

राष्ट्रीय राजमार्ग एवं अवसंरचना विकास निगम लिमिटेड

सड़क परिवहन और राजमार्ग मंत्रालय, भारत सरकार

तीसरी मंजिल, पीटीआई बिल्डिंग, 4-संसद मार्ग, नई दिल्ली-110001

National Highways & Infrastructure Development Corporation Limited

Ministry of Road Transport & Highways, Govt. of India

3rd Floor, PTI Building, 4-Parliament Street, New Delhi-110001, +91 11 2346 1600, www.nhidcl.com



BHARATMALA
ROAD TO PROSPERITY



BUILDING INFRASTRUCTURE - BUILDING THE NATION

CIN: U45400DL2014GOI269062

सार्वजनिक क्षेत्र का उपक्रम

A PUBLIC SECTOR UNDERTAKING

NHIDCL/CivilWork/ALT/Bagrakot-Kafer/PKG-IVA/2017

18.02.2019

CIRCULAR

Sub: Debarment of M/s. S&P Infrastructure Developers Private Limited from participating in future projects of/ or to be undertaken by NHIDCL till 17th February 2021 - reg.

With the approval of the Competent Authority of NHIDCL, M/s. S&P Infrastructure Developers Private Limited, 907 New Delhi House, 27 Barakhamba Road, New Delhi-110001 has been debarred from participating in future projects of/or to be undertaken by NHIDCL w.e.f. 18.02.2019 till 17.02.2021. Copy of debarment letter no. NHIDCL/CivilWork/ALT/Bagrakot-Kafer/PKG-IVA/2017 dated 18.02.2019 is enclosed herewith for information and records.

Rahul Gupta
18/02/19
(Rahul Gupta)
Executive Director

Copy to:

- (i) Director General (RD) & SS Ministry of Road Transport & Highways
- (ii) Director General (Border Roads), Seema Sadak Bhawan, Ring Road, Narayana, New Delhi 100010
- (iii) Chairman, NHAI
- (iv) Chief Secretaries/Secretaries (PWD/Roads) of all State Govt. /UT with National Highways and Centrally Sponsored Schemes.
- (v) Chief Engineers of all State Govt. /UT dealing with National Highways and centrally sponsored schemes.
- (vi) P.S. to MD, NHIDCL, Director (A&F/T) NHIDCL
- (vii) All officers of NHIDCL - HQ/Branch Offices.
- (viii) Media relation/IT division/Infracon cell with request to get it hoisted on NHIDCL website.

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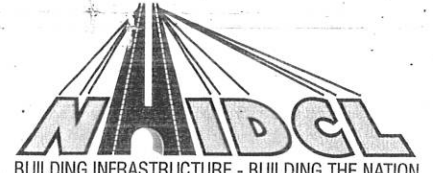
सड़क परिवहन और राजमार्ग मंत्रालय, भारत सरकार
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A PUBLIC SECTOR UNDERTAKING

NHIDCL/CivilWork/ALT/Bagrakot-Kafer/PKG-IVA/2017/117

18.02.2019

To,

- (i) M/s R.P. Infraprojects
(A Joint venture of M/s. S&P Infrastructure Developers Pvt. Ltd.
& M/s. Aarpee Infraprojects Pvt. Ltd.)
907 New Delhi House,
27 Barakhamba Road,
New Delhi-110001

[Kind Attention: Sh. Sanjeev Gaur, Authorized Signatory]

- (ii) M/s. S&P Infrastructure Developers Pvt. Ltd.
907 New Delhi House,
27 Barakhamba Road,
New Delhi-110001

[Kind Attention: Sh. Sanjeev Gaur, Authorized Signatory]

- (iii) M/s. Aarpee Infraprojects Pvt. Ltd.
Infinity Square, Room no. 201
2nd floor, Beside PCM Bus Terminus,
2nd mile, Sevoke Road,
P.O. Siliguri
Dist. Jalpaiguri-734001

[Kind Attention: Sh. Rajesh Garg, Authorized Signatory]

Sub: Construction of alternate highway to Gangtok in Sikkim via Bagrakot-Chuikhim-Nimbong-Kafer-Bakhim-Algarah-Rhenok in the State of West Bengal and from Rhenok-Rorathang-Pakyong along with spur from Aritar-Rolep-Menla in the state of Sikkim (Package No. IVA from Km 0.00 to Km 13.00 of Bagrakot-Kafer section of NH 717 A in EPC mode under Phase 'A' of SARDP-NE in the state of West Bengal)- **Letter of Debarment under provisions of Clause 4.2 of section 4 of RFP document - regd.**

Ref:

- 1) M/s. S&P Infrastructure Developers Private Limited Letter no. S&P/RW/NH-717A/Bagrakot-Kafer/Pkg.-IVA/024 dated 05.01.2019
- 2) M/s Aarpee Infraprojects Pvt. Ltd. letter No Nil dated 04.12.2018
- 3) M/s. S&P Infrastructure Developers Private Limited Letter no. S&P/RW/NH-717A/Bagrakot-Kafer/Pkg.-IVA/025 dated 10.11.2018

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- 4) NHIDCL's letter no NHIDCL/Civil Work/ALT/Bagrakot-Kafer/PKG-IVA/2017/267 dated 29.10.2018
- 5) NHIDCL's Letter no. NHIDCL/Civil Work/ALT/Bagrakot-Kafer/PKG-IVA/2017/185 dated 18.09.2018
- 6) NHIDCL's Letter no. NHIDCL/Civil Work/ALT/Bagrakot-Kafer/PKG-IVA/2017/398 dated 28.03.2018
- 7) NHIDCL's Letter no. NHIDCL/Civil Work/ ALT/ Bagrakot-Kafer/ PKG-IVA /2017/212 dated 09.10.2018

Sir,

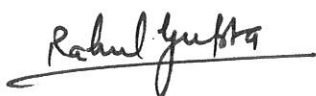
Whereas, LOA for the work of "Construction of alternate highway to Gangtok in Sikkim via Bagrakot-Chuikhim-Nimbong-Kafer-Bakhim-Algarah-Rhenok in the State of West Bengal and from Rhenok-Rorathang-Pakyong along with spur from Aritar-Rolep-Menla in the state of Sikkim (Package No. IVA from Km 0.00 to Km 13.00 of Bagrakot-Kafer section of NH 717 A in EPC mode under Phase 'A' of SARDP-NE in the state of West Bengal)" (hereinafter referred as Project) was issued to M/s. R.P. Infraprojects (joint venture of M/s. S&P Infrastructure Developers Private Limited and M/s. Aarpee Infraprojects Pvt. Ltd.) (hereinafter referred as the Selected Bidder) on 28.03.2018 by the National Highways & Infrastructure Development Corporation limited (hereinafter referred as 'NHIDCL' or 'Authority').

2. Whereas, in view of the transgressions/violation and perpetration of fraud and exercise of fraudulent practice upon NHIDCL by submitting false documents and claiming false work experience by M/s. Aarpee Infraprojects (P) Ltd, the other partner of the JV during submission of the bid, which was confirmed by Road & Bridge Department, Govt. of Sikkim and in consequence the LoA was withdrawn and Bid Security BG worth Rs. 3.17 Cr was forfeited by the Authority as per stipulations of clause 2.6.3 and clause 4.1 of the RFP document.

3. Whereas, the Authority vide letter at Sr. No. (4) under reference above issued 'Show cause Notice' and 'Personal Hearing' giving 14 (fourteen) days notice period as to why (i) M/s R.P. Infraprojects (joint venture of M/s. S&P Infrastructure Developers Private Limited and M/s. Aarpee Infraprojects Pvt. Ltd.), (ii) M/s. S&P Infrastructure Developers Private Limited and (iii) M/s. Aarpee Infraprojects Pvt. Ltd. should not be debarred for participating directly or indirectly in any form in any work connected with NHIDCL.

4. Whereas, in their reply M/s S&P Infrastructure Developers Private Limited stated that the M/s S&P Infrastructure Developers Private Limited had the required work experience except in case of Technical score at the time of bid submission. Further, M/s S&P Infrastructure Developers Private Limited stated that the fraudulent practice was not committed by them and requested to look into the matter in right perspective and accordingly order for re-calling the Notice under reply. M/s S&P Infrastructure Developers Private Limited also requested to execute the project as single entity.

5. Whereas, the requests made by M/s S&P Infrastructure Developers Pvt. Ltd. were considered and as per provisions under clause 2.6.2 of section 2, in case of misrepresentation/improper response, the entire Joint Venture and each member of



the Joint Venture jointly and severally may be disqualified/rejected. Further, M/s S&P Infrastructure Developers Pvt. Ltd. themselves have admitted through their reply to the Authority that they were not technically qualified at the time of bid submission. Thus, the request of Lead Member for re-calling the Notice under reply is not tenable.

6. Whereas, pursuant to the show cause a personal hearing was held on 03.01.2019, which was attended by Sh. Sanjeev Gaur, Authorized Signatory on behalf of M/s. R.P. Infraprojects (joint venture of M/s. S&P Infrastructure Developers Private Limited and M/s. Aarpee Infraprojects Pvt. Ltd.), Smt. Krishna, Director, Sh. Shyam S. Mittal, Director and Sh. Bishnu Kumar Agrawal, PoA on behalf of M/s. S&P Infrastructure Developers Pvt. Ltd.

7. Whereas, the High Power Committee, NHIDCL considered your subsequent reply, submitted vide letter No. S&P/RW/NH-717A/Bagrakot-Kafer/Pkg-IV-A/025, Nil, S&P/RW/NH-717A/Bagrakot-Kafer/Pkg.-IVA/024 dated 10.11.2018, 04.12.2018 and 05.01.2019 respectively, submitted in response to 'Show cause Notice' and it is stated that the submissions / reply of M/s. S&P Infrastructure Developers Pvt. Ltd. are not found satisfactory.

8. Whereas, during the course of the personal hearing the contractor in reference to the contents of the show cause and withdrawal of LoA upon again submitted that;

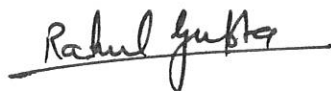
(i) M/s S&P have not committed any mistake in submission of bid. It was the other partner M/s. Aarpee Infraprojects Pvt. Ltd. who had adopted the fraudulent practice while submitting the bid which was not known to them. Hence, the lead partner should not be penalized for the misdeed of other partner.

(ii) The lead partner reiterated that they are ready to carry out the work independently and accordingly they requested NHIDCL.

9. Whereas, on enquiry to the representatives of Selected Bidder regarding any debarment/suspension from any Central/State Govt. Department/organization, the representatives informed that no such action has been done on to M/s S&P Infrastructure Developers Pvt. Ltd.

10. Whereas, an order issued by the Bihar Govt. dated 24.11.2016, was shown by the High Power Committee of NHIDCL to the representatives of Selected Bidder regarding their debarment, they stated that such action was done well after the completion of the project and also the concerned project was related to LWE scheme of MoRTH and hence this was not applicable to NH projects.

11. Whereas, on enquiry to the representatives of Selected Bidder whether they had moved to any court being aggrieved to the action of the Govt. of Bihar; they denied that they had gone to court. But the High Power Committee of NHIDCL showed them order of the High Court of Judicature at Patna (Civil writ Jurisdiction case no.1319 of 2017) titled as M/s. S&P Infrastructure Developers Pvt. Ltd. Vs. The State of Bihar & Others and stated that they had approached to Court against the debarment of the said work and the court had passed appropriate orders.



12. Whereas, M/s. R.P. Infraprojects (joint venture of M/s. S&P Infrastructure Developers Private Limited and M/s. Aarpee Infraprojects Pvt. Ltd.) (hereinafter referred as the Selected Bidder) had submitted undertaking/certification as per the provisions in Appendix-1A of the bidding documents towards correctness, authentication, integrity, litigation, judicial pronouncement, conflict of interest, corrupt practice, fraudulent practice, coercive practice, undesirable practice as defined in clause 4.3 of RFP. But the bidder did not declare its debarment/registration suspension by Govt. of Bihar and its approaching the court and indictment by the court which established the act of fraudulent practice as defined in clause 4.3 section 4 of the RFP document.

13. Whereas, in compliance of the directions of the Hon'ble Supreme Court judgment in *Kulja Industries vs Chief General Manager, Western Telecom Project BSNL & Ors AIR 2014 SC 9*, has been deliberated and considered, which are as follows

Sl. No.	Relevant factors considered for debarment in terms of Kulja Industries Limited.	Remarks of NHIDCL
(a)	The actual or potential harm or impact that result or may result from the wrongdoing.	Withdrawal of LoA and re-invitation of bids and therefore, wastage of public money, time and resources. As a result of the fraud by the Selected Bidder, the entire bidding process had to be re-invited and therefore, a major construction project of the Govt. of India is delayed and hampered.
(b)	The frequency of incidents and/or duration of the wrongdoing.	(i) The JV partner namely M/s. Aarpee Infraprojects Pvt. Ltd. is already debarred by NHIDCL for a period of 3(three) years vide letter no. NHIDCL/Sikkim/Civil Work/Singtam Tarku (0.000-16.000)/2017 dated 26.10.2018. It is important to state that the gross fraud committed by M/s. Aarpee Infraprojects Pvt. Ltd. was admitted by them and confirmed by Roads & Bridge Department, Govt. of Sikkim. (ii) The majority of the credentials claimed by M/s. R.P. Infraprojects (joint venture of M/s. S&P Infrastructure Developers Private Limited and M/s. Aarpee Infraprojects Pvt. Ltd.) have turned out to be false/ forged/ fabricated. (iii) During the course of hearing, it also transpired that M/s. S&P Infrastructure Developers Private Limited defaulted with another project in the State of Bihar, which is detailed in Sr. (c) below.
(c)	Whether there is a pattern or	Yes.

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	prior history of wrongdoing.	An order dated 24.11.2016 has been issued by the Govt. of Bihar regarding suspension/debarment of M/s. S&P Infrastructure Developers Pvt. Ltd. Besides, the other partner, M/s. Aarpee Infraprojects Pvt. Ltd. has been found to be indulged in similar misconduct in bid submission for this project by means of producing fake documents on execution of work, which was considered for Technical Evaluation by NHIDCL. The Embassy of India, Thimpu, Bhutan vide their letter No./Thi/Eco./202/02/2018 dated 25.07.2018 has confirmed that the credentials claimed by M/s. Aarpee Infraprojects Pvt. Ltd. was not authentic and that something is dubious with the work experience quoted by M/s. Aarpee Infraprojects Pvt. Ltd.
(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 the basis of conduct similar to one or more of the causes for debarment specified in this part.	Yes, Govt. of Bihar vide order dated 24.11.2016 suspended/ debarred M/s. S&P Infrastructure Developers Pvt. Ltd. i.e. the Lead Member. Subsequently, the petition bearing no. Civil writ Jurisdiction Case no. 1319 of 2017 titled M/s. S&P Infrastructure Developers Pvt. Ltd. vs. The State of Bihar & others was filed before the Hon'ble High Court of Judicature at Patna and the matter was dismissed as withdrawn vide order dated 19.07.2017.
(e)	Whether and to what extent did the contractor plan, initiate or carry out the wrongdoing.	The LOA had been issued on 28.03.2018, which was subsequently withdrawn after the Selected Bidder was found to be indulged in fraudulent practices. The work was obtained on false document and false work experience and therefore, the wrongdoing was pre-planned and therefore, an attempt to cause huge loss to the Govt. of India and the public exchequer.
(f)	Whether the contractor has accepted responsibility for the wrongdoing and recognized the seriousness of the misconduct.	M/s. S&P Infrastructure Developers Private Limited has not admitted their wrongdoing. Whereas, the other member of the JV, M/s. Aarpee Infraprojects Pvt. Ltd. has admitted their faults vide letter no. Nil dated 27.09.2018
(g)	Whether the contractor has paid or agreed to pay all criminal, civil and	No.

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	improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.	
(h)	Whether the contractor has cooperated fully with the government agencies during the investigation and any court or administrative action.	The Selected Bidder has replied to Show Cause Notice and participated in Personal hearing etc. However, the Lead member (M/s. S&P Infrastructure Developers Private Limited) of the Selected Bidder had moved to the Hon'ble High court of Delhi being aggrieved with the action taken by NHIDCL towards withdrawal of LoA and encashment of Bid Security as stipulated in Clause 2.6.3 Section 2 and 4.1 of section 4 of RFP. The Hon'ble High Court of Delhi had upheld the action of NHIDCL through its order dated 15.10.2018. Moreover, pursuant to the High Court Order dated 15.10.2018, an amount of Rs. 2.32 Crores and Rs. 85 Lakh has been received by NHIDCL.
(i)	Whether the wrongdoing was pervasive within the contractor's organization.	Not known. However, it seems so from the conduct of the contractors.
(j)	The kind of positions held by the individuals involved in the wrongdoing.	Not known. However, during the course of Personal Hearing, there was no remorse or expression of guilt from the representatives of M/s. S&P Infrastructure Developers Private Limited and the Authorized Signatory of M/s. R.P. Infraprojects (joint venture of M/s. S&P Infrastructure Developers Private Limited and M/s. Aarpee Infraprojects Pvt. Ltd.) Surprisingly, there was no representative from M/s. Aarpee Infraprojects Pvt. Ltd. who already stands debarred by NHIDCL vide letter no. NHIDCL/Sikkim/Civil Work/Singtam Tarku (0.000-16.000)/2017 dated 26.10.2018.
(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	No.

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	surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.	
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14. Whereas, NHIDCL has suffered time loss and reputational damage due to Selected Bidder's fundamental breaches to the RFP and Selected Bidder's persistent & sustained gross defaults. There has also been severe strain on the public ex-chequer and there is loss of public money. To initiate debarment, the relevant provisions under section 4.2 of section 4 of the RFP document which read as follows;

"Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Agreement, or otherwise if a Bidder or Contractor, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Agreement, such Bidder shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder, or Contractor, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be"

15. Therefore, in view of the above and after taking into consideration all the facts and records and as per the guidelines stipulated in Kulja Industries (supra) and under the provisions of clause 4.2 of section 4 of the RFP document, the Competent Authority hereby passes the following orders:

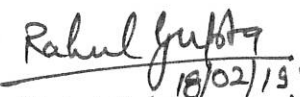
- (i) **M/s. R.P. Infraprojects (joint venture of M/s. S&P Infrastructure Developers Pvt. Ltd. and M/s. Aarpee Infraprojects Pvt. Ltd.)** jointly and severally, is hereby debarred for a period of **2 (two) years** from participating directly or indirectly in any form in any work connected with NHIDCL under the provisions of clause 4.2 of section 4 of the RFP document.
- (ii) **M/s. S&P Infrastructure Developers Pvt. Ltd.**, the lead member jointly and severally, is hereby debarred for a period of **2 (two) years** from participating directly or indirectly in any form in any work connected with NHIDCL under the provisions of clause 4.2 of section 4 of the RFP document.
- (iii) **M/s. Aarpee Infraprojects Pvt. Ltd.**, the other member jointly and severally, is hereby debarred for a period of **2 (two) years** from participating directly or indirectly in any form in any work connected with NHIDCL under the provisions of clause 4.2 of section 4 of the RFP document.



16. This debarment shall not have any consequential effect on the earlier debarment of M/s. Aarpee Infraprojects Pvt. Ltd., issued by NHIDCL vide letter no. NHIDCL/Sikkim/Civil Work/Singtam Tarku (0.000-16.000)/2017 dated 26.10.2018.

17. This letter is issued without prejudice to any other right or remedy available to the Authority under the RFP document and/or applicable law and is issued with the approval of the Competent Authority, NHIDCL.

Yours Sincerely,


(Rahul Gupta)

Executive Director