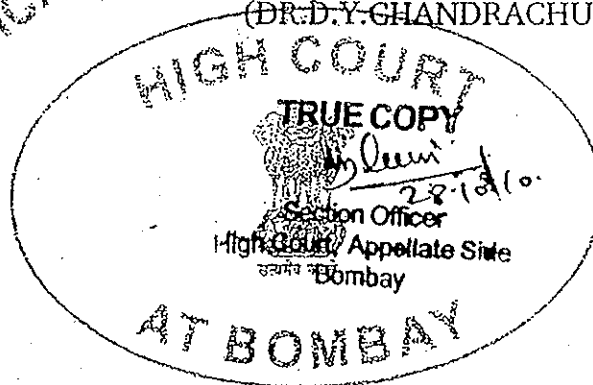
We record that statement.

17. For the reasons aforesaid, we do not find any merit in the Petition. The Petition is accordingly dismissed.

CHIEF JUSTICE

(DR. D. Y. GHANDRACHUD, J.)

AUTHENTICATED COPY



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1542 OF 2009

Reliance Infrastructure Limited and others. ... Petitioners
Versus
Maharashtra State Road Development Corporation
Limited and others. ... Respondents

Mr. J.J. Bhat, Senior Advocate with Mr. Janak Dwarkadas, Senior Advocate, Ms. Anjali Chandorkar, Mr. Naval Agarwal and Mr. D.J. Kakalia i/by M/s. Mulla & Mulla & CBC for the petitioners.

Mr. Rafique Dada, Senior Advocate with Mr. Prashant Chavan, Mr. J. Kapadia, Mr. F. Lakdawala and Mr. M. Bootwala i/by M/s. Little & Co. for respondent No.1.

Mr. D.A. Nalawade, Government Pleader for respondent No.2.

Mr. Rohinton Nariman, Senior Advocate, Mr. Furdoon De'vitre, Senior Advocate, Mr. Aspi Chinoy, Senior Advocate, Mr. Rajeev Kumar, Mr. Rudreshwar Singh, Mr. Deepak Y. Chitnis i/by M/s. Chitnis-Chinpar4ikar & Co. for respondent No.3.

Mr. R.S. Apte, Senior Advocate i/by Mr. Aniruddha A. Garge for respondent No.4.

Ms. Savitha Kunder i/by M/s. Negandhi, Shah & Himayatulla for respondent No.5.

CORAM : MOHIT S. SHAH, C.J. &
DR. D.Y. CHANDRACHUD, J.
Thursday, October 28, 2010

P.C.

After the judgment is pronounced, the learned counsel for the petitioner prays that status-quo as of today may be continued for a period of

"Disclaimer Clause : Authenticated copy is not a Certified Copy"

LETTER OF ACCEPTANCE

No.: MSRDC/ 02/ JMD/MEP/2010/ 1907

Date: 28/10/2010

To,
MEP Ideal Toll Consortium,
2nd Floor, IRB Complex, Chandivali Farm,
Chandivali Village, Andheri (E)
Mumbai - 400 072

Sub: Notice inviting Bid No. NIL dated 20.06.2009 for appointment as Contractor for the work of Securitization of five Mumbai Entry Points along with maintenance of flyovers and allied structures given in the Bid Document.

- Ref: 1) Your Bid dated 23.07.2009 submitted pursuant to the said Notice Inviting bids.
- 2) Your Letter No. MEPIDL/OUT/139 dated 10.02.2010
 - 3) Your Letter No. MEPIDL/OUT/714 dated 31.08.2010
 - 4) Minutes of meeting of Cabinet Committee on Infrastructure dated 31.08.2010 issued vide Government letter No. pasusa/2010/F.No. 41/desk/1461 dated 14.09.2010
 - 5) PWD, Govt. of Maharashtra's memorandum No. Kha Kshe Sa - 2005/Pra. Kra. 108/LB 4/Raste-8 issued by Dy. Secretary, dated 15.09.2010
 - 6) MSRDC's letter No. MSRDC/01/JMD/MEP/2010/1725 dated 24.09.2010.
 - 7) Your office letter No. Nil dated 24.09.2010
 - 8) MSRDC's letter No. MSRDC/01/JMD/MEP/2010/1726 dated 24.09.2010.
 - 9) Hon'ble High Court Bombay's orders dated 28th October, 2010

Dear Sir,

This is to inform you that your above mentioned bid for appointment as Contractor for the work of Securitization of five Mumbai Entry Points along with maintenance of flyovers and allied structures including Collection of Toll at five entry toll stations of Mumbai namely Dahisar toll station on Western Express Highway corridor, Mulund toll station on Eastern Express Highway corridor, Mulund toll station on Lal Bhadur Shastri Marg corridor, Vashi on Sion-Panvel Highway corridor and Airoli toll station

Maharashtra State Road Development Corporation Limited
(A Government Of Maharashtra Undertaking)

Priyadarshini Park, Nepean Sea Road, Mumbai - 400 036, India.
Tef.: (D) 2368 5909, (O) 2369 5109 • Fax : 2369 1031 • E-mail: vcmd@msrdc.org

on Airoli Bridge corridor including Operation and Maintenance of Flyovers and Allied Structures given in the Bid Document for a period of 16 years (Sixteen Years) from the date of authorization by the competent officer has been accepted by the Corporation on the terms and conditions of contract and forming part of the bid document submitted by you, which is your bid accepted by the Corporation.

As you are aware, as per the terms and conditions of contract, Clause 10, Page 45, Volume III, you have to pay the Corporation Performance security as detailed below :

- (i) You have to pay within thirty days of the letter of acceptance, as OM and M performance security amounting to Rs. 25 Cr. and also Rs. 1.25 Cr per corridor totaling to Rs. 6.25 Cr. as per Table 10.1 Sr. No. 2 of Vol. III of the Bid Document (with increase of 15% to be given in advance for every 3 years till end of concession period).
- (ii) You are also requested to pay Rs. 7 Cr. as a security for performance of maintenance activity in the form of Pay Order / Demand Draft only, within 30 days from this Letter of Acceptance (during the year till and end of concession period with annual increase of 7%).

The performance security at Sr No (i) shall be either in the form of a demand draft drawn in favour of Maharashtra State Road Development Corporation Ltd., payable at Mumbai, which shall carry no interest or in the form of a bank guarantee issued by a nationalized bank or state bank of India or bank promoted by all India financial institution including HDFC, issued from any branch in Mumbai or encashable at Mumbai.

You have to pay total Rs. 2100.00 Cr. (Rs. Two Thousand One Hundred crores only) as an upfront amount as agreed by you vide your letter No. Nil dated 24.09.2010 after 21 days but within 90 days of date of Orders pronounced by Hon'ble High Court, Mumbai on 28th October, 2010.

Maharashtra State Road Development Corporation Limited
(A Government Of Maharashtra Undertaking)

Priyadarshini Park, Nepean Sea Road, Mumbai - 400 036, India.
Tel.: (D) 2368 5909, (O) 2369 6109 • Fax : 2369 1031 • E-mail: vcnd@msrdc.org

BIPIN SHRIMALI IAS
Vice Chairman & Managing Director



You also have to sign the Agreement as stipulated in the Bid Document.

Please note that as per the said terms and conditions of contract, if you fail or neglect to furnish to the MSRDC, within 30 days of issue of this letter of acceptance, a performance security or fail to pay upfront payment as mentioned above after 21 days and within 90 days from date of this letter (as per orders of Mumbai High Court on 28th October, 2010), this bid for your appointment as Contractor shall stand terminated and there upon, without prejudice to any other rights and remedies of the Corporation, the amount of bid security paid by you shall stand forfeited to the Corporation.

Thanking you,

Yours faithfully,

A handwritten signature in black ink is written over the typed name. To the right of the signature, the date "28/10" is written in black ink.

VICE CHAIRMAN & MANAGING DIRECTOR
MSRDC LTD., MUMBAI

Maharashtra State Road Development Corporation Limited
(A Government Of Maharashtra Undertaking)

Priyadarshini Park, Nepean Sea Road, Mumbai - 400 036, India.
Tel.: (D) 2368 5909, (O) 2369 6109 • Fax: 2369 1031 • E-mail: vcmd@msrdc.org



Maharashtra State
Road Development
Corpn. Ltd.
(A Govt. of Maharashtra Undertaking)

No. MSRDC/02/JMD(I)/5 MEP/1908
Date 28/10/2010

To,
M/s. MEP Ideal Toll Consortium
2nd Floor, IRB Complex, Chandivli Farm,
Chandilvi Village, Andheri(E),
Mumbai - 400 072

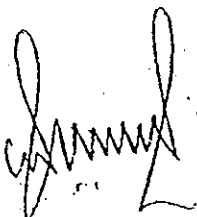
Subject: Securitization of toll at five Mumbai Entry Points along with
maintenance of
Flyovers and allied structures
Approval to the SPV

Reference : 1) Your office letter No.MEPIDL/OUT/782 dated 23.09.2010
2) Your office letter no. MEPIDL/OUT/823 dated 30.09.2010.

Vide above references you have requested to approve the SPV formed by you,
namely M/s MEP Infrastructure Private Limited having its registered office at
2nd Floor, IRB Complex, Chandivali Farm, Chandivali Village, Andheri (East)
Mumbai 400 072, to execute the work of Securitisation of toll at five Mumbai
Entry Points along with maintenance of Flyovers and allied structures till the
successful completion of the Contract period.

The Same is approved by MSRDC.

This is for favour of information please.


S B Nage
Chief Engineer

Copy to SE (Ohol) MSRDC for information



MEP-IDEAL TOLL CONSORTIUM

410, boomerang, Chandivli Farm Road, Near Chandivli Studio, Andheri (East)
Mumbai - 400 072. Tel - 91 22 61204800. Fax - 91 22 61204804



MEPIDL/OUT/INTRA/1015

28th October, 2010

To,
The Vice Chairman & Managing Director
Maharashtra State Road Development
Corporation Ltd, Priyadarshini Park,
Nepean Sea Road, Mumbai- 400 036.

Subject: Securitization of Five Mumbai Entry Points along with maintenance of flyovers and allied Structures.

- Ref : 1. Our office letter No.MEPIDL/OUT/782 dated 23.09.2010
2. Your Letter of Acceptance No.MSRDC/02/JMD/MEP/2010/ 1907 dated 28.10.2010
3. Your Office Letter No.MSRDC/02/JMD(I)/5MEP/1908 dated 28.10.2010

Dear Sir,

With reference to the above subject, please find attached herewith Intra Group Agreement between M/s. MEP-Ideal Toll Consortium and our SPV M/s. MEP Infrastructure Pvt. Ltd prepared as per the terms of the bid in original for your approval and further necessary action please.

Thanking you and assuring our best co-operations at all the times.

Yours faithfully
For MEP IDEAL TOLL CONSORTIUM

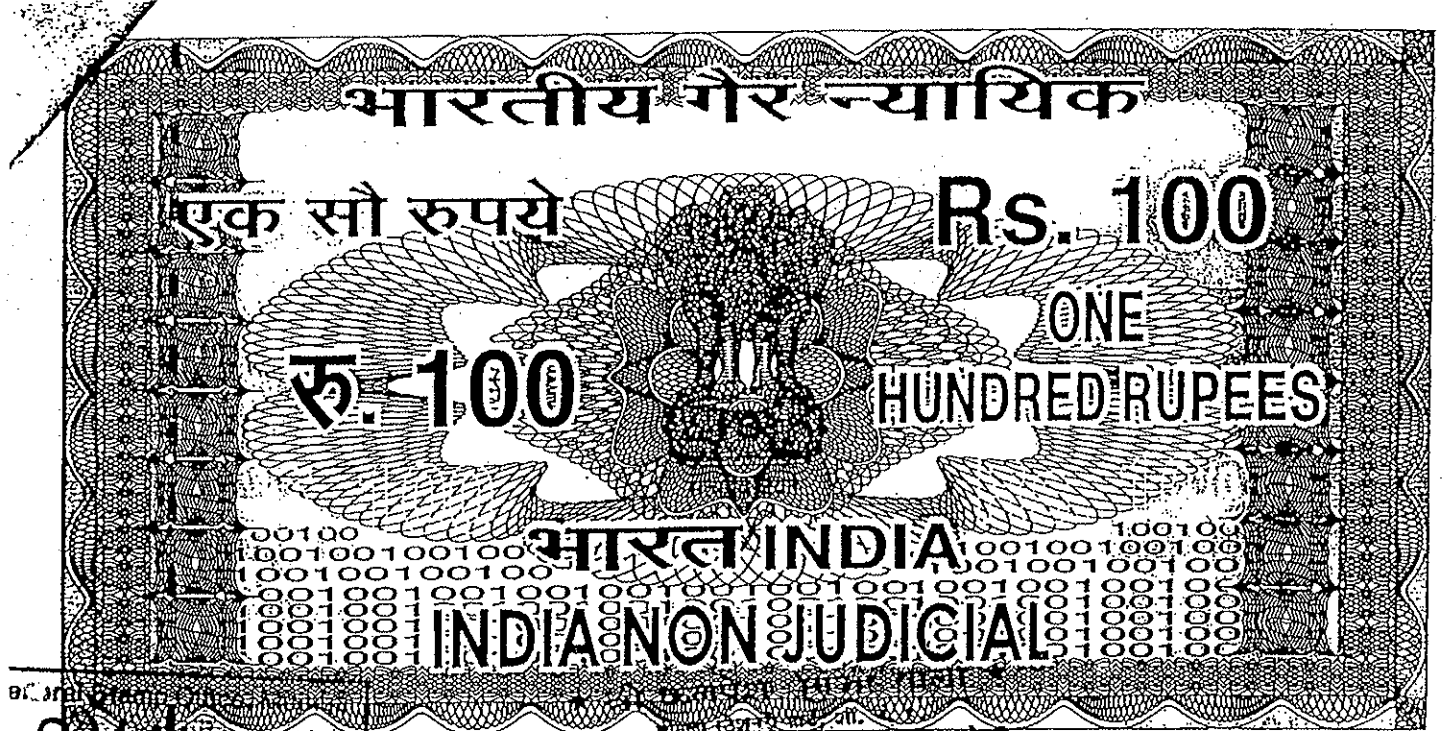
Jayant D.Mhaiskar
Authorised Signatory



*Received original
letters & copies
29/10/10*

- Cc to: 1] The Joint Managing Director (I), MSRDC Ltd, Mumbai.
2] The Secretary & Financial Advisor, MSRDC Ltd, Mumbai.
3] The Chief Engineer, MSRDC Ltd, Mumbai.

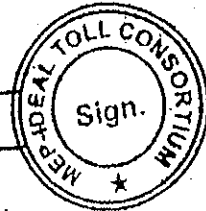
D.A: Intra Group Agreement in original



S.V. No. 207
 महाराष्ट्र MAHARASHTRA
 - 6 SEP 2010
 Oper Office

एच. एच. जी. रोड, एलफान्दे मॅन्शन, फुल्ले, मुंबई-२०.
 परवानाधारक मुद्रांक विक्रेता
 परवाना क्रमांक नं. २०७
 2017 दिनांक
 M/s./Mrs./Mr.
 नॅम न्यायोलर मुद्रांक देणार विक्रेता

DK 280241



HRI K. R. MADGE

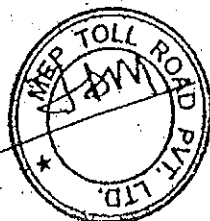
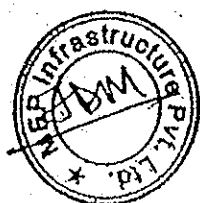
परवानाधारक मुद्रांक विक्रेता

INTRA GROUP AGREEMENT

THIS AGREEMENT, made and entered into as of this 28th day of October 2010 at Mumbai, by and between:

MEP INFRASTRUCTURE PRIVATE LIMITED, a company incorporated under the Companies Act 1956 (Act 1 of 1956) having its registered office at 410, boomerang, Chandivali Farm Road, Near Chandivali Studio, Andheri (East), Mumbai 400 072 (hereinafter referred to as "the Special Purpose Vehicle or SPV" or 'The contractor' which expression shall unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and assigns); on FIRST PART

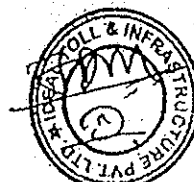
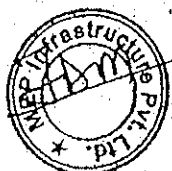
And



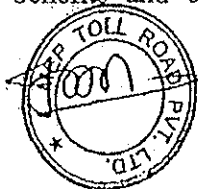
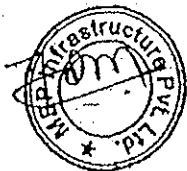
MEP - IDEAL TOLL CONSORTIUM, (hereinafter referred to as the "Successful Bidder" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted substitutes) a CONSORTIUM formed by M/s MEP TOLL ROAD PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 (Act 1 of 1956) having its registered office at 410, boomerang, Chandivali Farm Road, Near Chandivali Studio, Andheri (East), Mumbai 400 072 (hereinafter referred to as "MEPTRPL", which expression shall unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and assigns); and IDEAL TOLL & INFRASTRUCTURE PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 (Act 1 of 1956) having its registered office at 408-409, boomerang, Chandivali Farm Road, Near Chandivali Studio, Andheri (East), Mumbai 400 072 (hereinafter referred to as "IT IPL", which expression shall unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and assigns);
ON SECOND PART

WHEREAS:

- A) The Government of Maharashtra (hereinafter referred to as "GOM") has appointment Maharashtra State Road Development Corporation (hereinafter referred to as "MSRDC") as an Entrepreneur for the construction of Flyovers and allied structures in Mumbai (hereinafter referred to as "Mumbai Flyovers") for toll and other rights for a period upto 30.09.2027.
- B) MSRDC has completed the construction of Flyovers and same are in operation.
- C) Under the provisions of Section 20 of the Bombay Motor Vehicles Tax Act, 1958 (Bombay Act LXV of 1958) (hereinafter referred to as the "the said Maharashtra Act"), the GOM is empowered to levy and collect toll on Motor Vehicles and trailers drawn by such vehicles:



- D) Under provisions of the said Maharashtra Act, the GOM has approved the toll rates to be levied on the specified vehicle passing through the Five Mumbai Entry Points namely 1) Vashi on Sion Panvel Highway, 2) Dahisar on Western Express Highway, 3) Airoli bridge, 4) Mulund on Eastern Express Highway and 5) Mulund on Lal Bahadur Shastri Marg and authorized MSRDC to collect and apply the proceeds accruing from toll collection for a period up to 30.09.2027 as considered expedient:
- E) With a view to select and appoint suitable contractor for "Securitization of Five Mumbai Entry Points along with maintenance of flyovers and allied structures and collection of toll, the MSRDC invited bid by giving wide publicity by way of advertisement in news papers.
- F) Pursuant to the bidding process, bidding documents were issued to the prospective bidders containing Vol. I (Instructions to bidders), Vol.II (Scope of work, Technical Specifications & Drawings), Vol.III (Conditions of contract), vol. IV (The financial Bid) and common set of deviations(Hereinafter referred to as the Bid Documents.)
- G) Pursuant to the bidding process, the bid submitted by MEP-Ideal Toll Consortium was found responsive and had offered lowest Concession period amongst all the bidders.
- H) MSRDC has accepted the bid of MEP-Ideal Toll Consortium vide letter of acceptance No. MSRDC/02/JMD/MEP/2010/1907 dated 28.10.2010.
- I) At the request of MEP-Ideal Toll Consortium, MSRDC has agreed to allow the successful bidder MEP-Ideal Toll Consortium to form Special Purpose Vehicle namely "MEP Infrastructure Private Limited" (herein after referred to as SPV) to carryout all the obligations of the MEP-Ideal Toll Consortium, and to enjoy all the rights and benefits of MEP-Ideal Toll Consortium under the Contract formed between MSRDC and MEP-Ideal Toll Consortium for Completion of the work.
- J) Pursuant to execution of the agreement and with the concurrence of MSRDC all the rights, benefits and obligations of MEP-Ideal Toll

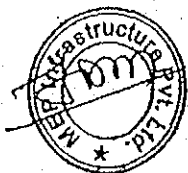


Consortium as the successful bidder shall be carried out and accrued by the SPV for the said project.

The parties hereto desire to set out in detail their inter-se rights and obligations in the implementation of the contract as stated hereunder.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT:

1. In consideration of the premises hereinabove and the covenants and undertakings of the parties as are contained herein, the MEP-Ideal Toll Consortium hereby agrees and irrevocably authorizes the SPV to execute the work under "Securitization of Five Mumbai Entry Points along with maintenance of flyovers and allied structures and collect the toll/ fee at the five entry points of Mumbai at the rates specified in the terms and conditions of the contract and retain the same with absolute rights of disposition /appropriation subject to the condition that the SPV shall pay to MSRDC the lump sum upfront payment as stipulated in the terms and conditions of the contract and subject to the further condition that the SPV shall strictly observe and perform and discharge various obligations under the contract for the period of 16 years (Sixteen Years) from the date specified in the Commencement Order to be issued by MSRDC.
2. SPV hereby accepts the authority given by the MEP-Ideal Toll Consortium as contained hereinabove, and the SPV agrees to pay the lump-sum upfront payment to the MSRDC under the terms and conditions of the contract within the time stipulated by the MSRDC or any extension thereof.
3. SPV, in consideration of the premises herein above, further agrees and undertakes to execute and complete the project in all respects strictly in accordance with the terms and conditions of the contracts.
4. SPV hereby agrees to carry out the Project and shall take Project assets as defined in the Contract and shall have the right of collection of toll at five Mumbai Entry Points, and on the completion of the Contract Period shall



surrender the physical possession of the Project to MSRDC including all toll stations, tolling equipments and all other equipments, tools, Plants, machinery, fixtures forming the part of work etc. in good order and condition except normal wear and tear expected.

5. SPV hereby agrees to indemnify and keep indemnified and hold harmless the MEP-Ideal Toll Consortium of and from any cost, damages, charges and other expenses if may be put to on account of any breach of the terms and conditions of the project agreement, the bid document, or any commission and omissions on the part of the SPV or its officers employees, agents and servants engaged by it for implementing the project or on account of any action, claim and proceedings instituted by MSRDC and / or the third parties against the MEP-Ideal Toll Consortium in connection with the project or incidental thereto,
6. The SPV hereby undertakes to furnish to the MEP-Ideal Toll Consortium such information documents, records and covenants as it may require relating to the implementation of the project and the toll collection work at the toll/fee collection centers.
7. All officers, employees, workmen and agents engaged by the SPV for implementing the project shall be their officers, employees, workmen and agents of the SPV only and MEP-Ideal Toll Consortium shall not in any manner be responsible or liable to pay for their services or reimburse to SPV the wages, commission, fees etc. payable by it to them. SPV shall alone the responsible and the liable to observe and meet all obligations of an employer in respect of such officers, employees and workmen or agents under various labour laws applicable.
8. SPV has informed the MEP-Ideal Toll Consortium that it is arranging for a Term Loan from the Banks, Consortium of Banks and /or Financial institutes to meet the obligation of completing the work including paying the lump sum upfront payment to the MSRDC and requested the MEP-Ideal Toll Consortium to extend requisite corporate and other individual guarantees as



may be required by the said banks & institutes to which the MEP-Ideal Toll Consortium has agreed and assured to extend all support as may be required in that behalf including contribution to the additional share capital of SPV and furnishing of any financial assistance to meet any shortfall in the Tolls/Fee Collected so as to enable the SPV to repay the Term Loan or any installment or installments thereof.

9. MEP-Ideal Toll Consortium hereby agrees and undertakes to execute further documents, agreements, writings and furnish other securities as may be required by the lenders to the Project and register the same, wherever necessary, to more effectively assure and secure the repayment of the loans agreed to be granted by the lenders to the Project.

10. Without prejudice to the foregoing conditions and covenants it is hereby agreed and declared that the SPV shall duly and faithfully perform all and singular duties, liabilities and obligations devolving upon MEP-Ideal Toll Consortium arising for performance by MEP-Ideal Toll Consortium by the acceptance of the bid submitted by MEP-Ideal Toll Consortium to MSRDC.

11. This Agreement shall be executed in duplicate and each party shall retain one Counter Part. Each counter part shall be as effective as the Original.

IN WITNESS WHEREOF the parties hereto have set and subscribed their respective hands and seals on the day and year first hereinabove written.

The Common Seal of MEP Toll Road Private Limited "as Lead Member of the Consortium" has been affixed hereunto pursuant to the Resolution passed at the meeting of its Board of Directors held on 28th day of October 2010 in the presence of Mr. Jayant D. Mhaiskar, Managing Director, who has signed these presents in token of their presence at the time of affixing the Common seal

For MEP TOLL ROAD PVT. LTD.
J. Mhaiskar
MANAGING DIRECTOR



Witnesses:

1. Arditya Lankar
2. Mandar Karandikar

Mandar
M.V. Karandikar

The Common Seal of IDEAL Toll & Infrastructure Private Limited "as Member of the Consortium" has been affixed hereunto pursuant to the Resolution passed at the meeting of its Board of Directors held on 28th day of October, 2010 in the presence of two Directors, viz., Mr. Dattatray P. Mhaiskar and Mr. Jayant D. Mhaiskar who has signed these presents in token of their presence at the time of affixing the Common seal

For Ideal Toll & Infrastructure Pvt. Ltd.

Dattatray P. Mhaiskar

Director

For Ideal Toll & Infrastructure Pvt. Ltd.

Joyant D. Mhaiskar

Director

Witnesses:

1. Sameer A. Apte
2. Pravin V. Mukhal.

Sameer A. Apte
Pravin V. Mukhal.

The Common Seal of MEP Infrastructure Private Limited has been affixed hereunto pursuant to Resolution passed at the meeting of its Board of Directors held on 28th day of October, 2010 in the presence of Mr. Jayant D. Mhaiskar, Director who has signed these presents in token of their presence at the time of affixing the Common seal

For MEP Infrastructure Pvt. Ltd.

Joyant D. Mhaiskar

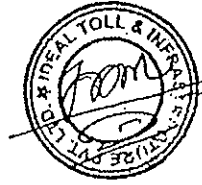
Director



Witnesses:

1. Shridhas Phadke *Shridhas*

2. Langaswar P. P. *Langaswar*



**MEP INFRASTRUCTURE
PRIVATE LIMITED**

410, Boomerang, Chandivali Farm Road, Near Chandivali Studio, Andheri (East) Mumbai-400072.

MEP-INFRA/OUT/55

To,
The Vice Chairman & Managing Director
Maharashtra State Road Development
Corporation Ltd, Priyadarshini Park,
Nepean Sea Road, Mumbai- 400 036.

M. S. R. D. C.	
(BWSLP) SITE OFFICE	
BANDEA	
INW. ID NO	_____
DATE	_____
TIME	_____
REMA. NEX	_____

October 29, 2010

Subject: Securitization of Five Mumbai Entry Points along with maintenance of flyovers and allied Structures.

Ref: 1) Your Letter of Acceptance No.MSRDC/02/JMD/MEP/2010/1907 dated 28.10.2010
2) Your Office Letter No.MSRDC/02/JMD(I)/ 5 MEP/1908 dated 28.10.2010

Dear Sir,

With reference to the above subject, we are very much thankful to you for issuing us Letter of Acceptance. As per the terms & conditions of the contract, we are submitting herewith the payments as mentioned below;

1. O M and M Performance Security amounting to Rs.25,00,000,00/- (Rupees Twenty Five Crores Only) in the form of BG No 235-10 dated 29.10.2010 issued by Canara Bank, Prime Corporate Branch-1, Mumbai valid for the period of 18 years i.e. up to 28.10.2028.
2. O M and M Performance Security amounting to Rs Rs.6,25,00,000/- (Rupees Six Crores Twenty Five Lacs Only) in the form of BG No 236-10 dated 29.10.2010 issued by Canara Bank, Prime Corporate Branch-1, Mumbai valid for the period of 3 years i.e. up to 28.10.2013.

Kindly acknowledge the same.

Thanking you & assuring our best co-operations at all the times.

Yours faithfully
For MEP Infrastructure Pvt.Ltd

M. V. Karandikar

Authorized Signatory

- Copy to: -
- 1] The Joint Managing Director (I), MSRDC Ltd, Mumbai
 - 2] Secretary & Financial Advisor, MSRDC Ltd, Mumbai
 - 3] The Chief Engineer (SBN), MSRDC Ltd, Bandra
 - 4] The Project In-Charge (Mumbai Entry Point), MSRDC Ltd, Bandra
 - 5] The Deputy Manager (Accounts), MSRDC Ltd, Bandra



केनरा बैंक  Canara Bank

Head Office: 112 J. C. Road, Bangalore - 560 002

DATE : 29-OCT-2010

To:
MAHARASHTRA STATE ROAD DEVELOPMENT CORPORATION LTD
PRIYADARSHINI PARK
NEPEANSEA ROAD
MUMBAI - 400 036

Dear Sir,

*SUB: Our Guarantee No. 235-10 dated 29-OCT-2010 for INR 25,00,00,000.00
on behalf of A/c MEP INFRASTRUCTURE PVT. LTD.*

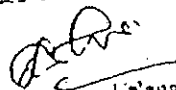
The above Guarantee for INR 25,00,00,000.00 (INDIAN RUPEES TWENTY FIVE CRORES ONLY) is issued in your favour having validity upto 28-OCT-2028.

The original Guarantee is handed over to the party for their onward submission to you.

Now, we have enclosed a copy of the said guarantee, which you may compare with the original, when original Guarantee is presented to you.

Thanking you,

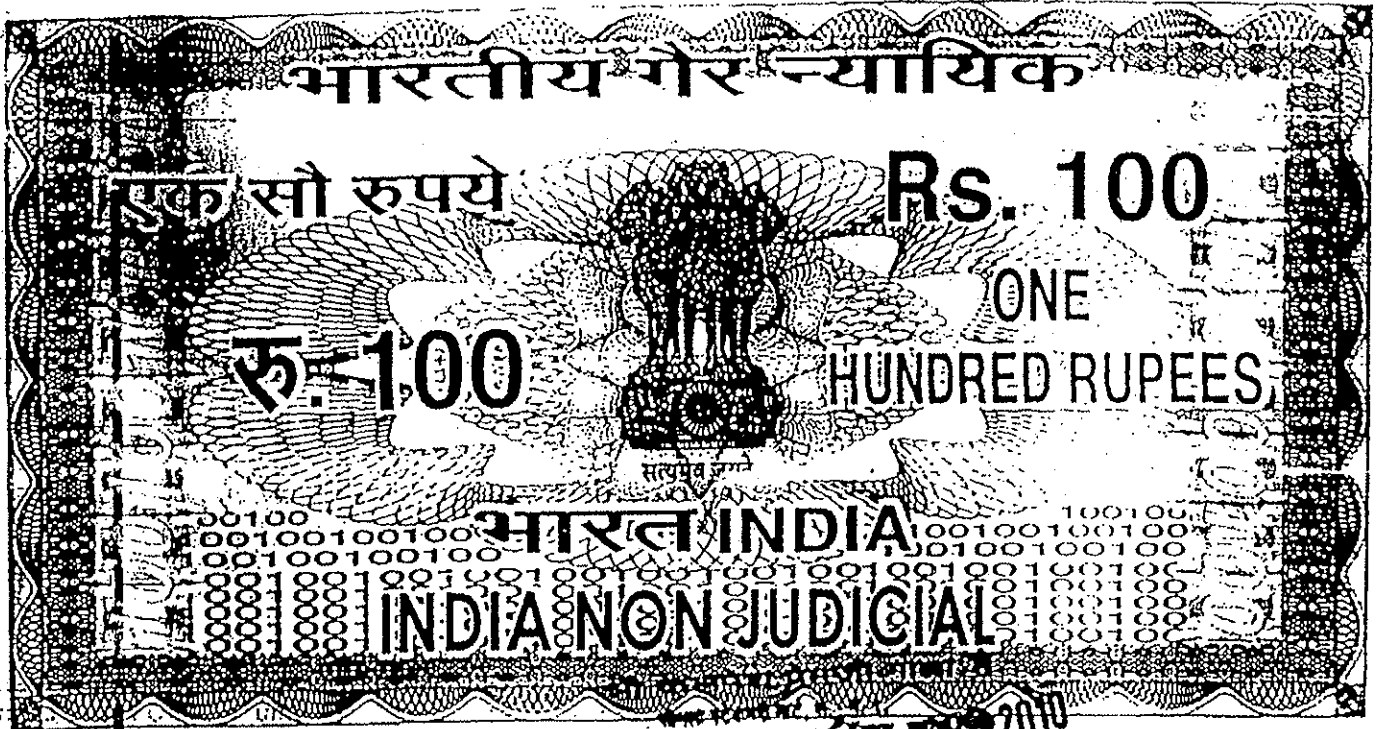
Yours faithfully,
For CANARA BANK


Senior Manager
Prime Corporate Branch - I, Mumbai
Encl: Copy of the Guarantee

SR. MANAGER
S. P. No. 26781

Prime Corporate Branch - I,
Maker Tower F
20th Floor, 85, Cuffe Parade
Mumbai 400 005

Fax : 022 22156021-22
Phone : 022 22156018-20
E-Mail ID : mcity2630@canbank.co.in
Bank Web site : www.canarabank.com



MAHARASHTRA

13 SEP 2010

Proprietor Officer

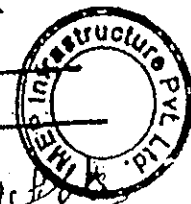
BHRI. K. R. MADGE

21-SEP-2010
 १४४, एन. सी. रोड, एस्तारशीनी पार्क, मुंबई-४०० ०३६

परवानाधारक पुत्रांक विक्रेता
 क्रमांक २०१

DK 876508

_____ दिनांक



CANARA BANK
 PRIME CORPORATE BR-I
 MUMBAI -
 BG NO. 235-10

To: Maharashtra State Road Development Corporation Limited,
 Priyadarshini Park, Nepean Sea Road,
 Mumbai - 400 036

BACKGROUND

(A) MEP Infrastructure Private Limited (hereafter referred to as "Contractor") having its Registered office at 410, boomerang, Chandivall Farm Road, Near Chandivall Studio, Andheri (East) Mumbai 400 072 has agreed in accordance with the Contract Agreement dated _____ between It and MSRDC (the "Contract Agreement") to Finance , Operate, Monitor and Maintain the "Securitization of Five Mumbai Entry Points along with maintenance of flyovers and allied structures".

कृते केनरा बँक
 For CANARA BANK

प्रबंधक / अधिकारी / Manager / Officer
 प्राईम कॉर्पोरेट शाखा-I, मुंबई - ०

का. प्र. शा. अ. शा. ०
 M. N. K. S. AMBI
 शा. प्र. शा. अ. शा. ०
 (S.P. No. 38457)

केनरा बँक
 CANARA BANK

- (B) The Contractor is required to give MSRDC a guarantee by a Bank or Financial Institution based in India in the sum of Rs. 25,00,00,000/- only (Indian Rupees Twenty Five Crores only) as security for compliance with its obligations under the Contract Agreement in respect of Operation, Monitoring and Maintenance of the Project.
- (C) We have agreed to give MSRDC that guarantee on the terms set out in this guarantee.

GUARANTEE

- (1) We guarantee and shall be responsible to MSRDC for all amounts owed to it by the Contractor from time to time up to an amount not exceeding Rupees 25,00,00,000/- (Indian Rupees Twenty Five Crores only). Amounts payable under this guarantee shall be paid in Indian Rupees.
- (2) We undertake to immediately pay to MSRDC upon first written demand and without deduction any amount or amounts demanded from time to time not exceeding Rs.25,00,00,000/- (Indian Rupees Twenty Five Crores only) without MSRDC being required to show grounds or give reasons for its demand or the amount demanded.
- (3) We waive any requirement that MSRDC demand any debt or payment from the Contractor before presenting us with a demand under this guarantee.
- (4) We agree that no underlying dispute as between MSRDC and the Contractor nor any pending application for interim relief or arbitration proceedings or other legal

कृते केनरा बँक
For CANARA BANK

प्रबंधक / अधिकारी / Manager / Officer
प्रथम कार्पोरेट शाखा-1, मुंबई- 05
Prime Corporate Branch-I, Mumbai-05

कृते केनरा बँक
For CANARA BANK

कृते केनरा बँक
For CANARA BANK

AR.M. LOHIA
SR. MANAGER
S.P. No. 28731

proceedings shall constitute any ground for prevention, delay or obstruction for making payment to MSRDC under this guarantee and the existence of any disputes or differences or claims in arbitration or otherwise shall not constitute any ground for non-payment on this guarantee.

- (5) We agree that no change, addition to or other modifications to the terms of the Contract Agreement or to any documents which have or may be made between MSRDC and the Contractor shall in any way relieve us from any liability under this guarantee and we waive any requirement for notice of any such change, addition or modification.
- (6) This guarantee is valid and effective from its date and shall be in force for a period of 18 years i.e. upto 28.10.2028 from the date of issue
- (7) We agree that our obligation to pay any demand made by MSRDC before the termination of this guarantee shall continue until the amount demanded has been paid in full or till 28.10.2028 which ever is earlier.
- (8) We agree that we will not assign our obligations under this guarantee without the prior written consent of MSRDC. MSRDC will not unreasonably withhold its consent if the proposed assignee is of adequate financial standing to meet its obligations under this guarantee and the assignee assumes in writing the obligations under this guarantee at the same time or before the assignment.
- (9) This guarantee binds the Bank, its successors and permitted assigns.

कुते केनरा बँक
For CANARA BANK

प्रबंधक / अधिकारी / Manager / Officer
प्राईम कारपोरेट शाखा - L, मुंबई - 05
Prime Corporate Branch - L, Mumbai - 05

एम. एन. कोसंबी
M. N. KOSAMBI
अधिकारी / Officer
(S.P. No. 100)

कुते केनरा बँक
For CANARA BANK

वरिष्ठ

Prime Officer

ARMLO
SR. MANAGER
S.P. No. 100

- (10) The words and expressions used in this guarantee which have been defined in the Contract Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Contract Agreement.

Notwithstanding anything contained herein our liability under the guarantee hereby renewed/ extended shall

1. Our liability under this Bank Guarantee shall not exceed Rs 25,00,00,000 (twenty five crore only)
2. This Bank Guarantee shall be valid upto 28-10-2028 and
3. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only and only, if you serve upon us a written claim or demand on or before 28-10-2028

Date 29-Oct-2010

कृते केनरा बँक
For CANARA BANK

प्रबंधक / अधिकारी / Manager / Officer
प्राइम कार्पोरेट शाखा-I, मुंबई-05
Prime Corporate Branch-I, Mumbai-05

एम. एन. कोसंबी
M. N. KOSAMBI
अधिकारी / officer
(S.P. No. 48457)

कृते केनरा बँक
For CANARA BANK

वरिष्ठ प्रबंधक / अधिकारी / Senior Manager / Officer
प्राइम कार्पोरेट शाखा-I, मुंबई-05
Prime Corporate Branch-I, Mumbai-05

AR.M. LOHIA
SR. MANAGER
S.F. No. 48457

केनरा बैंक  Canara Bank

Head Office: 112 J. C. Road, Bangalore – 560 002

DATE : 29-OCT-2010

To:
MAHARASHTRA STATE ROAD DEVELOPMENT CORPORATION LTD
PRIYADARSHINI PARK
NEPEANSEA ROAD
MUMBAI - 400 036

Dear Sir,

**SUB: Our Guarantee No. 236-10 dated 29-OCT-2010 for INR 6,25,00,000.00
on behalf of A/c-MEP INFRASTRUCTURE PVT. LTD.**

The above Guarantee for INR 6,25,00,000.00 (INDIAN RUPEES SIX CRORES
TWENTY FIVE LACS ONLY) is issued in your favour having validity upto
28-OCT-2013 .

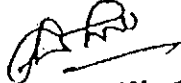
The original Guarantee is handed over to the party for their onward submission
to you.

Now, we have enclosed a copy of the said guarantee, which you may compare with
the original, when original Guarantee is presented to you.

Thanking you,

Yours faithfully, बैंक

For CANARA BANK



Senior Manager / स.मैनेजर
मि. अरुण कुमार

Encl: Copy of the Guarantee

ARUN KUMAR
SR. MANAGER
S. P. No: 26781

Prime Corporate Branch - 1,
Maker Tower F
20th Floor, 85, Cuffe Parade
Mumbai 400 005.

Fax : 022 22156021-22
Phone : 022 22156018-20
E-Mail ID : mcity2630@canbank.co.in
Bank Web site : www.canarabank.com



SV No. 207
 महाराष्ट्र MAHARASHTRA
 13 SEP 2010
 Proper Officer

111, एन. जी. रोड, एल्लेपट्टी मंदिर, बंगलूरु-२१.
 मुंबई-२१.
 परवानाधारक मुद्रांक विक्रेता
 परवाना क्रमांक नं. २९१९
 21 SEP 2010
 DK 876511
 MEP Infrastructure Pvt. Ltd.
 18/9

SHRI. K. R. MADGE

CANARA BANK
 PRIME CORPORATE BR-1
 MUMBAI -
 BG NO. - 236/10

To: Maharashtra State Road Development Corporation Limited,
 Priyadarshini Park, Nepean Sea Road,
 Mumbai - 400 036

BACKGROUND

(A) MEP Infrastructure Private Limited (hereafter referred to as "Contractor") having its Registered office at 410, boomerang, Chandivall Farm Road, Near Chandivall Studio, Andheri (East) Mumbai 400 072 has agreed in accordance with the Contract Agreement dated _____ between it and MSRDC (the "Contract Agreement") to Finance , Operate, Monitor and Maintain the "Securitization of Five Mumbai Entry Points along with maintenance of flyovers and allied structures".

कुते केनरा बैंक
 For CANARA BANK

कुते केनरा बैंक
 For CANARA BANK

(Signature)

ARUN LOHIYA
 CHIEF MANAGER
 23/9/2010

महाराष्ट्र
 M. N. KOSAMBI
 सहायक अधिकारी
 (S. P. No. 48457)

प्रदत्तक/अधिकारी/Manager/Officer
 कर्मचारी कार्यालय-1, मुंबई-

CANARA BANK
PRIME CORPORATE BR-I
MUMBAI
BG NO. - 236/10

- (5) We agree that no change, addition to or other modifications to the terms of the Contract Agreement or to any documents which have or may be made between MSRDC and the Contractor shall in any way relieve us from any liability under this guarantee and we waive any requirement for notice of any such change, addition or modification.
- (6) This guarantee is valid and effective from its date and shall be in force for a period of 3 years i.e. up to 28.10.2013 from the date of issue or till the Contractor issues a fresh bank guarantee for the subsequent period in terms of the Contract Agreement, which ever is later.
- (7) We agree that our obligation to pay any demand made by MSRDC before the termination of this guarantee shall continue until the amount demanded has been paid in full till 28.10.2013.
- (8) We agree that we will not assign our obligations under this guarantee without the prior written consent of MSRDC. MSRDC will not unreasonably withhold its consent if the proposed assignee is of adequate financial standing to meet its obligations under this guarantee and the assignee assumes in writing the obligations under this guarantee at the same time or before the assignment.

कृते केनरा बँक
For CANARA BANK

प्रबंधक / अधिकारी / Manager / Officer
प्राईम कॉर्पोरेट शाखा-I, मुंबई-05
Prime Corporate Branch-I, Mumbai-05

एच. एन. कोसंबी
M. N. KOSAMBI
अधिकारी / officer
(S.P. No. 48457)

कृते केनरा बँक
For CANARA BANK
[Signature]
[Signature] / [Signature]
[Signature]
Mumbai

AR.M. LOHIA
SR. MANAGER
S.P. No: 26781

CANARA BANK
PRIME CORPORATE BR-I
MUMBAI
BG NO. - 236/10

- (9) This guarantee binds the Bank, its successors and permitted assigns.
- (10) The words and expressions used in this guarantee which have been defined in the Contract Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Contract Agreement.

- (1) Notwith standing anything contained herein our liability under the guarantee hereby renewed/ extended shall
- (2) Our liability under this Bank Guarantee shall not exceed Rs 6,25,00,000.00(Rupees Six crore twenty five lacs only)
- (3) This Bank Guarantee shall be valid upto 28-10-2013 and
- (4) We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only and only ,if you serve upon us a written claim or demand on or before 28-10-2013

Date 29-Oct-2010

कृते केनरा बँक
For CANARA BANK

प्रबंधक / अधिकारी / Manager / Officer
प्राईम कॉर्पोरेट शाखा-I, मुंबई-
Prime Corporate Branch-I, Mumbai-05

एल. एन. कोसंबी
M. N. KOSAMBI
अधिकारी / officer
(S.P. No. 48457)

कृते केनरा बँक
For CANARA BANK

वरिष्ठ अधिकारी / Senior Officer
Prime Corporate Branch-I, Mumbai

कृते केनरा बँक
For CANARA BANK
S.P. No. 216181

MEP INFRASTRUCTURE
PRIVATE LIMITED

410, boomerang, Chandivali Farm Road, Near Chandivali Studio, Andheri (East) Mumbai 400 072.

MEP-INFRA/OUT/56

October 30, 2010

To,
The Vice Chairman & Managing Director
Maharashtra State Road Development
Corporation Ltd, Priyadarshini Park,
Nepean Sea Road, Mumbai- 400 036.

Subject: Securitization of Five Mumbai Entry Points along with maintenance of flyovers and allied Structures.

Ref: 1) Your Letter of Acceptance No.MSRDC/02/JMD/MEP/2010/1907 dated 28.10.2010

2) Your Office Letter No.MSRDC/02/JMD(1)/ 5 MEP/1908 dated 28.10.2010

Dear Sir,

With reference to the above subject and as per the terms & conditions of the contract, we are submitting herewith, Security for Performance of maintenance activities amounting to Rs.7,00,00,000/- (Rupees Seven Crores Only) vide Cheque No 887724 dated 30.10.2010 drawn on Canara Bank, Prime Corporate Branch-1, Mumbai.

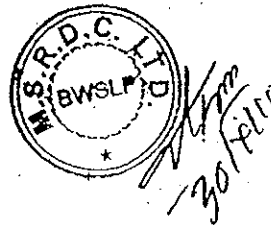
Kindly acknowledge the same

Thanking you & assuring our best co-operations at all the times.

Yours faithfully
For MEP Infrastructure Pvt.Ltd

M.V.Karandikar

Authorized Signatory



- Copy to: -
- 1] The Joint Managing Director (I), MSRDC Ltd, Mumbai
 - 2] Secretary & Financial Advisor, MSRDC Ltd, Mumbai
 - 3] The Chief Engineer (SBN), MSRDC Ltd, Bandra
 - 4] The Project In-Charge (Mumbai Entry Point), MSRDC Ltd, Bandra
 - 5] The Deputy Manager (Accounts), MSRDC Ltd, Bandra

528856

ITEM NO.MM-2C

Court No.2

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s) 31526/2010

(From the judgement and order dated 28/10/2010 in WP No. 1542/2009 of The HIGH COURT OF BOMBAY)

RELIANCE INFRASTRUCTURE LTD. & ORS.

Petitioner(s)

VERSUS

MAH. STATE ROAD DEVT. CORP. LTD.

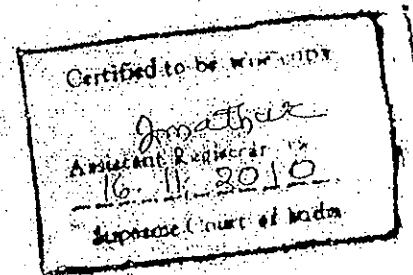
Respondent (s)

(With appln(s) for exemption from filing c/c of the impugned Judgment and prayer for interim relief.)

Date: 16/11/2010. This Petition was called on for hearing today.

CORAM

HON'BLE MR. JUSTICE ALTAMAS KABIR
HON'BLE MR. JUSTICE CYRILAC JOSEPH



For Petitioner(s) Mr. Mukul Rohtagi, Sr. Adv.
Mr. P. S. Patwalia, Sr. Adv.
Mr. Mahesh Agarwal, Adv.
Mr. Nakul Mohta, Adv.
Mr. E. C. Agrawala, Adv.

For Respondent(s) Mr. Gopal Subramaniam, SG
Mr. A. S. Bhasme, Adv.
Mr. Brajesh Pandey, Adv.


Mr. H. N. Salve, Sr. Adv.
Mr. R. F. Nariman, Sr. Adv.
Dr. A. M. Singhvi, Sr. Adv.
Mr. D. Y. Chitnis, Adv.
Mr. Redreshwar Singh, Adv.
Mr. Tapes Kumar Singh, Adv.


UPON hearing counsel the Court made the following
O R D E R

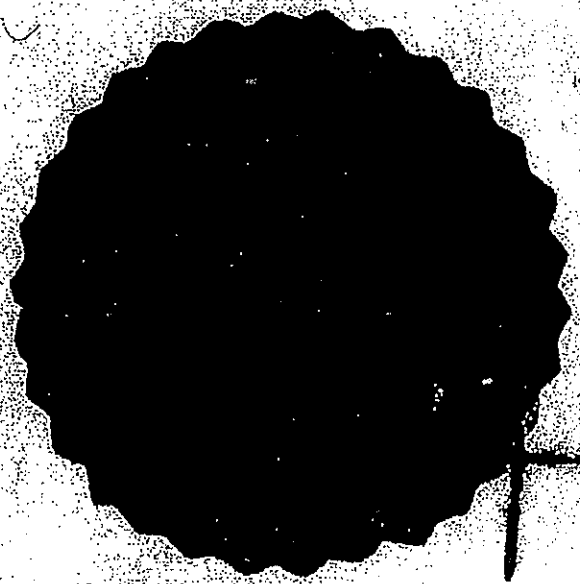
Let this matter be listed on 25th November, 2010, instead 22nd November, 2010.

Till then, the interim orders passed by the High Court dated 28th October, 2010, will continue. Furthermore, the respondent No.1, Corporation, will be at liberty to accept the amounts, as directed, from the respondent No.3 and shall keep the same in a separate no

lien account and it is also made clear that such deposit will be subject to the result of the Special Leave Petition, and shall not create any equity in favour of the respondent.


(Ganga Thakur)
PS to Registrar


(Juginder Kaur)
Court Master



A. No. A-49087
Urgent Fee: Rs. 5/-
Certificate Fee: Rs. 10/-
No. of Pages: 2 Rs.
Total Cost: Rs. 15
Date of Application: 6/11/10
Date of Delivery: 16/11/10

By [Signature]
Supreme Court of India

RECEIVED BY THE PRESIDENT

ITEM NO.2

Court No.2

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s). 31526/2010
(From the judgment and order dated 28/10/2010 in WP No. 1542/2009
of The HIGH COURT OF BOMBAY)

RELIANCE INFRASTRUCTURE LTD. & ORS.

Petitioner(s)

VERSUS

MAH. STATE ROAD DEVT. CORP. LTD.

Respondent(s)

(With appln(s) for exemption from filing c/c of the impugned Judgment
and with prayer for interim relief)

Date: 25/11/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR

HON'BLE MR. JUSTICE CYRIAC JOSEPH

For Petitioner(s) Mr. Mukul Rohtagi, Sr. Adv.
 Mr. P.S. Patwalia, Sr. Adv.
 Mr. Mahesh Agarwal, Adv.
 Mr. Rishi Agarwal, Adv.
 Mr. Nakul Mohta, Adv.
 Mr. E.C. Agrawala, Adv.
 Ms. Radhika Gautam, Adv.

For Respondent(s) Mr. Gopal Subramaniam, SG
R1&3 Mr. A.S. Bhasme, Adv.-on-record.
 Mr. Brajesh Pandey, Adv.

Mr. Harish N. Salve, Sr. Adv.
Mr. R.F. Nariman, Sr. Adv.
Dr. A.M. Singhvi, Sr. Adv.
Mr. Deepak Y. Chitnis, Adv.
Mr. Rudreshwar Singh, Adv.
For Mr. Tapeshe Kumar Singh, Adv.-on-record.

UPON hearing counsel the Court made the following
O R D E R

Having regard to the fact that the lead member of
the consortium, which had the petitioners also as its
members, withdrew itself from the deal and had taken
back the earnest money deposited, as well as the
financial bid, this Special Leave Petition, in our view,
is not maintainable. The same is, accordingly,
dismissed on the said ground.

(Sheetal Dhingra) (Juginder Kaur)
Court Master Court Master

SUBSTITUTION AGREEMENT

SUBSTITUTION AGREEMENT

BETWEEN

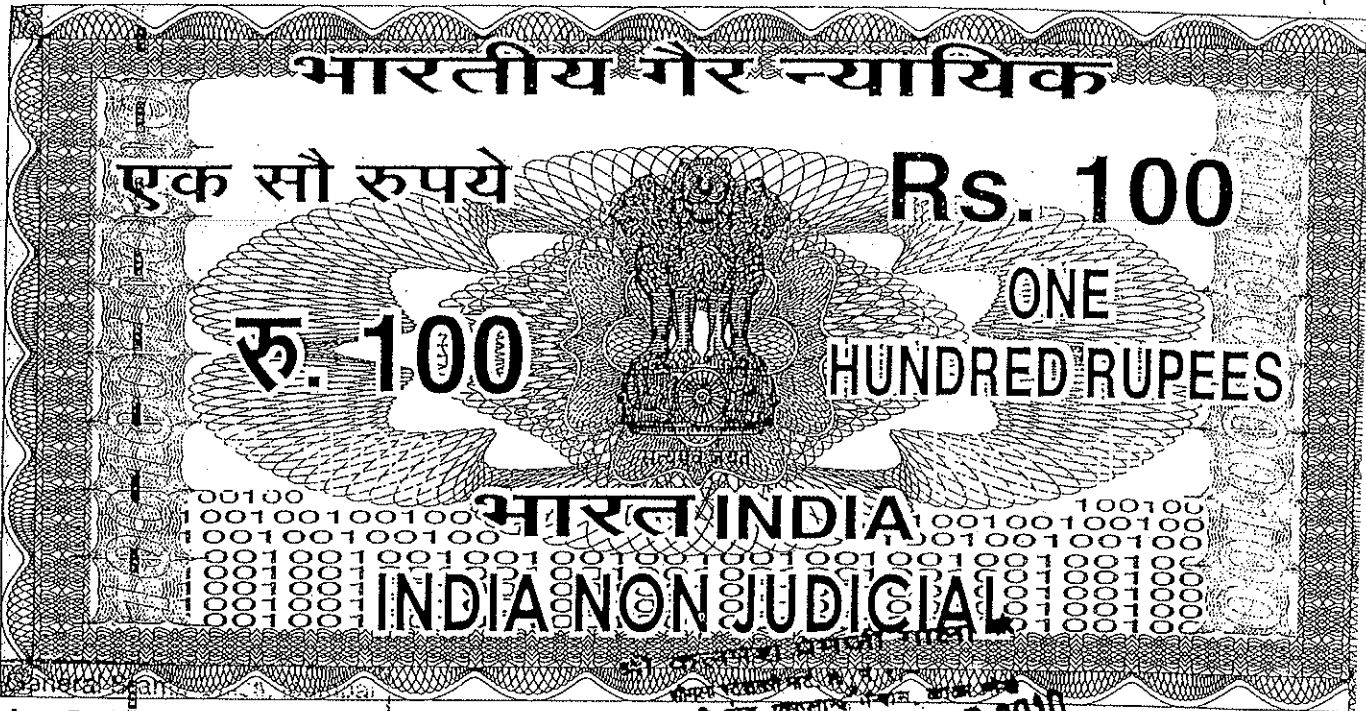
MAHARASHTRA STATE ROAD DEVELOPMENT CORPORATION LTD.

AND

MEP INFRASTRUCTURE PVT. LTD.

AND

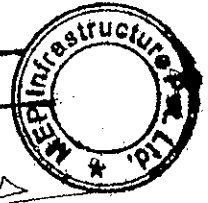
INFRASTRUCTURE DEVELOPMENT FINANCE COMPANY LTD.



8/11/2010
 MAHARASHTRA
 13 SEP 2010
 Proper Officer

१४४, एन. जी. रोड, एलाना-मिना, मुंबई-२०
 परवानाधारक मुक्ति विक्रता
 परवाना क्रमांक नं. २०१
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SHRI. K. R. MADGE

SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is made on this 19th day of November, 2010

BETWEEN

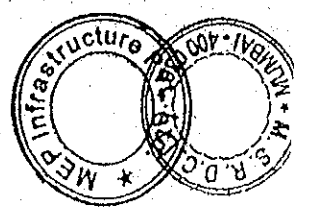
(i) MAHARASHTRA STATE ROAD DEVELOPMENT CORPORATION LIMITED, a corporation fully owned by the Government of Maharashtra and its nominees and incorporated as a limited company under the Companies Act 1956 and having its registered office at Priyadarshini Park, Nepean Sea Road, Mumbai-400 036 (hereinafter referred to as "MSRDC" which expression shall unless repugnant to the context or meaning thereof include its successors and assigns),

AND

(ii) MEP INFRASTRUCTURE PRIVATE LIMITED a company within the meaning of the Companies Act, 1956 having its Registered Office at 410, boomerang, Chandivali Farm Road, Near Chandivali Studio, Andheri (East), Mumbai 400072, India (hereinafter referred to as the



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"Contractor" which expression shall unless repugnant to the context or meaning thereof include its successors and assigns),

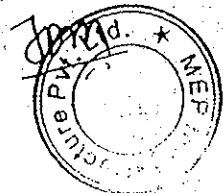
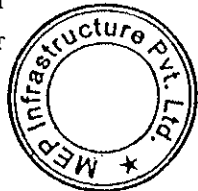
AND

- (iii) **INFRASTRUCTURE DEVELOPMENT FINANCE COMPANY LIMITED**, a company within the meaning of the Companies Act, 1956 and having its Registered Office at KRM Tower, 8th Floor, No.1, Harrington Road, Chetpet, Chennai - 600 031 and offices at Naman Chambers, C-32, G Block, Bandra Kurla Complex, Bandra (East), Mumbai - 400051 and an office at 2nd floor, Capital Court, Munirka, New Delhi - 110067 acting for itself and for and on behalf of the Senior Lenders listed in Schedule-I hereto (hereinafter referred to as the "Senior Lenders").

(MSRDC, the Contractor and the Senior Lenders are hereinafter collectively referred to as the "Parties" and individually are hereinafter referred to as "Party").

WHEREAS

- (A) By the Contract Agreement dated 19 November 2010 entered into between MSRDC and the Contractor, MSRDC has granted to the Contractor the Contract for Implementation of "Securitization of Five Mumbai Entry along with maintenance of flyovers and allied structures" Project subject to and on the terms, conditions and covenants set forth in the said Contract Agreement or forming part thereof.
- (B) With a view to help facilitate obtaining of financing for the said Project by the Contractor so as to enable the Contractor to finance, monitor, and maintain the same pursuant to and in accordance with the Contract Agreement, the Parties have agreed that subject to the terms and conditions of the Contract Agreement and the Financing Documents, that the Senior Lenders shall have the right to substitute the Contractor by the Selectee for the residual period of the Contract on the terms, conditions and covenants mentioned herein below:
- (C) As a condition to making any disbursement pursuant to the Financing Documents, the Senior Lenders have required and it is deemed necessary and expedient to record the terms, conditions and covenants of the above Substitution Agreement between the Parties.



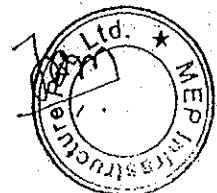
NOW THEREFORE THE PARTIES HERETO HEREBY AGREE AND THIS SUBSTITUTION AGREEMENT WITNESSETH AS FOLLOWS:

Article - 1: DEFINITIONS

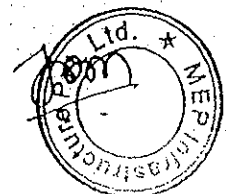
- 1.1 For the purpose of this Substitution Agreement, the following terms shall have the meaning hereinafter respectively assigned to them:
- 1.1.1 "Contract" means the bundle of rights, obligations and covenants of the Contractor under and as set forth in the Contract Agreement.
- 1.1.2 "Contract Agreement" means the Contract Agreement dated 19 November, 2010 entered into between MSRDC and the Contractor granting the Contract to the Contractor in respect of the "Securitization of Five Mumbai Entry Points along with maintenance of flyovers and allied structures" and includes without limitation any amendments thereto made in accordance with the provisions contained in this behalf therein.
- 1.1.3 "Event of Default" means occurrence of any of the following events:
- (i) A Material Breach by the Contractor of the Contract Agreement, or the occurrence of a Contractor Event of Default as defined in the Contract Agreement.
 - (ii) A material default in payment by the Contractor to all or any or the Senior Lenders under the Financing Documents of any two installments, either of principal or interest or both, due and payable by it on account of Lenders Dues.
 - (iii) Any event of default under or breach of any of the terms of any of the Financing Documents or Project Agreements concerning the Project which in the sole opinion of the Lenders Agent is material or major and which may seriously affect the ability of the Contractor to meet its payment obligations to the Senior Lenders under the Financing Documents or to design, construction, financing, operate, monitoring, maintain and transfer the Project pursuant to and in accordance with the Contract Agreement.
- 1.1.4 "Financial Assistance" means the loans, advances and other funding assistance including any syndicated/participation facility provided by the Senior Lenders as set forth in *Schedule -2* hereto for financing the whole or any part of the Project Cost.



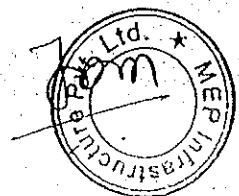
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- 1.1.5 "Financing Documents" means the documents executed/to be executed by the Contractor or entered/to be entered into by the Contractor with the Senior Lenders and/or the Lenders Agent in respect of the Financial Assistance and include loan agreements, guarantees, notes, debenture, bonds and other security agreements and other documents relating to the Financial Assistance and brief particulars whereof are set forth in *Schedule-2* hereto in relation to each Senior Lender.
- 1.1.6 "Lenders Agent" means the **INFRASTRUCTURE DEVELOPMENT FINANCE COMPANY LIMITED**, a company within the meaning of the Companies Act, 1956 and having its Registered Office at KRM Tower, 8th Floor, No.1, Harrington Road, Chetpet, Chennai – 600 031 and offices at Naman Chambers, C-32, G Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400051 and an office at 2nd floor, Capital Court, Munirka, New Delhi - 110067 and any replacement thereof appointed by all the Senior Lenders, inter alia, on the condition that as security for the Financial Assistance they shall have the right to seek transfer and assignment of the Contract Agreement including the Contract in accordance with the provisions of this Substitution Agreement.
- 1.1.7 "Lenders Certificate" shall have the meaning ascribed thereto in Clause 2.2(b).
- 1.1.8 "Lenders Dues" means the aggregate of all monies owed by the Contractor to the Senior Lenders under the Financial Documents on account of principal there under for funding the whole or any part of the Project Cost, and all accrued interest, additional interest, liquidated damages, commitment fees, commission, prepayment premium, costs, charges and other monies including financing charges and fees owed by the Contractor to the Senior Lenders under the Financing Documents for the Project upto the transfer date payable under the Financing Documents.
- 1.1.9 "Notice of Default" shall have the meaning ascribed thereto in Clause 2.2(a).
- 1.1.10 "Proposal" shall have the meaning ascribed thereto Clause 3.1 (iii).
- 1.1.11 "Project Agreements" means this Substitution Agreement, the Contract Agreement and certain other agreements and contracts entered into by the Contractor with MSRDC and others relating to the Project and brief particulars whereof are set forth in *Schedule-3* hereto.



- 1.1.12 "Project Cost" means total capital cost of the Project as provided by the Senior Lenders.
- 1.1.13 "Senior Lenders" means the financial institutions, trusts, funds, banks and such other persons who have provided or agreed to provide the finance to the Contractor under any of the Financing Documents for meeting all or any part of the Total Project Cost and who hold pari passu charge on the Project Assets.
- 1.1.14 "Selectee" means a new Contractor proposed by the Senior Lenders pursuant to this Substitution Agreement and approved by MSRDC for substituting the Contractor for the residual period of the Contract by amendment of the Contract Agreement or by execution of a fresh Contract Agreement.
- 1.1.15 "Substitution Notice" means the notice given by the Lenders Agent pursuant to Clause 2.2 (c) of this Substitution Agreement.
- 1.2 The words and expression beginning with or in capital letters used in this Substitution Agreement but not defined herein but defined in the Contract Agreement, shall have, unless repugnant to the context, the meaning respectively assigned to them in the Contract Agreement.
- 1.3 In this Substitution Agreement unless the context otherwise requires:
- (a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
 - (b) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations or other entities (whether or not having a separate legal entity);
 - (c) the headings are for convenience of reference only and shall not be used in and shall not affect the construction or interpretation of this Substitution Agreement;
 - (d) terms beginning with capital letters and defined in this Substitution Agreement shall have meaning ascribed thereto herein;



- C/1
- (e) the words "include" and "including" are to be construed without limitation;
 - (f) any reference to a "day" shall mean reference to a calendar day;
 - (g) any reference to "month" shall mean reference to a calendar month;
 - (h) the Schedules to this Substitution Agreement form an integral part of this Substitution Agreement and will be in full force and effect as though they were expressly set out in the body of this Substitution Agreement;
 - (i) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference provided that this clause shall not operate so as to increase liabilities or obligations of MSRDC hereunder or pursuant hereto in any manner whatsoever;
 - (j) references to Recitals, clauses, sub-clauses, paragraphs, or schedules in this Substitution Agreement shall, except where the context otherwise requires, be deemed to be references to Recitals, Articles, clauses, sub-clauses, paragraphs, Annexures, appendices of this Substitution Agreement.
 - (k) Any agreement, consent, approval, authorization, proposal, notice, communication, information or report required under or pursuant to this Substitution Agreement from or by any Party or Senior Lender(s) shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party or the Senior Lender(s), as the case may be, in this behalf and not otherwise; and
 - (l) Any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both days or dates.

Article - 2: SUBSTITUTION OF THE CONTRACTOR BY A SELECTEE

2.1 MSRDC hereby irrevocably agrees to substitute the Contractor by a Selectee (selected by the Senior Lenders in accordance with the provisions of this Substitution Agreement and approved by MSRDC) by amendment of the Contract Agreement or by execution of a fresh Contract Agreement in favour of the Selectee for the purpose of securing the payments of the Lenders Dues, provided that nothing contained herein shall entitle the

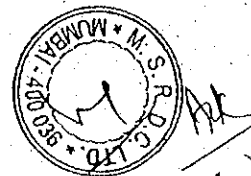


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Senior Lenders to operate the Contract themselves as a Contractor under and in accordance with Contractor Agreement either individually or collectively.

- 2.2
- (a) The Lenders Agent shall notify by the notice in writing to the Contractor, with a copy thereof simultaneously to MSRDC, about the occurrence of an Event of Default and requiring the Contractor to remedy and cure such default within 30 (thirty) days from the date of delivery of such notice to the Contractor (the "Notice of Default"). The Notice of Default shall be accompanied by the Lenders Certificate.
 - (b) A certificate under the hands of an authorized officer of the Lenders Agent annexed to the Notice of Default certifying -
 - (i) the occurrence of an Event of Default, and
 - (ii) the Lenders Dues(the "Lenders Certificate") shall be conclusive evidence of occurrence of such Event of Default and of such Lenders Dues. Such Lenders Certificate shall be final, conclusive and binding upon the Contractor for the purposes of this Substitution Agreement and the Financing Documents.
 - (c) MSRDC and the Contractor hereby irrevocably agree that the Lenders Agent may within 30 (thirty) days of the date of delivery of the Notice of Default to the Contractor and without prejudice to any other right or remedy available to the Senior lenders under the Financial Document, notify MSRDC and the Contractor on behalf of all the Senior Lenders about the Senior Lenders decision to invite, negotiate and procure offers, either through private negotiations or public auction or process of tendering of the residual period of the Contract and the rights and obligations of the Contractor under the Contract Agreement, to a Selectee, subject to be approval of such Selectee by MSRDC (the "Substitution Notice").
 - (d) Upon assumption by the Selectee, all the liability and obligations of the Contractor under the Financing Documents and the Contract Agreement including obligation to pay any sums then due and payable to MSRDC under the Contract Agreement, MSRDC shall grant the Contract to the Selectee on the same terms and conditions for the residual period of the Contract, by amendment of the Contract Agreement or, if required by the Lenders Agent by a separate agreement with the Selectee.



2.3 The Lenders Agent shall apply in the selection of the Selectee, following criteria

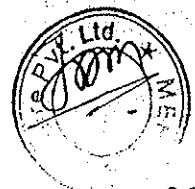
- (i) the Selectee shall be capable of properly discharging the duties, obligations and liabilities of the Contractor under the Contract Agreement;
- (ii) the Selectee shall provide security to the satisfaction of Senior Lenders for repayment of the Lenders Dues;
- (iii) the Selectee shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues of the Contractor to MSRDC under and in accordance with the Contract Agreement and of Lender's Dues upon terms and conditions as agreed to with the Senior Lenders;
- (iv) the Selectee shall have the net worth, experience and technical quality and shall hold the minimum equity (if applicable) as set forth in the RFP Documents Contract Agreement or prescribed by MSRDC thereunder in respect of the Contractor or as relaxed subsequently by MSRDC;
- (v) the Selectee shall have not been in breach of any agreement between the Selectee and MSRDC ; and
- (vi) any other appropriate condition or criteria, whereby continuity in the performance of the Contractor's obligations under the Contract Agreement is maintained and the security in favour of Senior Lenders under the Financing Documents is preserved.

2.4 At any time prior to the approval of the Selectee by MSRDC pursuant to this Substitution Agreement, MSRDC may require the Lenders Agent to satisfy MSRDC as to the eligibility of the Selectee and the decision of MSRDC in this behalf (which shall be reasonable), shall be final, conclusive and binding on the Senior Lenders and the Selectee.

Article - 3: MODALITY FOR SUBSTITUTION

3.1 The following modalities shall be applicable to any substitution of the Contractor by the Selectee pursuant to this Substitution Agreement:

- (i) The Lenders Agent may invite, negotiate or procure offers either through private negotiations or public auction or process of tender or otherwise for the substitution of the Contractor by the Selectee.
- (ii) The Lenders Agent shall on behalf of the Senior Lenders propose to MSRDC pursuant to sub-clause (iii) below, the name of the Selectee for acceptance and shall apply as necessary to MSRDC for:



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- (a) grant to the Selectee (as substitute for the Contractor) the right to design, construct, finance, operate, monitor, maintain and transfer this Project under and in accordance with and subject to and on the terms and conditions set forth in the Contract Agreement,
 - (b) amendment of the Contract Agreement or execution of a fresh agreement so as to grant to the Selectee on the same terms and conditions, the residual period of the concession under original Contract Agreement, and
 - (c) the execution of a new Substitution Agreement with the proposed selectee for the residual period of Concession on the same terms and conditions as of this Substitution Agreement.
- (iii) The Lenders Agent on behalf of the Senior Lenders shall be entitled, within a period of 120 (one hundred twenty) days from the date of delivery to MSRDC of the Substitution Notice pursuant to Clause 2 (c) above, to select and propose a Selectee to MSRDC for its approval (the "Proposal"). The Proposal of the Lenders Agent pursuant to this sub-clause (iii) shall contain the particulars and information in respect of the Selectee, the Lenders Dues and all other data and information, as prescribed in *Schedule-4* hereto. Without prejudice to the foregoing the Lenders Agent agrees and undertakes to provide to MSRDC such further and other information and such clarifications in respect of any data, particulars or information, furnished pursuant hereto by the Lenders Agent as MSRDC may reasonably require. MSRDC shall convey its approval or otherwise of such Proposal, including of Selectee, in its sole discretion within 60 (sixty) days of (a) the date of receipt of the Proposal by MSRDC, or (b) the date when last of further and other information and such clarifications in respect of any data, particulars or information comprised in the Proposal, as have been provided in the Lenders Agent to MSRDC, whichever is later. It is expressly agreed that the Proposal shall be accompanied by an unconditional undertaking of the Selectee that it shall upon approval by MSRDC of the Proposal including the Selectee, observe, comply, perform and fulfill the terms, conditions and covenants of the Contract Agreement which according to its terms are required to be observed, complied with, performed and fulfilled by Contractor thereunder on the footing as if such Selectee were the original Contractor under the Contract Agreement and shall be liable for and shall assume, discharge and pay the Lenders Dues to the Senior Lenders under and in accordance



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with the Financing Documents. Upon approval of the Proposal by MSRDC, such Selectee shall become the Selectee hereunder.

- (iv) MSRDC shall, upon its satisfaction of the eligibility of the Selectee and in accordance with the provisions of this Substitution Agreement and subject to the provisions of sub-clause (v) below proceed to substitute the Contractor or the Selectee by amendment of the Contract Agreement or by execution of fresh agreement or such other writing as MSRDC may reasonably require on the same terms and conditions for the residual period of the Concession in favour of the Selectee.
- (v) The substitution as aforesaid shall be subject to the Selectee, obtaining requisite Indian Government approvals, clearances and permission necessary for operating the Contract under and in accordance with the Contract Agreement.
- (vi) The objection if any of MSRDC to the substitution as aforesaid shall be reasoned and be made after hearing the Lenders Agent, provided however, that in the event of a refusal as stated above the Lenders Agent may propose another Selectee. In the event that no objection is raised with respect to the Selectee by MSRDC within the period set forth in sub-clause (iii) above, the Selectee shall be deemed to have been accepted by MSRDC shall, subject to the provisions of sub-clause (v) above, grant the Contract to the Selectee for the residual period within 15 days of its acceptance/deemed acceptance of the Selectee.
- (vii) The substitution as aforesaid, pursuant to the security interest hereby created in favour of the Senior Lenders, shall be deemed to be complete only upon the Selectee as Contractor accepting and complying with the terms and conditions stipulated in the Contract Agreement.
- (viii) The decision of the Senior Lenders and MSRDC the selection of the Selectee shall be final and binding on the Contractor and shall be deemed to have been made with the concurrence of the Contractor and the Contractor hereby expressly waives all rights to object to or challenge such selection of the Selectee on any ground whatsoever. No third party shall have the right to question the decision of the Senior Lenders/Lenders Agent and MSRDC.
- (ix) All actions of the Lenders Agent hereunder shall be deemed to be on behalf of the Senior Lenders, and be binding upon them. The Lenders



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Agent is authorized to receive payment of compensation, payment to cure default and any other payments, consideration for transfer in accordance with the Substitution Notice and the Financing Documents and give valid discharge on behalf of all Senior Lenders.

- 3.2 The terms and conditions for substitution of the Contractor by the Selectee shall be proposed by the Senior Lenders through the Lenders Agent to MSRDC, on the occurrence of an Event of Default and continuance thereof for six months but at least two months prior to the anticipated date of substitution as aforesaid.
- 3.3 The Contractor hereby irrevocably agrees and waives any right to challenge the Senior Lender's decision to apply to MSRDC for substitution as aforesaid and neither the Contractor nor MSRDC shall be entitled to prevent the Lenders Agent from proceeding to seek such a substitution of Contractor by Selectee as hereinbefore provided. The Contractor agrees and confirms that the Contractor shall not have any right to seek re-valuation of the Contractor's assets and the Contract Agreement including the Contract, otherwise than as contracted in the Financing Documents while MSRDC permits substitution as hereinbefore provided, pursuant to the Lenders Agent's request. The Parties acknowledge that the rights of the Senior Lenders hereunder are irrevocable and shall not be contested in any proceedings before any court of authority and the Contractor shall not have right or remedy to prevent, obstruct, injunct or restrain MSRDC and/or the Senior Lenders from effecting or causing the substitution as aforesaid.
- 3.4 Where no suitable Selectee can be found by the Lenders Agent and MSRDC shall decide to take over the Contract then MSRDC shall advise the Lenders Agent of all steps it proposes to take under the Contract Agreement for determination of Termination Payments thereof.
- (i) If MSRDC decides to substitute the Contractor by any other person (MSRDC Nominee), it shall take into account the Senior Lender's Dues while considering offers from such persons and shall include the suitable condition as agreed to by the Lenders Agent on behalf of the Senior Lenders for payment or take over of such dues by such MSRDC nominee to the extent agreed by the Lenders Agent while substituting the Contractor by MSRDC Nominee. MSRDC Nominee shall similarly be bound to execute the supplementary/ fresh substitution agreement on the same terms and conditions as provided herein.



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(ii) Notwithstanding anything contained in Clause 3.4 and this Clause 3.5, MSRDC shall not be required to take over, upon Termination of this Contract Agreement, the liabilities representing the Lender's Dues save and except to the extent of Termination Payments due and payable upon such Termination under the Contract Agreement. In such an event MSRDC's obligation shall be limited to assumption of such liabilities and payments of dues as MSRDC has agreed to bear under the Contract Agreement.

3.5 Nothing contained in these presents shall mean or be interpreted as provision of any guarantee or surety by MSRDC and it is expressly agreed that MSRDC has not provided any surety, guarantee or counter guarantee whether directly or indirectly for the recovery of amount of Financial Assistance advanced by the Senior Lenders to the Contractor.

Article - 4: INTERIM PROTECTION OF SERVICES AND PRESERVATION OF SECURITY

4.1 In the event of the Senior Lenders notifying MSRDC of the Contractor Event of Default (and the Contractor has not cured the default within a period of 30 days) or in special circumstances affecting the security of the Senior Lenders, the Senior Lenders shall be entitled to institute protective legal proceedings for a receivership (the "Receiver") to maintain, preserve and protect the assets (other than the Contract Agreement including the Contract) held as security for the Senior Lenders provided always that such receiver shall be MSRDC if such assets are in the opinion of MSRDC necessary and required for the operation and maintenance of the Project and the Parties hereby consent and agree to the same. The Lenders Agent shall in such an event notify MSRDC to assume receivership of the assets held as security and MSRDC shall operate and maintain the same pending the substitution of the Contractor by the Selectee. In the event MSRDC does not assume receivership and declines the request of the Lenders Agent, the Lenders Agent shall for itself and each of the Senior Lenders, be entitled to seek the appointment of a Court Receiver for the Contractor's assets held as security and MSRDC shall operate and maintain the same pending substitution as aforesaid and/or the takeover of the Contract Agreement including the Project in accordance with the Contract Agreement or this Substitution Agreement by MSRDC. All the receivables shall be deposited by the Receiver in the Escrow Account and shall be dealt with in accordance with the Contract Agreement. The Receiver shall be responsible for protecting the assets in receivership and shall render a true and proper account of the receivership to the Senior Lenders in accordance with the terms of its appointment. The Receiver shall make best efforts to operate



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and maintain the Project, in accordance with the obligations of the Contractor under the Contract Agreement. Any person other than MSRDC may be appointed as Receiver only with the prior consent of MSRDC. In a declaratory suit for appointment of a Receiver, notwithstanding that no recovery or mortgage suit or proceeding for enforcement of the Senior Lenders' security under the Financing Documents is instituted by the Lenders Agent for itself or the Senior Lenders, any action for appointment of MSRDC as Receiver or appointment of an Independent Court Receiver shall be without prejudice to the other rights and remedies of MSRDC, and of the Senior Lenders under the Financing Documents.

Article - 5: TERMINATION OF THE CONTRACTOR BY MSRDC

- 5.1 If under the Contract Agreement an event occurs which shall entitle MSRDC to Terminate the Contract Agreement, MSRDC shall intimate the Senior Lenders prior to exercising of its decision to terminate the Contract Agreement and advise the Senior Lenders to ensure the cure of the event which otherwise can result in termination of the Contract and the Contract Agreement. Such a notice shall entitle the Senior Lenders to cure any financial or other default of the Contractor within a period of 2 (two) months from the date of the notice received from MSRDC failing which MSRDC without any further notice to either the Contractor or the Lenders Agent/Senior Lenders, shall be entitled for Termination of the Contract Agreement.
- 5.2 Upon receipt of the Notice as referred to in Clause 5.1, intimating occurrence of an event which can entail Termination of the Contract Agreement, the Senior Lenders shall be entitled to consider such notice as an Event of Default and may initiate steps to invite, negotiate and procure offers for the substitution of the Contractor by a Selectee in accordance with the procedure set forth in this Substitution Agreement.

Article-6: SENIOR LENDERS RIGHT TO RECEIVE TERMINATION PAYMENTS

- 6.1 MSRDC and Contractor hereby agree, and confirm that without prejudice to any other right or remedy, MSRDC shall be entitled to deposit the Termination Payments into the Escrow Account and the Senior Lenders shall be entitled to receive the same without any further reference to or consent of the Contractor under and in accordance with the Contract Agreement towards satisfaction of the Senior Lenders Dues out of and limited to the sum of Termination Payments worked out under and in accordance with the Contract Agreement. The Senior Lenders shall be



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entitled to appropriate any consideration received for the substitution as hereinabove provided from the Selectee towards the payment of their and MSRDC's respective dues to the exclusion of the Contractor.

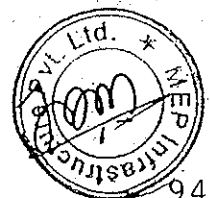
- 6.2 The Contractor hereby nominates, constitutes and appoints the Lenders Agent as its constituted attorney for doing all acts, deeds and things as may be required to be done for the substitution of the Contractor by the Selectee pursuant hereto and for receiving consideration for discharge of the Lender' Dues pursuant to Clause 6.1 above.
- 6.3 The Contractor hereby expressly authorizes payment of sums by MSRDC on account of Termination Payments into Escrow Account and the Lenders Agent to draw the same there from for and on behalf of the account of the Senior Lenders notwithstanding the pendency of any dispute or objection or claim that the Contractor may have against the Senior Lenders and/or MSRDC. The deposit by MSRDC into the Escrow Account and payment to the Senior Lenders directly or through the Lenders Agent in accordance with this Substitution Agreement made or caused to be made by MSRDC shall constitute a valid discharge of its obligation of the payment thereof to the Contractor. All such payments shall stand charged to the Senior Lender under the Financing Documents and shall be receivable by the Lenders Agent from the Escrow Account on behalf of the Senior Lenders to the exclusion of any Receiver or liquidator appointed.

Article - 7: GENERAL

- 7.1 The Parties hereto expressly represent and warrant that they are duly empowered to sign and execute this Substitution Agreement and the Lenders Agent is duly and fully authorized by each of the Senior Lenders to enter into this Substitution Agreement on their behalf.
- 7.2 Notices under this Substitution Agreement shall be sent to the addresses first hereinabove mentioned. Any change in the address of any Party shall be duly notified by a Registered post acknowledgement due and delivered to the other Parties.
- 7.3 The expression "MSRDC" the "Contractor" the "Senior Lenders" and the Lenders Agent" herein used shall unless there be anything repugnant to the subject or context include their respective successors, legal representatives, administrators and permitted assigns.
- 7.4 This Substitution Agreement shall not be affected by reorganisation of any Senior Lender, Lender Agent or MSRDC and the successor - in interest of



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- such Senior Lender, Lenders Agent or MSRDC shall have the benefit of this Substitution Agreement.
- 7.5 No amendment, variation or modification to this Substitution Agreement shall be valid and effectual unless made in writing and executed by the duly authorised representatives of all the Parties hereto.
- 7.6 All stamp duties or other imposts and charges as are applicable on this Substitution Agreement or on amendment of the Contract Agreement or execution of fresh Contract Agreement for the purpose of substitution as aforesaid shall be borne by and be to the account of the Contractor. In the event of the Senior Lenders making such payment for the time being, it shall be deemed to be a part of the Lender Dues.
- 7.7 The Parties hereby expressly agree that for the purpose of giving full and proper effect to this Substitution Agreement, the Contract Agreement and this Substitution Agreement shall be read together and construed harmoniously. The terms of this Substitution Agreement shall prevail in the event of any inconsistency with the Contract Agreement.
- 7.8 The consultation, recommendation or approval of the Lenders Agent under this Substitution Agreement shall always be taken as consultation, recommendation or approval of every concerned Senior Lender and each such Senior Lender shall be bound by the same and hereby waives its right to question or dispute the same.
- 7.9 This Substitution Agreement shall be in addition to and shall not be in derogation of the terms of the Financing Documents.
- 7.10 It shall not be necessary for the Senior Lenders or the Lenders Agent to enforce or exhaust any other remedy available to them before invoking the provisions of this Substitution Agreement.
- 7.11 Any dispute, difference or claim arising out of or in connection with or in relation to this Substitution Agreement which is not resolved amicably shall be decided finally by reference to arbitration to a Board of Arbitrators comprising of one nominee of each party to the dispute. Such arbitration shall be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The arbitrators shall issue a reasoned award. The venue of such arbitration shall be Mumbai, India. The Award shall be final and binding on the Parties. The Parties agree and undertake to carry out the award of the arbitrators (the "Award") without delay.



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7.12 The Substitution Agreement and right and obligations of the Parties shall remain in full force and effect pending the Award in any arbitration proceeding hereunder. The Courts in Mumbai only shall have jurisdiction over all or any matters arising out of or relating to this Substitution Agreement or proceedings arising out of or relating to the arbitration proceedings there under.

Above Substitution Agreement is subject to the result of Special Leave Petition No(s) 31526/2010 as per order of the Supreme Court dated 16th November 2010.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE SET THEIR HANDS HEREUNTO ON THIS 19th DAY OF NOVEMBER, 2010 HEREINABOVE MENTIONED.

SIGNED AND DELIVERED ON BEHALF OF MEP Infrastructure Private Limited (Contractor)

For MEP Infrastructure Pvt. Ltd.

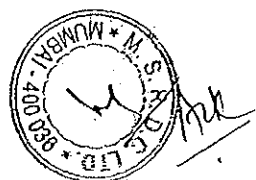
BY:
Name: Jayant D. Mhaskar

Jomhaskar
Director

Designation : Director

In the presence of:


1. Auditya Lanke Darke
2. Mandavkar Karandikar m.v. Karandikar



SIGNED AND DELIVERED ON BEHALF OF Maharashtra State Road Development Corporation Ltd.

BY:




19/11/18

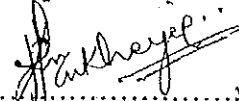
Name: Bipin Shrimali


BIPIN SHRIMALI

Vice Chairman & Managing Director
MSRDC Ltd

Designation : Vice Chairman & Managing Director

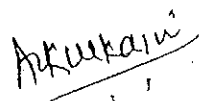
In the presence of:

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.....
S. K. Mukheyee
.....

2 
.....
K. S. P. Rao
.....

SIGNED AND DELIVERED ON BEHALF OF Infrastructure Development Finance Company Limited


BY:

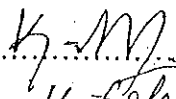


Name: Atul Kulkarni

Designation : Vice President - Portfolio Mgt.

In the presence of:

1 
.....
Raju Dodi
.....

2 
.....
K. Selvaraj
.....

Schedule-1 : List of Senior Lenders


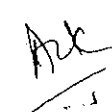
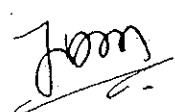
Financial Institution / Bank	Loan Amount (Rs. Crore)
Infrastructure Development Finance Company Limited	As per the Financing documents on terms and conditions mentioned therein
Housing Development Finance Corporation Limited	As per the Deed of Assignment dated October 25, 2010

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Schedule-2 : List of Loans, Advances and other funding assistance including Syndicated /participation facility provided by the Senior Lenders together with list of Loan Agreements, Guarantees, Notes, Debenture, Bonds and other Security Agreements and other Documents relating to Financial Assistance with their brief particulars.

Financial Institution / Bank	Loan Amount (Rs. Crore)
Infrastructure Development Finance Company Limited	As per the Financing documents on terms and conditions mentioned therein
Housing Development Finance Corporation Limited	As per the Deed of Assignment dated October 25, 2010

List of Agreements	Date of Agreement
Loan Agreement	September 27, 2010
Deed of Hypothecation	September 27, 2010
Share Pledge Agreement	September 27, 2010
Sponsor Undertaking	September 27, 2010
Corporate Guarantee	September 27, 2010
Security Trustee Agreement	September 27, 2010
Lenders' Agent Agreement	September 27, 2010
Collection Bank Agreement	To be executed
Deed of Assignment	October 25, 2010

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Schedule-3 : List of Project Agreements (such as the Substitution Agreement, the Contract Agreement and other Agreements and contracts entered into between the Contractor and MSRDC relating to the project together with their brief particulars)

List of Agreements	Date of Agreement
Contract Agreement	19/11/2010
Escrow Agreement	19/11/2010
Substitution Agreement	19/11/2010

Handwritten initials and signature: "H", "AK", and "Jom".

ESCROW AGREEMENT

ESCROW ACCOUNT AGREEMENT

among

MEP INFRASTRUCTURE PVT. LTD. (The "Contractor")

INFRASTRUCTURE DEVELOPMENT FINANCE COMPANY LIMITED

As Lenders Representative

And

CANARA BANK

As Escrow Agent

And

MAHARASHTRA STATE ROAD DEVELOPMENT CORPORATION LTD.



महाराष्ट्र MAHARASHTRA
 L.S. NO. 297
 3 SEP 2010
 Proper Officer

१४४, एम. जी. रोड, एमएफआर मन्डल, मुंबई-२३..
 परवानाधारक मुद्रांक विक्रेता
 7596 परवाना क्रमांक नं. २०१
 दिनांक _____
 MA/MS/Mr _____
 मुद्रा न्यायिक मुद्रांक वेतन विक्रेता
 21 SEP 2010
 DK 876528
 MEP Infrastructure Pvt. Ltd.

SHRI. K. R. MADGE

ESCROW ACCOUNT AGREEMENT

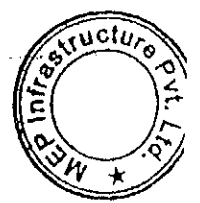
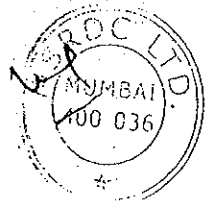
THIS ESCROW ACCOUNT AGREEMENT (the "Escrow Agreement") is made on the 19th day of November, 2010 by and among :

MEP Infrastructure Private Limited a company incorporated in India whose registered office is at 410, boomerang, Chandivali Farm Road, Near Chandivali Studio, Andheri (East) Mumbai – 400 072, Maharashtra, India (hereinafter referred to as the "Contractor") which expression shall unless repugnant to the context or meaning thereof including its administrators, successors and permitted substitutes);

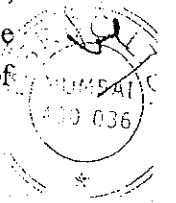
and



Act. Jm



Act. Jm



INFRASTRUCTURE DEVELOPMENT FINANCE COMPANY LIMITED and having its registered office at KRM Tower, 8th Floor, No.1, Harrington Road, Chetpet, Chennai – 600 031 and offices at Naman Chambers, C-32, G Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400051 as Senior Lenders Representative (the "Lenders Representative");

and

CANARA BANK and having its Head Office at 112, J. C. Road, Bangalore – 560 002 and acting through its Prime Corporate Branch I at Maker Tower F, 20th Floor, Cuffe Parade, Mumbai – 400005. (the "Escrow Agent").

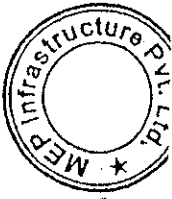
and

MAHARASHTRA STATE ROAD DEVELOPMENT CORPORATION LIMITED, a corporation fully owned by the Government of Maharashtra and incorporated as a limited company under the Companies Act 1956 and having its registered office at PWD Compound, Priyadarshini Park, Nepean Sea Road, Mumbai-400 036 (hereinafter referred to as "MSRDC" which expression shall unless repugnant to the context or meaning thereof including its administrators, successors and assigns).

WHEREAS

- (A) The Contractor is undertaking a project of the "Securitization of Five Mumbai Entry Points and Widening along with maintenance of flyovers and allied structures" in Mumbai, Maharashtra.
- (B) The Contractor has entered into a Contract Agreement dated as of 19th November 2010 with MSRDC (the "Contract Agreement") wherein MSRDC has granted Contract to the Contractor for the work referred to above.
- (C) The Contractor has entered into Financing Documents with Senior Lenders wherein Senior Lenders (the "Lenders") have agreed to lend and advance to the Contractor such rupee amounts as per the financing documents and terms and conditions mentioned therein.
- (D) One of the terms of the Contract Agreement and Financing Documents is that the Contractor is required to establish an Escrow Account, inter alia, on terms and conditions satisfactory to Senior Lenders.

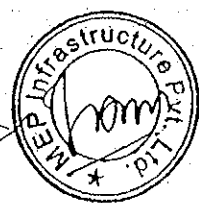
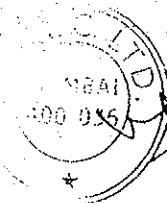
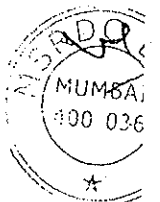
NOW THEREFORE IN CONSIDERATION OF THE PREMISES AND MUTUAL COVENANTS HEREINAFTER CONTAINED IT IS AGREED BY THE PARTIES AS FOLLOWS:



AX

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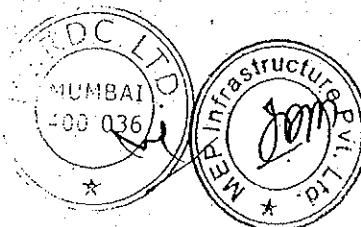


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I Definitions and Construction

- 1.1 Definitions: Each capitalized term used herein and not otherwise defined shall have the definition assigned to such term in the Contract Agreement or the Substitution Agreement as the case may be
- a. "Account" means the Escrow Account to be opened by the Contractor in accordance with this Escrow Agreement;
 - b. "Authorised Investment" means any authorised investments which Lenders Representative may; from time to time permit the Contractor to make in accordance with this Escrow Agreement.
 - c. "Business Day" means any day on which banks are open for business in or in relation to any notice or communication to be made under this Escrow Agreement, a day on which banks are open for business in the place of receipt of such notice or communication;
 - d. "Company Account" shall mean any bank account of the Contractor, other than the Escrow Account.
 - e. "Enforcement Notice" means any enforcement procedure commenced by the Lenders Representative under any of the Security Documents;
 - f. "Escrow Account" means the an Escrow Account established in terms of and under this Escrow Agreement;
 - g. "Event of Default" means an event of default as defined and detailed in the Financing Documents;
 - h. "INR" means the lawful currency of India;
 - i. "Lenders Representative" means **INFRASTRUCTURE DEVELOPMENT FINANCE COMPANY LIMITED** and having its registered office at KRM Tower, 8th Floor, No.1, Harrington Road, Chetpet, Chennai – 600 031 and offices at Naman Chambers, C-32, G Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400051 as security trustee and Representative for the Lenders;
 - j. "Payment Date" means in relation to any Permitted Payment, the date(s) specified for scheduled such payment;
 - k. "Permitted Payment" means the payments agreed to in this Escrow Agreement excluding payments to the Company Account as more particularly given in clause 3.2.1 below;
 - l. "Required Balance" means on any Date in relation to the Sub-Account of the Escrow Account, an amount INR which if proportionately built over the



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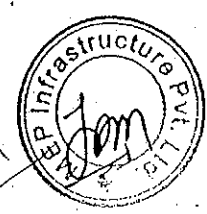
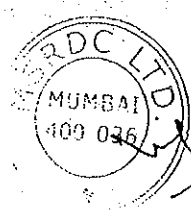
months, would be sufficient to meet Permitted Payment on the Payment Date(s).

- m. "Security Documents" means all or any of the security documents executed, delivered or furnished to secure the Financial Assistance under the Financing Documents including but not limited to the Deed of Hypothecation, Mortgage Deed, Equitable Mortgage, Deed of Guarantee, Pledge Agreement, Undertakings, Negative Lien and other incidental or supplemental document related thereto.
- n. "Sub-Accounts" means the Sub-Accounts of the Escrow Account, into which the monies due in relations to Permitted Payment would be credited every month and paid out if due and if not due in a month then appropriated proportionately in such month and retained in the Sub-Account and paid out therefrom on the Payment Date.
- o. "Year" means each twelve month period ending on March 31.

1.2 Construction

In this Escrow Agreement:

- a. unless the context otherwise requires, the singular includes the plural and vice versa;
- b. headings and the use of bold type face shall be ignored in its construction;
- c. a reference to a Clause, or Schedule is, unless indicated to the contrary, a reference to a clause or schedule to this Escrow Agreement;
- d. references to this Escrow Agreement shall be construed as references also to any separate or independent stipulation or agreement contained in it;
- e. the words "other", "or otherwise" and "whatsoever" shall not be construed to be as any limitation upon the generality of any preceding words or matters specifically referred to;
- f. reference to the word "includes" or "including" are to be construed without limitation;
- g. references to a person shall include such person's successors and permitted assignees or transferees'
- h. all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented; substituted, novated or assigned from time to time;
- i. the words "herein", "hereto" and "hereunder" refer to this Escrow Agreement as a whole and not to the particular Clause in which such word may be used;
- j. words importing a particular gender include all genders;
- k. "person" includes any individual, partnership, firm, trust, body corporate,



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government, governmental body, authority, agency, unincorporated body of persons or association;

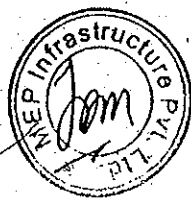
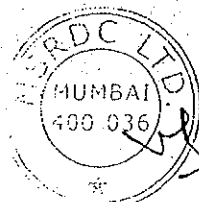
- l. any reference to a public organization shall be deemed to include a reference to any successor to such public organization or any organization or entity which has taken over the functions or responsibilities of such public organization;
- m. references to "party" means a party to this Escrow Agreement and references to "parties" shall be construed accordingly; and
- n. references to any law shall include reference to such law as it may, after the date of this Escrow Agreement, from time to time be amended, supplemented or re-enacted.

2 THE ACCOUNTS

2.1 Acceptance of Appointment of Escrow Agent

(a) The Escrow Agent hereby agrees to act as such and to accept all payments and other amounts to be delivered to or held by the Escrow Agent pursuant to the terms of this Escrow Agreement. Escrow Agent shall hold and safeguard the Escrow Account during the term of this Escrow Agreement and shall treat the amount in the Escrow Account as monies deposited by Contractor / MSRDC with the Escrow Agent, as agent for the benefit of the Lenders Representative, or its nominee, successors or assigns, in trust in accordance with the provisions of this Escrow Agreement. In performing its functions and duties under this Escrow Agreement, the Escrow Agent shall act solely as agent for the Lenders Representative.

The Contractor also hereby declares that all right, title and interest in and to the Escrow Account, the Authorised Investments and Permitted Payments made from the Escrow Account shall be vested in the Escrow Agent and held in trust for the Senior Lenders acting through Lenders Representative, MSRDC and the Contractor in accordance with the terms of this Escrow Agreement and as their respective interests are provided for herein. Amounts deposited in the Escrow Account from time to time shall be held by the Escrow Agent in trust and received and applied as provided in and in accordance with this Escrow Agreement. No person other than the Lenders Representative, MSRDC and the Contractor shall have any rights hereunder as the beneficiaries of or as third party beneficiaries under this Escrow Agreement.



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(b) The rights of the Contractor/ MSRDC in the monies held in Escrow Account are as set forth in their entirety in this Escrow Agreement and Contractor/ MSRDC shall have no other rights against or to the monies in the Escrow Account.

2.2 Establishment of Escrow Account

At least thirty (1) day prior to seeking any disbursement (including issue of guarantees or all forms of Financial Assistance), the Contractor shall establish the Escrow Account with the Escrow Agent.

2.3 Maintenance of the Account

The Escrow Agent shall maintain the Escrow Account in accordance with the terms of this Escrow Agreement and its usual practices and applicable regulations and pay the maximum rate of interest payable to its customer on the balance in the said account from time to time.

2.4 Operating Procedures

The Escrow Agent and the Contractor shall agree (after consultation with the Lenders Representative) on the detailed mandates, terms and conditions and operating procedures, if any, for the Escrow Account but in the event of any inconsistency between this Escrow Agreement and such mandates, terms and conditions or procedures, this Escrow Agreement shall prevail.

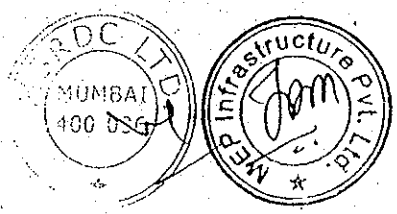
3. CURRENCY

3.1 The Escrow Account shall be established with the Prime Corporate Branch I, Mumbai of the Escrow Agent. The Escrow Account shall be denominated in INR.

3.2. Deposits

3.2.1 The Contractor:

- (a) agrees, confirms and undertakes that it shall deposit and/or credit the Escrow Account with :
 - i. all its receivables;
 - ii. toll revenues collected under the Contract Agreement;
 - iii. all proceeds received pursuant to any insurance claims; and
 - iv. all monies received from any other sources in relation to and in respect of the Project,
- (b) may make other deposits of the Contractor's other funds into the Escrow Accounts at any time. Provided however that the terms of this Escrow



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Agreement shall apply to such other funds deposited in the Escrow Account by the Contractor.

MSRDC agrees, confirms and undertakes that it shall deposit and/or credit the Escrow Account with:

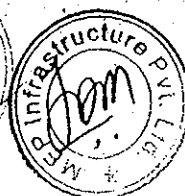
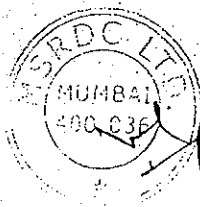
- (a) all toll collected by MSRDC in exercise of its rights under Contract Agreement.
- (b) Termination Payment, and other monies paid or disbursed in accordance with the provisions of the Contract Agreement and/or the Substitution Agreement.

3.2.2 The Escrow Agent shall ensure that all interest, if any, on the balance of the Escrow Account and interest on Authorized Investments made from the Escrow Account shall be credited to or deposited in the Escrow Account.

3.3 Withdrawals

3.3.1 The Escrow Agent shall withdraw amounts from the Escrow Accounts appropriated in the following order every month and deposit in the relevant Sub-Account for payments and if not due in a month then appropriated proportionately in such month and retained in the Sub-Account and paid out therefrom on the Payment Date(s);

- a. All taxes due and payable by the Contractor,
- b. All expenses in connection with and relevant to the construction of The Project by way of payment to the EPC contractor and such other persons as may be specified in the Financing Documents.
- c. Monthly proportionate provision of Debt Service Payments due in an Accounting Year and payment of Debt Service Payments in the month when due.
- d. OM&M Expenses including Toll collection expenses incurred by the Contractor directly or through OM&M Contractor if any, subject to the items and ceiling in respect thereof as set forth in the Financing Documents but not exceeding 1/12 (one twelfth) of the annual liability on this account. The whole or part of the expense on repair work or OM&M expenses including expenses incurred by MSRDC on account of exercise of any of its rights under Contract Agreement provided MSRDC certifies to the Escrow Agent that MSRDC had incurred such expenses in accordance with the provisions of this Escrow Agreement.
- e. The whole of the expense on completion of Punch List items incurred by MSRDC.
- f. The whole or part of the expense on repair work or OM&M Expense including Toll collection expenses incurred by MSRDC.
- g. All Contract Fees due to MSRDC from the Contractor under this Agreement



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- h. Reimbursements of expenditure incurred by MSRDC, if any, for payment of insurance premium, etc., which are otherwise Contractor's responsibility, on account of failure on part of the Contractor to keep such insurance(s) effective and in force.
- i. Such remuneration, cost and expenses of the Independent Engineer in case the Contractor does not reimburse the remuneration, cost and expenses of the Independent Consultant to MSRDC within 15 (fifteen) days of receiving a statement of expenditure from MSRDC.
- j. Any payments and Damages due and payable by the Contractor to MSRDC pursuant to this Agreement, , recovery due to reduction in the scope of work, penalty for non completion of Punch List items, penalty for OM&M expenses incurred by MSRDC; and
- k. Balance in accordance with the instructions of the Contractor.

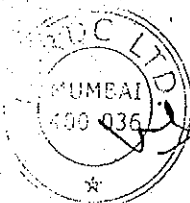
The amounts specified in clause 3.3.1 (a) to (k) constitute the Permitted Payments. For each year, Bank Proforma would be separately provided by the Contractor to the Escrow Agent, with the permission of Lenders Representative, not later than 60 (sixty) days prior to the first day of each year.

3.3.2 Notwithstanding anything to the contrary contained this Escrow Agreement upon the earlier of (i) issue of Termination Notice (ii) termination of Contract Agreement, or (iii) the expiry of contract period, all amounts standing to the credit of the Escrow Account shall be appropriated and dealt with in the following order:

- a. all taxes due and payable by the Contractor,
- b. all Contract Fees due and payable to MSRDC under this Agreement;
- c. all accrued debt and service payments to Senior Lenders;
- d. all accrued OM&M expenses;
- e. any payments and Damages due and payable by the Contractor to MSRDC pursuant to this Escrow Agreement including termination claims, Recovery due to reduction in Scope of Work;
- f. any other payments required to be made under this Agreement; and balance, if any, on the instructions of the Contractor.

3.3.3 Not withstanding anything to the contrary contained in this agreement, any Termination Payments made by MSRDC into the Escrow account shall not be appropriated therefrom for any purpose whatsoever, until the Vesting Certificate has been issued by MSRDC. Provided, however, that this restriction shall not apply to appropriation in favour of the Senior Lenders to the extent of Debt Due.

3.3.4 From the date, which is two years prior to the expiry of the Concession period, a sum estimated by Independent Engineer for renewal works, shall not withstanding anything to the contrary contained in this Escrow Agreement, be retained in the



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Escrow Account provided that if a Bank Guarantee of an equivalent sum in the form and content acceptable to MSRDC has been furnished by the Contractor to MSRDC, no such retention shall be made. If following the second Inspection, it is agreed or determined that no renewal works are required, then within 14 days of such agreement, 50 % of the sums thus retained shall be released from the Escrow account to the Contractor. Within 14 days after the issue of Vesting Certificate, the sums thus retained shall be released from the Escrow account to the Contractor.

3.4 Application of Insufficient Funds

As provided in *Clause 3.3 above*, the application of funds in the Escrow Account shall be applied in the serial order of priority set forth therein. If the funds available for payment to a Sub-Account are sufficient to pay a portion, but not all, of the amount required to be paid to any Sub-Account, the Escrow Agent shall apply such funds in the serial order of priority set forth in *Clause 3.3 above*, until exhaustion thereof.

4 AUTHORISED INVESTMENTS

4.1 Power to Invest

The Escrow Agent shall invest the amounts standing to the credit of any of the Sub-Accounts in Authorized Investments on the instructions of the Contractor as approved by the Lenders Representative, from time to time, in accordance with the provisions of this Escrow Agreement. The Escrow Agent shall not be bound to and shall not make investments under the Indian Trusts Act, 1882 without prior approval of the Lenders Representative.

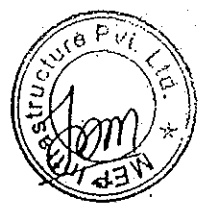
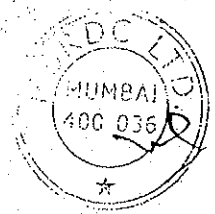
4.2 Procedure for Investments

4.2.1 All Authorized Investments shall be made and/or realized by the Escrow Agent on the instructions of the Contractor as approved by the Lenders Representative from time to time, in accordance with the provisions of this Escrow Agreement.

4.2.2 All documents of title or other documentary evidence of ownership with respect to Authorized Investments made out of any Escrow Account will be held in the custody of the Escrow Agent.

4.3 Realizations

Upon the realization of any investment made under this Clause, the proceeds of realization shall immediately be credited to the relevant Sub-Account by the Escrow Agent or immediately invested in another Authorized Investment in accordance with the Contractor's instructions as approved by the Lenders Representative.



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4.4 Mandatory Relations

In the event that the Contractor becomes aware that any Authorized Investment has ceased to be an Authorized Investment, the Contractor shall immediately instruct the Escrow Agent on a best efforts basis to realize such Authorized Investment on its maturity date or earlier if possible under intimation to the Lenders representative or MSRDC.

4.5 Accounts Include Investments

Any reference in this Escrow Agreement to the balance standing to the credit of the Escrow Account shall be deemed to include a reference to the amount of the Authorized Investments in which all, or part of, such balance is for the time being invested.

4.6 Interest on Investments

Any interest or other income received on account of Authorized Investments shall be paid to the Escrow Account.

4.7 Enforcement Notice

On receipt of an Enforcement Notice from the Lenders Representative, the Escrow Agent shall realize the Authorized Investments, whether such investments have matured or not on a best efforts basis, and apply the proceeds as directed by the Lenders Representative.

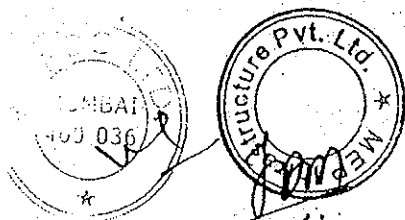
5 WITHDRAWALS FOLLOWING EVENT OF DEFAULT

If the Lenders Representative notifies the Escrow Agent that an Event of Default is likely to occur or has occurred, and is continuing, then, until such time as the Lenders Representative has notified the Escrow Agent that the Event of Default has been cured or waived under the Financing Documents, the Escrow Agent shall only make withdrawals from the Escrow Accounts which constitute Permitted Payment and shall not make any payments from the Escrow Account to the contractor accounts.

6 ESCROW AGENT PROVISIONS

6.1 The Escrow Agent and the Lenders

The Contractor hereby appoints the Escrow Agent to act as trustee for the Lenders Representative in connection herewith and authorizes the Escrow Agent to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Agent by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Agent accepts such appointment pursuant to the terms hereof.



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6.2 Particular Duties of the Escrow Agent

The Escrow Agent :

- a. may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Contractor upon a certificate signed by or on behalf of the Contractor;
- b. may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or documents believed by it to be authentic;
- c. shall, within five (5) Business Days after receipt, deliver a copy to the Lenders Representative of any notice or document received by the Escrow Agent in its capacity as the Escrow Agent from the Contractor or any other person hereunder or in connection herewith; and
- d. shall, within five (5) Business Days after receipt, deliver a copy to the Contractor of any notice or document received by the Escrow Agent from the Lenders Representative in connection herewith.

6.3 Segregation of Funds

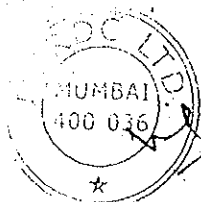
Monies and other property received by the Escrow Agent under this Escrow Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Agent in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Agent.

6.4 Termination

- 6.4.1 This Escrow Agreement shall remain in full force and effect so long as amounts remain outstanding from the Contractor in respect of the Financial Assistance received by it from the Senior Lenders or its obligations to MSRDC, unless terminated earlier by the mutual consent of the parties or otherwise in accordance with the provisions of this Clause.
- 6.4.2 The Contractor may, by not less than 45 days prior notice to the Escrow Agent, MSRDC and the Lender Representative, terminate this Escrow Agreement and appoint a new Escrow Agent, provided the new Escrow Agent is acceptable to the Lender Representative and arrangement are made satisfactory to the Lender's Representative for transfer of amount deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Agent.

6.5 Fees

The Contractor shall pay the Escrow Agent fees in an amount and at such times as may be agreed between the Escrow Agent and the Contractor.



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7 ESCROW AGREEMENT DEFAULTS

7.1 If the Contractor is in breach of any of its obligations under this Escrow Agreement and, following a notice of default from the Lender's Representative, fails to remedy the same:

- (a) in the case of a failure to deposit funds received by the Contractor in the Escrow Account, by depositing the same in the Escrow Account within five Business Days of receipt of such notice;
- (b) in the case of a breach consisting of causing the Escrow Agent to transfer funds to any Contractor Account in breach of the terms of this Escrow Agreement, by depositing the relevant funds in the Escrow Account or any Sub-Account in which such transfer should have been made within five Business Days of receipt of such notice;
- (c) in the case of a breach of the Contractor's obligations under Clause 4, by instructing the Escrow Agent to realize any investment made in breach of Clause 4 within Five (5) Business Days of receipt of such notice; or
- (d) in the case of any other breach, by remedying the same within five (5) Business Days to the satisfaction of the Lenders Representative.

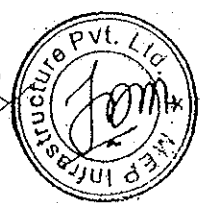
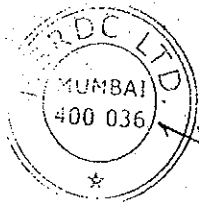
7.2 The Contractor and the Escrow Agent agree and confirm that any default by either the Contractor or the Escrow Agent in the performance of their respective obligations under this Escrow Agreement resulting, in the opinion of Lender's Representative, in a breach of this Escrow Agreement, shall qualify as an Event of Default under the Financing Documents/Security Documents.

8 MISCELLANEOUS

8.1 Closure of Accounts

The Escrow Agent shall, at the request of the Contractor made on or after the payment by the Contractor of all outstanding amounts under the Financing Documents/Contract Agreement and upon confirmation of receipt, close the Escrow Accounts and pay any amount standing to the credit thereof to the Contractor.

Notwithstanding anything to the contrary contained in this Escrow Agreement, this Escrow Agreement shall remain in full force and effect till the Transfer Date provided however if MSRDC shall certify to the Escrow Agent that Contract Agreement and/or the Contract has been terminated on account of default of the Contractor under this Escrow Agreement, then notwithstanding anything to the contrary contained herein, all the amounts standing to credit of the Escrow Account shall be dealt with in accordance with provisions of clause 3.3.2.



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8.2 Successors and Assignors

This Escrow Agreement shall be binding on and shall accrue to the benefit of the parties and their respective successors and permitted assigns.

8.3 No Set Off

The Escrow Agent agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Accounts. For the avoidance of doubt, it is declared by the Escrow Agent that the monies and properties held by the Escrow Agent shall not be considered as part of the assets of the Escrow Agent and being trust property, shall in the case of a bankruptcy or liquidation of the Escrow Agent be wholly excluded from the assets of the Escrow Agent in such bankruptcy or liquidation.

8.4 Notices

8.4.1 All notice or other communications to be given or made under this Escrow Agreement shall be in writing, shall either be delivered personally or sent by courier, registered or certified mail or facsimile. The address for service of each Party and its facsimile number is set out under its name on the signing pages hereto. All notices shall be effective upon actual receipt save that where a notice is received after 5.30 p.m. on a Business Day or on a day that is not a Business Day, such notice shall be deemed to be received on the first Business Day following the date of actual receipt. Without prejudice to the foregoing, a party giving or making a notice or communication by facsimile shall promptly deliver a copy of such notice or communication personally, or by courier or mail to the addressee of such notice or communication.

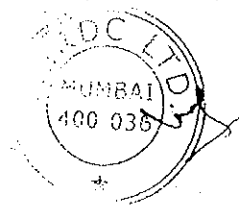
8.4.2 Any Party may by notice change the addresses and/or addresses to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

8.5 Waiver

Failure by any Party at any time to enforce any provision of this Escrow Agreement or to require performance by the other parties of any provision of this Escrow Agreement shall not be construed as a waiver of such provision and shall not affect the validity of this Escrow Agreement or any part of it or the right of the relevant Party to enforce any provision in accordance with its terms.

8.6 Severability

If any condition, Clause or provision of this Escrow Agreement not being of a fundamental nature, is held to be illegal or unenforceable, the validity or



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enforceability of the remainder of this Escrow Agreement shall not be affected thereby.

8.7 Amendments

No amendment to this Escrow Agreement shall be binding unless in writing and signed by the duly authorized representatives of the Parties.

8.8 Governing Law

The Escrow Agreement shall be governed by and construed in accordance with Indian Law.

8.9 Regulatory Approvals

The Escrow Agent shall use its best efforts to procure and shall thereafter maintain and comply with all regulatory approvals required for it to establish and operate the Escrow Accounts. The Escrow Agent represents and warrants that it is not aware of any reason why such regulatory approvals will not be ordinarily granted to the Escrow Agent.

8.10 Notification of Balances

Seven Business Days prior to each Payment Date (and for this purpose the Escrow Agent shall be entitled to rely on an affirmation by the Contractor and/or the Lenders Representative as to the relevant Payment Dates), the Escrow Agent shall notify the Lenders Representative of the balance of the Escrow Account as at the close of business on the immediately preceding Business Day.

Above Escrow Account Agreement is subject to the result of Special Leave Petition No(s) 31526/2010 as per order of the Supreme Court dated 16th November 2010.

IN WITNESS whereof the Contractor has caused its Common Seal to be affixed hereto and to a triplicate hereof on the date first above written and the Escrow Agent, MSRDC and the Lenders Representative have caused the said triplicate to be executed by the hand of an authorized official.

SIGNED AND DELIVERED ON BEHALF OF MEP Infrastructure Private Limited
(the Contractor)

For MEP Infrastructure Pvt. Ltd.

Jon Masha

Director

BY:

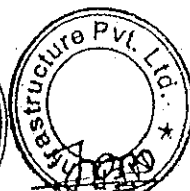
Name: Jayant D. Mhaiskar

Designation: Director

In the presence of:

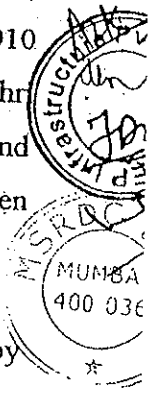
1. *R.R. Bajaj*

2. *Aarditya Lanke* *Lanke*



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THE COMMON SEAL OF MEP Infrastructure Private Limited has pursuant to the Resolution of its Board of Directors passed in that behalf on the 28 day of October 2010 hereunto been affixed in the presence any one of Shri Jayant D. Mhaiskar and Shri Dattatraya P. Mhaiskar, Directors who have signed these presents in token thereof and Shri Jayant D. Mhaiskar authorized person who has countersigned the same in token thereof.



SIGNED AND DELIVERED on behalf of **Canara Bank** within named Escrow Agent by the hand of an authorized official of the Escrow Agent

Name : K. H. HAVEWALA
Designation : Senior Manager
Address : Canara Bank, Prime Corporate Bldg E, Merid Tower 'F', 20th floor, Cuffe Parade, Mumbai - 400005
Fax No. :
Attention :

कृते केनरा बैंक
For CANARA BANK
प्रबंधक/Manager
प्राईम कॉर्पोरेट शाखा-1, मुंबई-05
Prime Corporate Branch-I, Mumbai-05

In the presence of:

- 1. [Signature] A.G.M. Canara Bank
Rep. Cuffe Parade Mumbai
- 2. [Signature] (G. Paramashwaran)

SIGNED AND DELIVERED BY THE INFRASTRUCTURE DEVELOPMENT FINANCE COMPANY LIMITED within named Lender' Representative by the hand of an authorized official of the Lender's Representative

Name : Atul Kulkarni
Designation : Vice President - Portfolio
Address : IDFC Ltd, Naman chambers, Bandra Kurla Complex, Bandra (E),
Fax no. :
Attention :

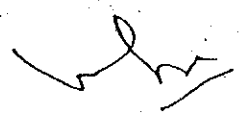
[Signature]
Atul Kulkarni

In the presence of:

- 1. [Signature] (K. Sekhraj)
- 2. [Signature]
Rajiv Doshi

SIGNED AND DELIVERED ON BEHALF OF MSRDC within named by the hand of an authorized official of MSRDC

BY:



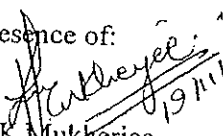
Name: **Mr. Bipin Shrimali**
Designation : Vice Chairman and Managing Director.

BIPIN SHRIMALI
Vice Chairman & Managing Director
MSRDC Ltd.

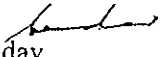
Address :

Fax Number :

Attention :

In the presence of:

1. Mr. S.K. Mukherjee

Joint Managing Director(I)


2. Mr. K. S. Pandav
Secretary & Financial Advisor



**LUMPSUM UPFRONT PAYMENT TO
MSRDC**

CANARA BANK
MUMBAI PRIME CORPORATE BRANCH II
903

STATEMENT OF ACCOUNT

Account No : 1903201010062
Product Name : CURRENT ACCOUNT- GENERAL

Statement of Account for the Period from 18/11/2010 to 19/11/2010

Customer ID : 63534287
Customer Name : MSRDC LTD - NO LIEN ACCOUNT
Customer Address : PWD COMPOUND ADJ TO PRIYADARSHIN PARK N S RD MUMBAI
MUMBAI

Account Title : MSRDC LTD - NO LIEN ACCOUNT
Joint Holder's Name : 1.

DATE	BRANCH DESCRIPTION	REF/CHG NO.	WITH DRAWALS	DEPOSITS	BALANCE
8/11/2010	1903 B/F ...		0.00	0.00	0.00
4/11/2010	1903 FT0108256705346	000G00088987	0.00	10,000.00	10000.00
19/11/2010	1903 TRF FROM 2630.201. 158		0.00	21,000,000.00	31000010000.00

TOTAL :

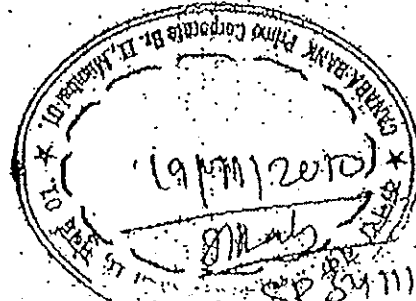
OPENING BALANCE	0.00	Dr. Count :	0	Dr. Amount:	0.00
CLOSING BALANCE	21,000,010,000.00	Cr. Count :	2	Cr. Amount:	21,000,010,000.00

UNLESS THE CONSTITUENT BRINGS TO THE NOTICE OF THE BANK ANY DISCREPANCY / ERRORS / OMISSION / UNAUTHORISED DEBITS IMMEDIATELY, THE ENTRIES IN SUCH PASS SHEET SHALL BE DEEMED AS CORRECT AND SHALL BIND THE DEBITOR. BEWARE OF PHISHING ATTACKS THROUGH EMAILS OR FAKE WEBSITES

WEB FACILITY USERS ARE REQUESTED TO NOTE THAT CANARA BANK DOES NOT SEEK ANY INFORMATION THROUGH EMAIL. DO NOT CLICK ON ANY LINK WHICH HAS COME THROUGH EMAIL FROM UNEXPECTED SOURCES. IT MAY CONTAIN MALICIOUS CODE WHICH COULD BE AN ATTEMPT TO "PHISH". ALWAYS LOGIN THROUGH WWW.CANARABANK.IN. PLEASE BEWARE OF PHISHING

COMPUTER OUTPUT - DOES NOT REQUIRE SIGNATURE

----- END OF STATEMENT -----



SP 8411
J. H. Shah
Officer (Office)
SR No: 3411

COMMENCEMENT ORDER

COMMENCEMENT ORDER



**Maharashtra State
Road Development
Corp. Ltd.**
(A Govt. of Maharashtra Undertaking)

No.: MSRDC/ 01/ JMD/MEP/2010/ 2015

Date: 19.11.2010

To,

MEP Infrastructure Private Limited,
410, boomerang, Chandivali Farm Road,
Near Chandivali Studio,
Andheri (E) Mumbai – 400 072

Sub: Notice inviting Bid No. NIL dated 20.06.2009 for appointment as Contractor for the work of Securitization of five Mumbai Entry Points along with maintenance of flyovers and allied structures given in the Bid Document.

- Ref:**
- 1) Your Bid dated 23.07.2009 submitted pursuant to the said Notice Inviting bids.
 - 2) Your Letter No. MEPIDL/OUT/139 dated 10.02.2010
 - 3) Your Letter No. MEPIDL/OUT/714 dated 31.08.2010
 - 4) Minutes of meeting of Cabinet Committee on Infrastructure dated 31.08.2010 issued vide Government letter No. pasusa/2010/F.No. 41/desk/1461 dated 14.09.2010
 - 5) PWD, Govt. of Maharashtra's memorandum No. Kha Kshe Sa – 2005/Pra. Kra. 108/LB 4/Raste-8 issued by Dy. Secretary, dated 15.09.2010
 - 6) MSRDC's letter No. MSRDC/01/JMD/MEP/2010/1725 dated 24.09.2010.
 - 7) Your office letter No. Nil dated 24.09.2010
 - 8) MSRDC's letter No. MSRDC/01/JMD/MEP/2010/1726 dated 24.09.2010.
 - 9) Hon'ble High Court Bombay's order dated 28.10.2010.
 - 10) MSRDC's Letter of Acceptance No. MSRDC/ 02/ JMD/MEP/2010/ 1907 dated 28.10.2010
 - 11) MSRDC's Letter of Approval to SPV No. MSRDC/ 02/ JMD(I)/5 MEP/ 1908 dated 28.10.2010
 - 12) Intragroup Agreement signed between Successful Bidder and its SPV (Contractor) on 28.10.2010.
 - 13) Substitution Agreement signed between MSRDC, SPV (Contractor) and Lenders on 19.11.2010
 - 14) Escrow Account Agreement signed between SPV (Contractor), MSRDC, Lenders and Escrow Agent on 19.11.2010.
 - 15) Contract Agreement signed on 19.11.2010 between SPV (Contractor), MSRDC and Successful Bid.
 - 16) Payment of Rs. 2100 Cr. made on 19.11.2010.

Dear Sir,

This is to inform you that your above mentioned bid for appointment as Contractor for the work of Securitization of five Mumbai Entry Points along with maintenance of flyovers and allied structures including Collection of Toll at five entry toll stations of Mumbai namely Dahisar toll station on Western Express Highway corridor, Mulund toll station on Eastern Express Highway corridor, Mulund toll station on Lal Bhadur Shastri Marg corridor, Vashi on Sion-Panvel Highway corridor and Airoli toll station on Airoli Bridge corridor including Operation and Maintenance of Flyovers and Allied Structures given in the Contract Agreement has been accepted by the corporation for a period of 16 years (Sixteen Years) vide Letter of Acceptance under reference 5 above.

You have paid, as per the terms and conditions of contract, Clause 10, Page 45, Volume III, to the Corporation Performance security as detailed below :

- (i) O.M. and M. performance security amounting to Rs. 25 Cr. and also Rs. 1.25 Cr per corridor totaling to Rs. 6.25 Cr. as per Table 10.1 Sr. No. 2 of Vol. III of the Bid Document in the form of Bank Guarantee of Canara Bank dtd. 29.10.2010.
- (ii) You have also paid Rs. 7 Cr. as a security for performance of maintenance activities in the form of Cheque drawn on Canara bank dtd. 30.10.2010.

You have entered into Substitution Agreement on 19.11.2010 as per Clause 50.1 (d) Vol-III of Contract Agreement.

You have entered into Escrow Account Agreement on 19.11.2010 as per Clause 52.2.1 Vol-III of Contract Agreement.

You have paid an Upfront Payment of Rs. 2100 crs. (Rupees Two Thousand One Hundred Crores.) through RTGS on 19.11.2010 in our Account No. 1903.201.10062 with Canara Bank, Prime Corporate Branch-II, Verma Chambers, Fort, Mumbai in style of "Maharashtra State Road Development Corporation Ltd. - No Lien Account"

You have paid amount of Rs.50.00 lakhs (Rupees fifty lakhs only) towards beautification and landscaping of flyovers and you also have paid amount of Rs.1.00 cr. (rupees one crores) towards financial consultants fee as per clause 9, Sr.no.4 and 5 at page 44 volume III of the contract agreement.

You have entered into Contract Agreement on 19.11.2010 as per Clause 6.3 of Vol. III of the Contract Agreement.

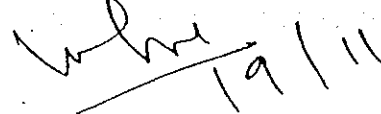
You are hereby authorized to collect the toll at five entry toll stations of Mumbai namely Dahisar toll station on Western Express Highway corridor, Mulund toll station on Eastern Express Highway corridor, Mulund toll station on Lal Bahadur Shastri Marg corridor, Vashi on Sion-Panvel Highway corridor and Airoli toll station on Airoli Bridge corridor including Operation and Maintenance of Flyovers and Allied Structures given in the Contract Agreement with effect from 00.00 hours on 20.11.2010 for a period of 16 years (Sixteen years) as per the toll notifications at Schedule 'L' Vol-III of the bid document.

Above Commencement Order is subject to the result of Special Leave Petition No. (s) 31526 / 2010 as per order of the Supreme Court dtd. 16.11.2010.

Signed copy of Contract Agreement is enclosed herewith. You are requested to acknowledge the receipt of the same.

Thanking you,

Yours Sincerely,



**VICE CHAIRMAN & MANAGING DIRECTOR
MSRDC LTD., MUMBAI**

Encl : As above