



AURANGABAD MUNICIPAL CORPORATION

Phone No (0240) 2333536-40 Fax No (0240)-2331213

AMC/ DE(WS)/ Jayakwadi Civil/748 /2015

Date:- 11 / 12 /2015

To

Mr. Sushil Sethi
Managing Director
SPML Infra Limited
Plot No. 65, Sector 32
Gurgaon 122 001

Sub: Aurangabad Water Supply Project –Failure to Complete Quarterly Project Milestones, Non-Fulfillment of Pre-COD Service Level Requirements and Concessionaire Event of Default

- Ref:
1. AMC letter No. AMC/DE(WS)/Jayakwadi Civil/408/2014 dated 01.09.2014
 2. AMC letter No. AMC/DE(WS)/Jayakwadi Civil/113/2015 dated 19.05.2015
 3. AMC letter No. AMC/DE(WS)/Jayakwadi Civil/253/2015 dated 04.07.2015
 4. AMC letter No. AMC/DE (WS)/ Jayakwadi Civil/296/2015 dated 27.07.2015
 5. Letter from Concessionaire ACWUCL/Aurangabad/2015-16/273 dated 05.08.2015
 6. AMC letter No. AMC/DE (WS)/ Jayakwadi Civil/388/2015 dated 25.08.2015
 7. AMC letter No. AMC/DE(WS)/Jayakwadi Civil/406/2015 dated 02.09.2015
 8. AMC letter No. AMC/DE(WS)/Jayakwadi Civil/486/2015 dated 01.10.2015
 9. AMC letter No. AMC/DE (WS)/ Jayakwadi Civil/601/2015 dated 05.11.2015
 10. Letter from Concessionaire ACWUCL/Aurangabad/2015-16/596 dated 05.11.2015
 11. Letter from Independent Engineer UCPL/15/PMD/368/LTR/450 dated 19.11. 2015
 12. Letter from Independent Engineer UCPL/15/PMD/368/LTR/457 dated 30.11. 2015
 13. Minutes of Meeting for a meeting held on December 09, 2015 at Aurangabad

Dear Sir,

We refer to above referred communications from Aurangabad Municipal Corporation (the "AMC") and Independent Engineer, and various Project review meetings. It may be noted that the Concessionaire, despite repeated requests, warnings, and communications from AMC and the Independent Engineer and despite having full cooperation from AMC at all levels and at all stages, has not fulfilled its Conditions Precedent, Pre-COD Service Level Requirements, its obligation under approved quarterly Project Milestones, and completely failed to either improve the availability of treated water to the citizens or to improve water supply distribution system within the City. It may be noted that:

- a) AMC vide its letter reference No. 1. AMC/DE (WS)/Jayakwadi Civil/408/2014 dated September 01, 2014 declared the Appointed Date, in accordance with the provisions of the Concession Agreement and handed over AMC's entire water supply system to the Concessionaire. It has been observed that from Appointed Date to date, i.e. in about last 15 months, the Concessionaire has completely failed to either implement the Project in accordance with the Concession Agreement, or improve the water supply system within the City, and in fact the water supply system within the City has steadily deteriorated over a period of time. It has been observed that, while the Concessionaire is being able to produce the potable grade water at about 135 MLD, which is in line with the Schedule

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XXIV of the Concession Agreement, the same was required to be at about 156 MLD, i.e. the actual capacity of the AMC's water treatment capacity. It is also observed that while AMC, before Appointed Date, was being able to supply either daily or alternate day water supply to the majority of the area within the City, the same has been deteriorated, post-Appointed Date, to about once in every third day in most of the parts of the City. The Concessionaire has also failed to take up any corrective measure to either halt such deterioration or improve the water supply system by any measure. It has also been discussed and noted that even to date, the Concessionaire has not prepared any effective corrective measures to improve the situation.

- b) It is generally observed that the Concessionaire has neither achieved any improvement in available quantum of water supply to the City nor improved the water supply distribution system within the City. The failure of the Concessionaire in improving water supply situation in a City has aggravated situation, creating large scale dissatisfaction among citizens of the City targeted towards AMC;
- c) AMC has approved the detailed quarterly Project Milestones vide AMC letter reference No. 4. AMC/DE (WS)/ Jayakwadi Civil/296/2015 dated July 27, 2015. The Concessionaire vide its letter reference No. 5. ACWUCL/Aurangabad/2015-16/273 dated August 05, 2015 represented to AMC that the release of Project Grant will support and facilitate the Concessionaire to receive the drawdown from the Bank. The Concessionaire, in the same letter, also assured AMC that, in case the drawdown gets delayed from the Bank, Concessionaire will invest money out of own funds. Based on the assurance provided by the Concessionaire, AMC released Project Grant, pursuant to **Clause 19.1** and **Schedule VII** of the Concession Agreement of Rs 20,08,60,400/- (Rupees twenty crore eight lakh sixty thousand and four hundred only), for the first four quarterly Project Milestones. AMC released the said Project Grant by retaining 5% of the total quarterly Project Grant of Rs 21,14,32,000/- (Rupees Twenty One Crore Fourteen Lakh and Thirty Two Thousand Only) due, i.e. Rs 1,05,71,600/- (Rupees one crore five lakh seventy one thousand and six hundred only) as the Contingency Reserve in accordance with **Clause 19.1 (c)** of the Concession Agreement. It may be noted that, despite AMC releasing Project Grant based on Concessionaire's above referred assurance, the Concessionaire has not yet provided evidence in a manner reasonably acceptable to AMC that the Concessionaire has funds available (whether by debt or equity) to undertake the Project. It may also be noted that against AMC's share in terms of quarterly Project Grant of Rs 21,14,32,000/- the Concessionaire was expected to invest Rs 21,20,55,000/- in order to complete the first four quarterly Project Milestones. The Concessionaire, as informed during the meeting held on December 09, 2015, has invested only about Rs 11 crore in the Project, i.e. about 25 % of the expected expenditure of the first four quarterly Project Milestones. Considering above, and in absence of any clarifications, it is clear that the Concessionaire has failed to achieve Financial Closure in accordance with **Clause 5.2 (a) (iii)** of the Concession Agreement, and the same shall be construed as the Concessionaire Event of Default in accordance with **Clause 33.1 (h)** of the Concession Agreement. It can also be construed that the Concessionaire has not invested the Project Grant released by AMC, based on an assurance of the Concessionaire;
- d) It is also observed that the Concessionaire, while providing thrust to the works related to the distribution network, did not adhere to the Government resolution, which has clearly stipulated to provide a first preference to the works related to improve the availability of water to the citizens, e.g. the Concessionaire should have been implemented a head works at source along with rising mains with & Water Treatment plant up to City rather than laying unauthorized water distribution network in the City;

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e) The Concessionaire was expected to complete the first four quarterly Project Milestones, as approved by AMC vide letter reference No. 4, AMC/DE (WS)/ Jayakwadi Civil/296/2015 dated July 27, 2015 by August 31, 2015. It may be noted that the Concessionaire, not only failed to fulfill its obligation to complete the approved quarterly Project Milestones on time, but despite receiving repeated communication from AMC and Independent Engineer, failed to take any corrective measures. Considering above and in absence of above clarifications, it shall be construed as the default in accordance with **Clause 18.5** of the Concession Agreement. Please refer following communications from AMC in this regard:

- AMC letter No. AMC/DE (WS)/ Jayakwadi Civil/616/2015 dated 07.11.2015
- AMC letter No. AMC/DE (WS)/ Jayakwadi Civil/601/2015 dated 05.11.2015
- AMC letter No. AMC/DE (WS)/ Jayakwadi Civil/558/2015 dated 26.10.2015
- AMC letter No. AMC/DE (WS)/ Jayakwadi Civil/500/2015 dated 05.10.2015
- AMC letter No. AMC/DE (WS)/ Jayakwadi Civil/496/2015 dated 05.10.2015
- AMC letter No. AMC/DE (WS)/ Jayakwadi Civil/485/2015 dated 01.10.2015
- AMC letter No. AMC/DE (WS)/ Jayakwadi Civil/471/2015 dated 28.09.2015
- AMC letter No. AMC/DE (WS)/ Jayakwadi Civil/431/2015 dated 10.09.2015

f) As the Preparatory Period Obligation, the Concessionaire was expected to submit the designs and drawings before Appointed Date, i.e. on or before August 31, 2014 and get it reviewed by the Independent Engineer. As a part of this obligation, the Concessionaire was expected to submit the final hydraulic design of the water distribution system to AMC and get it approved by the Independent Engineer and AMC. It may be noted that the Concessionaire despite consistent follow up by the Independent Engineer and AMC, the Concessionaire has not yet incorporated the comments provided by the Independent Engineer and AMC, and submitted the final hydraulic design for the water distribution system. Considering above and in absence of above clarifications, it shall be construed as the default in accordance with **Clause 15.6** of the Concession Agreement. Please refer following communications from AMC in this regard:

- AMC letter No. AMC/DE (WS)/ Jayakwadi Civil/642/2015 dated 16.11.2015
- AMC letter No. AMC/DE (WS)/ Jayakwadi Civil/557/2015 dated 26.10.2015
- AMC letter No. AMC/DE (WS)/ Jayakwadi Civil/469/2015 dated 28.09.2015

g) The Concessionaire has not yet submitted the structural design of the proposed water supply system, duly approved by the Government Engineering College, except one Elevated Service Reservoir (N-11), thereby defaulting the Mandatory Project Requirements of the Project. Please refer following communications from AMC in this regard:

- AMC letter No. AMC/DE (WS)/ Jayakwadi Civil/557/2015 dated 26.10.2015

h) In accordance with **Schedule XXIV - Service Level Requirements** of the Concession Agreement, the Concessionaire was expected to install consumer meters at 10% of the total connections in Year 1 of the Concession Period, i.e. on or before August 31, 2015. Also in accordance with the **Clause 15.2 (a) (vi)**, and by the end of Preparatory period, i.e. on or before August 31, 2014, the Concessionaire was expected to provide a plan for the metering all consumer connections and production and distribution points. It may be noted that the Concessionaire, on repeated insistence of the AMC, submitted a plan for the metering all consumer connections and production and distribution points on March 16, 2015, i.e. after 6.5 months of Appointed Date, vide its letter ACWUCL/Aurangabad/2014-15/500 dated March 16, 2015. The Concessionaire vide its letter ACWUCL/Aurangabad/2015-16/13 dated April 11, 2015, i.e. about 7.5 months of Appointed Date sought an authorization from AMC to meter all AMC properties, to which AMC replied promptly by granting such authorization to meter water connections to all AMC properties vide its letter

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AMC/DE (WS)/Jayakwadi Civil/47/2015 dated April 23, 2015. It may also be noted that the Concessionaire had not selected the vendor for consumer meters, and sought an approval for the consumer meter make only on April 08, 2015, and submitted QAP for these consumer meters on April 17, 2015, i.e. about 7.5 months post Appointed Date vide its letter ACWUCL/Aurangabad/2015-16/10 and ACWUCL/Aurangabad/2015-16/30 respectively. AMC approved the consumer meter vendor vide its letter AMC/DE(WS)/Jayakwadi Civil/114/ 2015 dated May 19, 2015 on receipt of an approval from an Independent Engineer vide its letter UCPL/15/PMD/368/LTR/206 dated April 11, 2015. It may also be noted that the Concessionaire is yet to submit an approval from the Independent Engineer for a plan for maintenance of these consumer meters, which was expected before May 31, 2015. It is quite clear that the Concessionaire has inordinately and deliberately delayed the process of an approval and an installation of consumer meters, while AMC assisted Concessionaire promptly to achieve this milestone. Please note that the opposition from different stakeholders was not for the metering of the consumer connections, but to install meters without providing any appropriate service. On a number of occasions through letters, and during the meetings, AMC and the Independent Engineer advised Concessionaire to not only improve its service delivery to the consumers, mainly in operations & maintenance of the system and to address consumer grievances, but also communicate positively with all stakeholders on a regular basis, either directly or through local media, explaining about the project and its benefits. It may be noted that the Concessionaire's efforts have not been reflected in actual performance, either in service delivery or communications with various stakeholders. The opposition for metering of connections is as a result of complete failure on part of the Concessionaire. Considering a lack of improvement in services to the consumers, growing opposition from consumers for metering of water connections without any improvement in services, and considering a resolution of Honourable General Body Resolution No. 20 dated 13.07.2015, AMC instructed Concessionaire to halt metering of the consumer water connections, till the time services improves in the City in accordance with Service Level Requirements stipulated in **Schedule XXIV** of the Concession Agreement. While the AMC's instruction to halt the metering of the consumer connections was supposed to be considered as a temporary measure, it may be noted that, Concessionaire has not done any concerned efforts to improve services to citizens or correct the negative image for the metering of the water connection, in order to restart the metering of water connections.

- i) It is the responsibility of the Concessionaire to fulfill the Pre-COD Service Level Requirements and get it approved by the Independent Engineer and AMC. It may be noted that the Concessionaire has failed to install bulk production and distribution meters even after fifteen months of Appointed Date. It may also be noted that while the Concessionaire has submitted the Household Survey data, the same has not yet been submitted in a report form to Independent Engineer and AMC. The Concessionaire has not yet fulfilled its responsibility to achieve Pre-COD Service Level Requirements, thereby seriously affecting the overall management of the water supply system in the City, and the same shall be construed as the default in accordance with **Schedule XXIV** of the Concession Agreement;
- j) As a part of Household Survey, the Concessionaire has identified 1,16,655 illegal water connections in the City. Despite having full support and assistance by AMC to regularize illegal water connections, the Concessionaire has failed to make any effective progress in legalizing these identified illegal water connections, and the same shall be construed as the default in accordance with **Clause 2.1 (i) and Clause 17.5** of the Concession Agreement. Please refer following communications from AMC in this regard:

Handwritten: Jayakwadi DE → AMC letter No. AMC/DE (WS)/ Jayakwadi Civil/640/2015 dated 10.11.2015

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- AMC letter No. AMC/DE (WS)/ Jayakwadi Civil/607/2015 dated 05.11.2015
- AMC letter No. AMC/DE (WS)/ Jayakwadi Civil/472/2015 dated 28.09.2015
- AMC letter No. AMC/EE (A & D)/ 2015/145 dated 28.09.2015

k) While Concessionaire has submitted the household survey data to AMC vide its letter reference No. 10, ACWUCL/Aurangabad/2015-16/596 dated 05.11.2015, the same has not been submitted in a report format to AMC, and it is also not clear the benefits that could be accrued to AMC and its water supply system through this data. It is also not clear from the data submitted by the Concessionaire, whether the same is in line with the Terms of Reference provided in **Annexure 1** of the clarifications provided by AMC, during the Bidding Process, on November 03, 2010. Please refer following communications from AMC in this regard:

- AMC letter No. AMC/DE (WS)/ Jayakwadi Civil/470/2015 dated 28.09.2015

l) The Concessionaire, in a meeting held on December 09, 2015, stated in a meeting that a distribution network of about 26 Kms has been laid, costing about Rs 4.5 crore. It was also stated in a meeting that such laying of pipelines didn't have any prior approval of either Independent Engineer or AMC. This clearly indicate a serious irregularity on part of the Concessionaire and the same shall be construed as a gross violation of the provisions of the Concession Agreement;

m) It is also observed that the Concessionaire has consistently failed to adhere to the approval of vendors, quality checks & adherence and material procurement procedures agreed between AMC, Concessionaire and the Independent Engineer. It has been observed by AMC and the Independent Engineer, on a multiple occasion, that the Concessionaire has been procuring material from vendors without AMC's approvals. This is a serious breach of the provisions of the Concession Agreement. Please refer following communications from AMC in this regard:

- AMC letter No. AMC/DE (WS)/ Jayakwadi Civil/622/2015 dated 09.11.2015
- AMC letter No. AMC/DE (WS)/ Jayakwadi Civil/618/2015 dated 07.11.2015
- AMC letter No. AMC/DE (WS)/ Jayakwadi Civil/449/2015 dated 19.09.2015

n) The Concessionaire has not yet provided evidence in a manner reasonably acceptable to AMC that the Concessionaire has obtained all Permits to undertake the Project. It is not clear whether the Concessionaire is in position to initiate the Construction and Rehabilitation Period Activities in accordance with **Clause 2.1** of the Concession Agreement, without having all required Permits in place;

o) The Concessionaire, despite repeated requests, has not yet submitted the copy of signed MoU between the Concessionaire and MS pipe manufacturer, and the same shall be construed as the default in accordance with **Clause 2.6** of the Request for Proposal Document. Please refer following communications from AMC in this regard:

- AMC letter No. AMC/DE (WS)/ Jayakwadi Civil/557/2015 dated 26.10.2015.

p) AMC vide its letter reference No. 7, AMC/DE(WS)/Jayakwadi Civil/406/2015 dated 02.09.2015 had approved Concessionaire's MS Pipe vendor Welspun for Raw Water and Pure Water. AMC vide its letter reference No. 2, AMC/DE(WS)/Jayakwadi Civil/113/2015 dated May 19, 2015 had also approved to use the alternative coating of MS Pipe for Raw Water and Pure Water. Despite such approvals, the Concessionaire failed to procure the adequate quantity of the MS Pipes from the approved vendor, apart from 300 meters procured earlier, seriously affecting the progress of the Project and ability of the Concessionaire to improve the water availability for the City and shall be construed as a default under **Clause 2.1 (c)** of the Concession Agreement;

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- q) AMC vide its letter reference No. 8, AMC/DE(WS)/Jayakwadi Civil/486/2015 dated 01.10.2015 had provided a provisional approval for Concessionaire's EPC Contractor Aurangabad Jal Supply Solutions Private Limited (AJSSPL). The provisional approval was required Concessionaire to submit the copy of final agreement between AJSSPL and the Concessionaire. It may be noted that the Concessionaire has failed to submit the copy of agreement between AJSSPL and the Concessionaire, which shall be construed as a default under **Clause 21.5 (e)** of the Concession Agreement;
- r) AMC vide its letter reference No. 3, AMC/DE(WS)/Jayakwadi Civil/253/2015 dated 04.07.2015 had provided a provisional approval for Concessionaire's EPC Contractor Tata Projects Limited (TPL). The provisional approval was required Concessionaire to submit the copy of final agreement between TPL and the Concessionaire. It may be noted that the Concessionaire has failed to submit the copy of agreement between ~~TPL~~ and the Concessionaire, which shall be construed as a default under **Clause 21.5 (e)** of the Concession Agreement;
- s) Prima facie, it is also observed that the Concessionaire's expenditure on the O&M of the water supply system is in excess of AMC's expenditure, before Appointed Date, on the system. The Concessionaire has failed to provide any justification for such excess expenditure;
- t) AMC, from Appointed Date, has paid about Rs 75.75 crore as AOSG, Rs 26.60 crore as user charges and Rs 20.08 crore as a grant to the Concessionaire. As against this, it appears that the Concessionaire has not spent more than this amount in implementing system, i.e. actual investment in either implementing new system or refurbishment of the existing system. Prima facie, this appears a gross mismanagement of the public funding. The Concessionaire has failed to provide any justification for such lack of expenditure on the improvement of the system;
- u) The Concessionaire, in accordance with **Clause 21.5 (a) (ii)** of the Concession Agreement, is expected to submit the unaudited quarterly financial statements within 30 days from the end of each such period covered by such financial statements. It may be noted that Concessionaire has not yet submitted any such financial information to AMC, Independent Engineer or Independent Auditor, which shall be construed as a default under the said Clause;
- v) The Concessionaire, in accordance with **Clause 21.5 (c)** of the Concession Agreement, is expected to submit the budgets. It may be noted that Concessionaire has not yet submitted any such financial information to AMC, Independent Engineer or Independent Auditor, which shall be construed as a default under the said Clause;
- w) It was also observed that the Concessionaire, on a multiple occasions, while issuing invoices or SMS regarding payment of user charges to consumers, did not verify the basic details like whether the consumer has water connection or not, the exact arrears, etc. This has created general unrest among consumers. It is also observed that the arrears collection drive is not in accordance with the Maharashtra Municipal Corporation Act, creating discomfort among citizens;
- x) The Concessionaire is expected to adhere to the Reporting Requirements in accordance with the **Schedule XVIII** of the Concession Agreement. It is observed that the submission of such reports are not in time, in a format required to measure either the progress of the Project or adherence of the Service Level Requirements;

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- y) Concessionaire has failed to make public relation activities in large and defend negative publicity in media which result in defame the AMC; and
- z) Concessionaire had changed the controlling officers and other team members of this project in frequent manner which result in slow progress of the project.

Considering above, please clarify, within 15 days of this letter, why AMC should not issue a "Notice of Intention to Terminate" under **Clause 34.1 (a)** of the Concession Agreement.

All seven pages signed,


Commissioner 11/12/15
Aurangabad Municipal Corporation

Copy to:

1. CEO, Aurangabad City Water Utility Company Limited, for information and further action.
2. Mr. Kailas Kejgir, K N D & Associates Chartered Accountants, for information.
3. Mr. Mahesh Pathak, Unity Consultants Private Limited, for information and further action.
4. Mr. Ajay Saxena, PPP Expert – Government of Maharashtra, for information.
5. Mr. Setu Divekar, Consultant to Aurangabad Municipal Corporation, for information.

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