



BHARATMALA
ROAD TO PROSPERITY



BUILDING INFRASTRUCTURE - BUILDING THE NATION

CIN: U45400DL2014GOI269062

सार्वजनिक क्षेत्र का उपक्रम

A PUBLIC SECTOR UNDERTAKING

No. NHIDCL/DPR/SN-DMP-PC/Manipur/2016/744

Dated: 06.04.2018

To

M/s Wadia Techno Engineering Services Limited
in association with M/s Zoma Engineers
Wing A Raheja Point 1, Pt. Jawaharlal Nehru Road,
Vakala, Santacruz (E), Mumbai- 400055.

2. M/s Wadia Techno Engineering Services Limited,
Wing A Reheja Point 1, Pt. Jawaharlal Nehru Road,
Vakala, Santacruz (E), Mumbai- 400055
3. M/s Zoma Consulting services Pvt. Ltd.
73 C 4th Floor, Prem Complex, Taimoor Nargar
Near New Friends Colony
New Delhi- 110025

Sub: "Consultancy Services for carrying out Feasibility Study, Preparation of Detailed Project Report (DPR) and providing pre-construction services in respect of (i) 2 Laning of Maran-Peren-Dimapur of NH-129A section in the state of Manipur and Nagaland. (ii) 2 Laning of Pallel-Chandel Section of NH- 102C in the state of Manipur. (iii) 2 Laning of Sanshak-Nampisha on NH-102 A in the state of Manipur. Letter of debarment under clause 3.2.4(i) of letter of invitation of RFP and pursuant to Order dated 07.02.2018, passed by the Hon'ble High Court of Delhi in W.P (C) No. 1143/2018 & Order dated 13.03.2018, passed by the Hon'ble High Court of Delhi in L.P.A No. 103/2018.

Ref:

- i. Debarment Letter, NHIDCL / DPR / SN - DMP - PC / Manipur / 2016/434 dated 20.11.2017.
- ii. NHIDCL Letter No. NHIDCL/DPR/SN-DMP-PC/Manipur/2016 dated 23.01.2018.
- iii. M/s Zoma Engineers, Letter dated 28.11.2017.
- iv. M/s Wadia Techno Engineering Services Limited, Letter No. WTESL / Proj / NHIDCL / 870 dated 30.11.2017 and Letter No. WTE/NHIDCL-MPR-01 dated 27.03.2018
- v. Order dated 07.02.2018, passed by the Hon'ble High Court of Delhi in W.P (C) No. 1143/2018.
- vi. Order dated 13.03.2018, passed by the Hon'ble High Court of Delhi in L.P.A No. 103/2018.

Sir,

WHEREAS, M/s Wadia Techno Engineering Services Limited and M/s Zoma Consulting services Pvt. Ltd. was initially debarred under clause 3.2.4(i) of the letter of invitation of RFP for a period of 3 years, jointly and individually from participation in the future projects of NHIDCL vide debarment letter under reference (i).

AND WHEREAS, the Competent Authority of NHIDCL had considered representation of the consultant M/s Wadia Techno Engineering Services Limited and M/s Zoma Consulting services Pvt. Ltd. sympathetically and vide order dated 23.01.2018 reduced the debarment period to 2 (two) years from 3 (three) years from date of issue of debarment order dated 20.11.2017 jointly and individually.

AND WHEREAS, the relevant paras of the letter dated 23.01.2018 issued by NHIDCL thereby reducing the debarment period to 2 (two) years from 3 (three) years are reiterated and repeated herein:

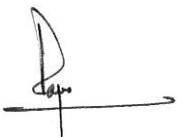
"AND WHEREAS, M/s Zoma Engineers and M/s Wadia Techno Engineering Services Limited requested vide letter under referene (ii) & (iii) respectively to review and recall the debarment letter under reference (i).

AND WHEREAS, the Competent Authority of NHIDCL has considered representation of the consultant M/s Wadia Techno Engineering Services Limited and M/s Zoma Consulting Services Pvt. Ltd. sympathetically and has decided to reduce the debarment period to 2 years from 3 years from the date of issue of debarment order dated 20.11.2017 jointly and individually.

AND WHEREAS, this letter is only in relation to the period of debarment and other provisions of the earlier letter dated 20.11.2017, remain unchanged."

AND WHEREAS, M/s Wadia Techno Engineering Services Ltd. thereafter filed Writ Petition (C) No. 1143/2018 before Hon'ble High Court of Delhi thereby challenging the debarment order dated 20.11.2017 and 23.01.2018 issued by NHIDCL. The said writ petition was disposed off by the Hon'ble High Court vide its order dated 07.02.2018, the relevant para is reproduced herein below:-

"12. As noticed above, it appears that the concerned authority has not considered the above factors in determining the period of blacklisting. In view of the above, the impugned orders are set aside and the matter is remanded to the concerned authorities to consider the quantum of punishment imposed on the petitioner having regard to the decision of the Supreme Court in Kulja Industries Limited (Supra)".



AND WHEREAS, NHIDCL thereafter filed an Appeal/LPA No. 103/2018 impugning the order dated 07.02.2018, passed by the Hon'ble Single Judge in W.P. (C) No. 1143/2018. The Division Bench disposed of the LPA vide its order dated 13.03.2018, by observing that ".....NHAI is generally correct in contending that the guidelines cannot be treated as inflexible or immutable under all circumstances; at the same time minutiae, pointed out by the Supreme Court, with respect to the application of mind in regard to each factor is meant to generally improve decision making and inject greater fairness. If these aspects are kept in mind, the remit order in the opinion of the Court cannot be faulted, especially having regard to the circumstance that the Single Judge has in no manner constrained NHAI from imposing any penalty or impose any objective limit as to the quantum, in the impugned order." Thus, in compliance of the directions of the Hon'ble High Court, the guidelines referred in the case of Kulja Industries Limited (supra) has been deliberated and considered, which are as follows:

Sl. No.	Relevant factors considered for debarment in terms of judgement of Kulja Industries Limited passed by Hon'ble Supreme court	Remarks/observation of NHIDCL
(a)	The actual or potential harm or impact that results or may result from the wrongdoing.	Cancellation of bidding process and re-invitation of bids have taken place and therefore loss of public money
(b)	The frequency of incidents and/or duration of the wrongdoing.	First, however the wrongdoing is an admitted fact. This is an admitted case of Fake CV.
(c)	Whether there is a pattern or prior history of wrongdoing.	Yes, there is a pattern. M/s Wadia Techno Engineering Services Limited in consortium of M/s Yooshin Engineering Corporation has been debarred by the Assam Government for the projects undertaken by the Assam PWD NH Works as well as works of MoRT&H implemented by Assam PWD NH Works for period of 2 years vide letter no. NHR.26/2016/Pt/50 dated 11.12.2017 on account of forgery.
(d)	Whether the contractor has been excluded or disqualified by an agency of the Federal Government or has not been allowed to participate in State or local contracts or assistance agreements on	Yes, the following companies have been debarred from participating in projects undertaken by the Assam PWD NH Works as well as works of

Sl. No.	Relevant factors considered for debarment in terms of judgement of Kulja Industries Limited passed by Hon'ble Supreme court	Remarks/observation of NHIDCL
	the basis of conduct similar to one or more of the causes for debarment specified in this part.	<p>MoRT&H implemented by Assam PWD NH Works for a period of 2 (two) years vide letter no. NHR.26/2016/Pt/50 dated 11.12.2017:</p> <p>(i) M/s Wadia Techno Engineering Services Ltd (WTESL) in consortium with M/s Yooshin Engineering Corporation</p> <p>(ii) M/s Wadia Tehno Engineering Services Ltd. Wing 'A' Raheja Point I, Pt. Jawaharlal Nehru Road, Vakola Santacruz (E), Mumbai-400055</p> <p>(iii) M/s Yooshin Engineering Corporation Seoul, Korea (E-mail: international@yooshin.com)</p> <p>(iv) However Hon'ble Gauhati High Court vide order 28.02.2018 has directed the Assam Government to give an opportunity of personal hearing and pass a fresh order on the issue of blacklisting. Further it is stated that until such time the exercise is carried out, the order of black listing shall not be given effect to.</p>
(e)	Whether and to what extent did the contractor plan, initiate or carry out the wrongdoing.	<p>The consultant planned to win the contract by unfair means. Vide letter no. NHIDCL/DPR/SN-DMP-PC/Manipur/2016 dated 07.10.2016, the Consultant emerged as Most Preferred Bidder and was requested to submit the justification for the cost quoted and called for negotiation as per clause 6 of RFP. All the key personnel's were also called for interaction with the Committee</p>

Sl. No.	Relevant factors considered for debarment in terms of judgement of Kulja Industries Limited passed by Hon'ble Supreme court	Remarks/observation of NHIDCL
		within 7 days.
(f)	Whether the contractor has accepted responsibility for the wrongdoing and recognized the seriousness of the misconduct.	Yes, admitted fact.
(g)	Whether the contractor has paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.	No
(h)	Whether the contractor has cooperated fully with the government agencies during the investigation and any court or administrative action.	Yes, the consultant has replied to Show Cause Notices, etc.
(i)	Whether the wrongdoing was pervasive within the contractor's organization.	Not known
(j)	The kind of positions held by the individuals involved in the wrongdoing.	Not known
(k)	Whether the contractor has taken appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence.	Not known
(l)	Whether the contractor fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.	The Consultant has stated that its associate M/z Zoma Engineering has done the wrong doing and replied to the Show Cause Notice, accordingly, its associate M/s Zoma Engineering has accepted the wrongdoing.

The Competent Authority of NHIDCL deliberated the matter in detail vide 49th Meeting of Executive Committee dated 23.03.2018 and on 04.04.2018 and after considering the relevant factors/guidelines enumerated by the Hon'ble Supreme Court of India in the case of Kulja Industries Limited (supra), and for the conduct



of breach and violation of the clause 3.2.4 (i) of letter of invitation of RFP for failing to exercise due diligence and complicity in the preparation of fake ID. The Competent Authority after taking into consideration all the facts and records, as per the guidelines stipulated in Kulja Industries Limited (supra) hereby passes the following orders:


1. The Association of M/s Zoma Consulting Engineers along with M/s Wadia Techno Engineering Services Limited is hereby debarred under clause 3.2.4 (i) of letter of invitation of RFP for a period of 2 (two) years from participation in the future projects of NHIDCL.
2. M/s Zoma Consulting Engineers is hereby debarred under clause 3.2.4(i) of the letter of invitation of RFP for a period of 2 (two) years for complicity in the preparation of fake ID and as admitted in their letter dated 19.06.2017. They are debarred for a period of 2 (two) years from participation in the future projects of NHIDCL.
3. M/s Wadia Techno Engineering Services Limited is hereby debarred under clause 3.2.4(i) of the letter of invitation of RFP for a period of 2 (two) years for failing to exercise due diligence and complicity in the preparation of fake ID. They are debarred for a period of 2 (two) years from participation in the future projects of NHIDCL.

In view of the Clause 1.8.2 (v) of the RFP and Clause 5 of MOU dated 19.07.2016 both the firms i.e. M/s Zoma Consulting Engineers and M/s Wadia Techno Engineering Services Limited are jointly and individually liable and, therefore, debarred for a period of 2 (two) years w.e.f. 20.11.2017 from participation in the future projects of NHIDCL as per clause 3.2.4(i) of the letter of invitation and natural consequence of the present debarment which includes appropriate action on the Infracon portal shall also be initiated by NHIDCL.

This letter is only in relation to the period of debarment and other provisions of the earlier letter dated 20.11.2017 and subsequently letter dated 23.01.2018 shall remain unchanged.

This letter is issued without prejudice to our rights and remedies and it may be noted that NHIDCL, shall be at liberty to take such other and further steps as per the contract and applicable laws.

This is issued with the approval of Competent Authority.


(Col Rajeev Sood, Retd)
GM (Tech)