



AURANGABAD MUNICIPAL CORPORATION

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AMC/ DE(WS)/ Jayakwadi Civil/ 0 6 /2016

Date:- 5 / 4 /2016

Notice

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
 14. Letter from Concessionaire ACWUCL/Aurangabad/2015-16/775 dated 22.12.2015
 15. AMC letter No. AMC/DE (WS)/ Jayakwadi Civil/1056/2016 dated 15.02.2016
 16. AMC letter No. AMC/DE (WS)/ Jayakwadi Civil/1183/2016 dated 11.03.2016
 17. Joint Secretary, Urban Development Department, Mantralaya, Mumbai Letter No. Yachika – 2015 / Pra.kra. 6/UD 33 Dated March 24, 2016

Dear Sir,

That I hereby issuing this legal notice to you, as you are Lead Consortium Member of the Consortium. That with respect to above referred communications made to you at various times for the progress and upgradation of project, in which Aurangabad Municipal Corporation (herein after called as “AMC”) & Independent Engineer, and Project review meetings taken at various times, whereby requesting you, warn you & even issued notices and orders to you to improve your work to the expectation of AMC & Concession Agreement made between us. It is not out of place to mention that you have not fulfilled the expectation & performed as per norms of the contract and it seems to me that you are failed to fulfill the same.

That inspite of repetitive communications made to you by AMC and Independent Engineer, even after providing full cooperation and support at all levels / stages, you have not fulfilled its Conditions Precedent, Pre-COD Service Level Requirements, its obligation under approved quarterly Project Milestones. That it is to be noted that you are failed to improve the availability of treated water to the citizens and to improve the water supply distribution system within the City.

1. It may be noted that, with reference to your letter ACWUCL/Aurangabad/2015-16/775 dated 22.12.2015, which is totally baseless and contradictory to the reality.

It may be noted that, AMC has not issued a Notice under Clause 34.1(a) of the Concession Agreement, and hence there is no question of withdrawing any Notice. But there is enough ground, as detailed in this letter, for AMC to issue such notice, as the Concessionaire has not satisfactorily clarified the issues raised by AMC in its letter no. AMC/DE (WS)/ Jayakwadi Civil/748/2015 dated December 11, 2015. The content of the said letter is perfectly in line with the ground reality, and 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;

2. The Concessionaire, even after 19 months of Appointed Date, has failed to ensure a draw down from the Bank, clearly indicating non-achieving Financial Closure. 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 is also clear from various communications of the AMC and Independent Engineer, mentioned below, that the Concessionaire has not fulfilled its obligations under approved quarterly Project Milestones:

- AMC Letter No. AMC/DE (WS)/Jayakwadi Civil/ 601/2015 dated November 05, 2015
- Letter from Independent Engineer No. UCPL/15/PMD/368/LTR/330 dated August 08, 2015
- Letter from Independent Engineer No. UCPL/15/PMD/368/LTR/352 dated September 02, 2015
- Letter from Independent Engineer No. UCPL/15/PMD/368/LTR/357 dated September 08, 2015
- Letter from Independent Engineer No. UCPL/15/PMD/368/LTR/399 dated October 13, 2015
- Letter from Independent Engineer No. UCPL/15/PMD/368/LTR/416 dated October 27, 2015
- Letter from Independent Engineer No. UCPL/15/PMD/368/LTR/418 dated October 27, 2015
- Letter from Independent Engineer No. UCPL/15/PMD/368/LTR/431 dated November 09, 2015
- Letter from Independent Engineer No. UCPL/15/PMD/368/LTR/450 dated November 19, 2015
- Letter from Independent Engineer No. UCPL/15/PMD/368/LTR/457 dated November 30, 2015

- Letter from Independent Engineer No. UCPL/15/PMD/368/LTR/459 dated November 30, 2015
 - Letter from Independent Engineer No. UCPL/15/PMD/368/LTR/474 dated December 14, 2015
 - Letter from Independent Engineer No. UCPL/15/PMD/368/LTR/480 dated December 16, 2015
3. AMC, in no communication ever claimed that the Concessionaire is not producing 135 MLD of treated water, which is in line with the Schedule XXIV of the Concession Agreement. But the Concessionaire's failure to operate and produce the treated water at 156 MLD, i.e. the water supply system's actual capacity, has crippled the water availability for the AMC Consumers. It may be noted that AMC, before Appointed Date, was supplying water once in three days to the some of the areas in the City, which, post-Appointed Date has been deteriorated to once in three days to most of the part of the City and once in four days to some parts of the City. It may also be noted that, the Concessionaire, in accordance with Schedule XXIV of the Concession Agreement was expected to supply daily water to the entire City from 2nd year of the Concession Agreement. Considering the current water distribution situation in the City, it looks impossible for the Concessionaire to achieve this. The Concessionaire has also failed to take up any corrective measure to either halt such deterioration or improve the water supply system by taking any measure. 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. Water Supply is one of the essential function and duty of the Corporation essentially related with right to live and life guaranteed under the Article 21 of the Constitution. It has also been discussed and noted that even to date, the Concessionaire has not prepared any effective corrective measures to improve the situation. It is also clear from various communications of the Independent Engineer and AMC, mentioned below, which was not denied or questioned by the Concessionaire that the Concessionaire has completely failed in its obligations to streamline the water supply situation in the City:
- Letter from Independent Engineer No. UCPL/15/PMD/368/LTR/359 dated September 11,2015
 - Letter from Independent Engineer No. UCPL/15/PMD/368/LTR/399 dated October 13,2015
 - Letter from Independent Engineer No. UCPL/15/PMD/368/LTR/401 dated October 14,2015
 - Letter from Independent Engineer No. UCPL/15/PMD/368/LTR/431 dated November 09,2015
 - Letter from Independent Engineer No. UCPL/15/PMD/368/LTR/474 dated December 14,2015
 - Letter from Independent Engineer No. UCPL/15/PMD/368/LTR/489 dated December 18,2015
 - AMC letter No. AMC/DE (WS)/Jayakwadi Civil/471/2015 dated September 28, 2015
 - AMC letter No. AMC/CE /320/2014 dated September 04, 2015
 - Minutes of Meeting of an Honorable General Body meeting held on July 13, 2015, AMC letter No. AMC/DE (WS)/Jayakwadi Civil/513/2015 dated October 09, 2015
 - AMC letter No. AMC/DE (WS)/Jayakwadi Civil/559/2015 dated October 26, 2015
 - AMC letter No. AMC/DE (WS)/Jayakwadi Civil/530/2015 dated October 16, 2015

- AMC letter No. AMC/DE (WS)/Jayakwadi Civil/496/2015 dated October 05, 2015
- AMC letter No. AMC/DE (WS)/Jayakwadi Civil/616/2015 dated December 07, 2015
- AMC letter No. AMC/DE (WS)/Jayakwadi Civil/617/2015 dated December 07, 2015

It may be noted that, after transferring the City's water supply system to the Concessionaire on September 01, 2014, i.e. even after 19 months of the scheduled period of 36 months of the Construction and Rehabilitation Period, failed to complete even basic works and the Project has not progressed, which is evident, as:

- a) The construction of Head Works is yet to commence;
- b) Procurement of MS pipe is at standstill, and no MS pipes have been procured on site after March 12, 2016;
- c) Concessionaire is yet to submit hydraulic flow diagram and RCC structural design for the water treatment plant, which is pending with the Concessionaire for last 2 months, and as a result the water treatment plant work could not be commenced;
- d) GA drawing of Master Balancing Reservoir, as per modified layout, is yet to be received by AMC and the Independent Engineer, and no work has been started at MBR;
- e) Concessionaire has to construct 11 ESRs viz. ESR No-18, 12,6,44,9,14,45,16,5,42 & 43 as per mandatory project requirement as a first step. AMC has already provided location clearance for 32 ESR locations. Except starting excavation at two ESR sites, i.e. at Harsool and Rozabaug, the Concessionaire has not yet started any other work for any other ESR;
- f) Concessionaire is expected to lay 1290 km of DI pipelines for distribution system as per mandatory project requirement, whereas the Concessionaire has been able to complete only about 40 km of distribution network, and the overall work progress is extremely slow and not satisfactory;
- g) Concessionaire has not commenced any work of Transmission Main, and no pipes have been procured as on date;
- h) As pointed out by AMC and the Independent Engineer, some of the pumps, which have lived its life fully, needs to be replaced, which is not being attended by the Concessionaire;
- i) For O&M works if new pipeline is laid the Concessionaire is expected to do the work of re-instatement of road, but the same is lagging behind, and it has not been pursued promptly;
- j) Plan of alternate day water supply to the 80% of city area has not been achieved by the Concessionaire. It is the responsibility of the Concessionaire, in accordance with the Concession Agreement from year 2 of the Concession Period, i.e. from September 1, 2015, to provide daily water supply to the entire city, which appears to be quite impossible with present situation;
- k) Regularization of illegal connection drive should be taken by the Concessionaire. Abhay Yojna has been extended by AMC up to December 2016. As such maximum benefit of this Abhay Yojna should have been taken by the Concessionaire to regularize the illegal connection, but the progress of this work is not satisfactory;
- l) The Concessionaire has installed Bulk flow meters at 39 locations. However, some of these meters are not in working conditions. Similarly, the Concessionaire is expected to construct RCC chambers for every meter as per the approved drawing. This work is yet to be completed. As a result of this, the Concessionaire has failed to provide raw and pure water pumping details based on Bulk meter; and

- m) One of the main objectives of the Project is to reduce the NRW in the water supply system. Since bulk meters have now been installed, the Concessionaire is expected to prepare a water balance account at least up to outlet of Nakshtrawadi MBR, in order to assess the water losses at every stage. The Concessionaire has not yet provided any systematic data regarding water losses to date, which has restricted Concessionaire to take any steps to control the water losses in the system, which could have been taken effectively in order to improve the water availability in summer months even after completing 19 months of the Concession Period.
4. While the Concessionaire, as claimed in its monthly progress reports submitted for August/ September/ October/ November 2015, is producing pure water ranging from about 146-150 MLD, the same is still lower as compared to the actual capacity of the AMC's water supply system. Also, AMC is not in a position to accept Concessionaire's claim of producing pure water in a range of about 146-150 MLD, as a result of Concessionaire's failure to produce authenticated bulk flow measurements at the strategic points such as (i) Jaikwadi old raw water pumping main;(ii) Jaikwadi new raw water pumping main;(iii) Dhorkin Booster Inlet and Outlet;(iv) Pharola old WTP Inlet and outlet;(v) Nakshtrawadi Booster Inlet and outlet;and (vi) Nakshtrawadi MBR Inlet and Outlet. It may also be noted that the Concessionaire's claimed retrofitting and overhauling of the pumps at the bulk water supply, for which the Concessionaire has not yet produced an authenticated details of the works carried out, has not resulted any improvement in a water supply system, as the same has neither achieved any improvement in available quantum of water supply to the City nor improved the water supply distribution system within the City.
5. AMC reiterate that:
- a) Though there was a willingness on part of AMC to declare an Appointed Date in December 2012, the same could not be achieved due to Concessionaire's non-compliance of its majority and critical Conditions Precedent as stipulated in **Clause 5.2 (a)** and Preparatory Period Obligations as stipulated in **Clause 15** of the Concession Agreement. It may be noted that, while AMC has completed all its Conditions Precedent, the Concessionaire is yet to fulfill its critical Conditions Precedent to date, i.e. to achieve the Financial Closure by way of securing draw down from its Bank. Please note that it is the Concessionaire's inability to fulfill its Conditions Precedent and Preparatory Period Obligations, as stipulated in the Concession Agreement, has delayed a Project. Also kindly refer your letter No. ACWUCL/Aurangabad/2014-15/473 dated February 27, 2015 where the Concessionaire has appreciated AMC's efforts in procuring PPP approval and procuring approval for Water Supply and Charges Bylaws – 2011 from the Government of Maharashtra. Therefore it is a misleading statement on part of Concessionaire that the Concessionaire had incurred financial losses on failure of AMC's commitment;
- b) Kindly refer your letter no. ACWUCL/Aurangabad/2015-16/41 dated May 08, 2015, and letters no. ACWUCL/Aurangabad/2015-16/765 and ACWUCL/Aurangabad/2015-16/766 dated December 18, 2015. The Concessionaire's claimed investment, as claimed in these letters, in the Project has serious anomalies, such as:

- While your letters no. 765 and 766 claimed an investment of Rs 123.75 crore as on April 01, 2015, your letter no. 41 claimed an investment of Rs 42.11 crore in the Project as on May 08, 2015.
- Claimed investment in fixed assets, as mentioned in your letter no. 765 and 766 are lower than the claimed investment in your letter no. 41;
- The said investment in the fixed assets, in all above referred letters also included an investment in office equipment, furniture & fixers and buildings. It is not clear, exactly how much has been investment in the City's water supply system;
- The said advances to the EPC Contractors have not been reflected in actual Project implementation, and hence, at this point in time, cannot be treated as an investment in the Project;
- It is not clear on how the Concessionaire can claim pre-operative expenses post Appointed Date;
- There is a difference between of about Rs 12 crore in funds utilization and sources of funds. It is not clear on how the Concessionaire has funded this gap of Rs 12 crore;
- It can easily be seen from the funds flow statement submitted by the Concessionaire vide its letters no. 765 and 766 that the funds raised through Debentures and Unsecured Subordinated Debt have been transferred to EPC Contractors as an advance, the capital grant from AMC could have been utilized for the fixed assets and other expenditure, thereby very little or no investment by the Concessionaire in the Project;
- As per letter no ACWUCL/Aurangabad/2015-16/765 and ACWUCL / Aurangabad / 2015-16/ 766, the Concessionaire had stated a Capital Advances for EPC Projects - Advance to Aurangabad Jal - Rs. 78,11,08,612/- & Capital Advances for EPC Projects - Capex Vendor - Rs. 10,23,53,907/- as opening balance as on 01/04/2014. It may kindly be noted that the agreement with Aurangabad Jal Supply Solutions Ltd. and other vendors had received AMC approval during FY2015-16, and is a major default, as the Concessionaire is claiming expenditure in the form of advances to the vendors even before receiving necessary approvals from AMC;
- When already a Capital Advance of Rs. 88,34,62,519/- was given for EPC Projects before 01/04/2014, why there was again need to pay an additional advance of Rs. 24,43,98,206/- in 2015-16 without any constructive Capital Work in the Project;
- Out of total deployment of funds of Rs. 149.79 crores only Rs. 10.18 Crores were deployed for Fixed Assets that also includes investment in office equipment, furniture & fixtures and buildings, so the investment in City's water supply system is negligible, which is much less than the Capex Project Grant of Rs. 20,08,60,400/-. This is a major default as the project grant should be extensively deployed for construction of project assets for which it is received; and
- As per deployment of funds provided by Concessionaire more than 95% of deployment of funds is non constructive which cannot be considered as deployed for the project.

The Concessionaire is requested to explain such wide anomalies in its claims in different letters, and above submitted funds flow statement, but till today Concessionaire did not pay any attention to answer the same.

- c) Kindly refer your letter no. ACWUCL/Aurangabad/2014-15/452 dated February 16, 2015, which states an average monthly O&M expenditure at about Rs 5.5 crore, the same has been increased to Rs about Rs 6.5 crore in accordance with your letter nos. ACWUCL/Aurangabad/2015-16/765 and ACWUCL/Aurangabad/2015-16/766 dated December 18, 2015. The Concessionaire is requested to explain such increase in its O&M expenditure;
- d) Achieving Financial Closure and securing draw down from the bank is the responsibility of the Concessionaire, and AMC could only assist on a best effort basis to the Concessionaire. Also kindly note that there is no communication from the IDBI Bank to AMC that has gone unanswered. AMC has always assisted Concessionaire in achieving Financial Closure and in fact offered on its own to meet IDBI Bank officials to take Project forward. It may also be noted that AMC officials, i.e. Executive Engineer concerned had indeed met with IDBI Bank officials, and discussed and clarified various aspects of the Project when their team was in Aurangabad. Therefore, it is totally baseless to say that IDBI Team returned Mumbai without any complete action plan;
- e) It may also be noted that the Concessionaire vide its letter No. 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. Therefore, it is completely surprising to allege AMC for Concessionaire's failure to get a draw down from its Banker. Vide letter No. 1391 Dated 22.01.2016 addressed to ACWUCL from IDBI Bank various conditions and prerequisite are desire by the Bank, in which it is mentioned that Guarantor is Shri Subhashchandra for Essel Infra projects Ltd. who is not a part of this project and Executed Agreement & also the letter itself indicates that concessionaire has failed to receive even 1st installment from the Bank for the said project. Considering above, and in absence of any satisfactory 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.

6. It may be noted that:

- a) The availability of the per capita water within AMC area is much less than the per capita norms of 135 lpcd. Hence, it was necessary for the Concessionaire to improve the availability of daily water supply to the citizens, which was possible only when the

works of Head works and rising main was to be taken on priority. However, the Concessionaire failed to prioritize the works, and instead started the work of coffer dam, which was then discontinued without any reason, in spite of repeated reminders and constant persuasion from AMC and the Independent Engineer;

- b) AMC, under Clause 10.2 (b) of the Concession Agreement, can only offer a support on a best effort basis, to obtain Permits from Government Instrumentality. Please note that the Clause 10.2 (b) of the Concession Agreement has not transferred the responsibility of obtaining the Permits to AMC, and the primary responsibility is with the Concessionaire. Therefore, it is surprising on part of the Concessionaire to shift the blame on AMC for its own failure. AMC reiterates that it is the responsibility of the Concessionaire, in accordance with Clause 5.2 (a)(i), to obtain at its own cost and expense, all Permits required for the implementation of the Project, and in conformity with, and as contemplated by, the Environmental and Social Assessment Report included as Schedule V and such other Permits required under Applicable Law. Therefore it is seen from the record that Concessionaire has not been made sincere efforts to obtain necessary permissions related to construction of head works and water treatment plant; and
- c) AMC had already approved the 3 LPE coating vide its letter AMC/DE (WS)/Jayakwadi Civil/ 113/2015 dated May 19, 2015. The revised approval vide its letter AMC/DE (WS)/Jayakwadi Civil/ 751/2015 dated December 11, 2015 was as a result of change in specification by the Concessionaire, which was granted after a due consideration and discussion with the Concessionaire and the Independent Engineer. The Concessionaire had an option to procure MS Pipes based on the approval provided by AMC in May 2015, and it is not correct to hold AMC responsible for the said delay. In fact, AMC had consistently followed with the Concessionaire to procure the MS pipes and start the construction works, which is evident from following:
- AMC letter No. AMC/DE (WS)/ Jayakwadi Civil/430/2015 dated September 10, 2015
 - AMC letter No. AMC/DE (WS)/ Jayakwadi Civil/625/2015 dated November09, 2015

7. The Concessionaire may note that:

It may be noted that, after approval of the Hydraulic Model and quarterly Project Milestones, no separate approval is required for any DMAs, and the Concessionaire is expected to work in accordance with the approved quarterly Project Milestones. Therefore, to claim that the delay in implementation of the Project was due to AMC's inability to approve the DMAs, is just passing Concessionaire's own responsibility to AMC, and the same should be avoided.

8. It may be noted that:

- a) The requirement of the 12 meter water pressure at Consumer connection is a mandatory condition, stipulated during the Bidding Process and the Concessionaire was not only aware of such condition but has submitted a Financial Bid after considering the same. Therefore, it is necessary for the Concessionaire to adhere with this condition. It is surprising that the Concessionaire is now raising this issue, and state that the cost of the Project has increased as a result of such condition. AMC specifically reiterate the statement as totally baseless;

- b) AMC has finalized the 32 locations for the proposed ESRs, and is in process to finalize the locations for other ESRs. It may be noted that the Concessionaire, after 19 months of Appointed Date, has failed to commence the construction of ESR even at a single location. AMC requests Concessionaire to at least complete the process for the cleared sites and start construction of the ESRs where they have received an approval from AMC. The delay on part of the Concessionaire in commencing the construction of the ESRs on clear sites would delay the implementation of the Project;
- c) It may be noted that the submission of the revised Hydraulic Model was pending with the Concessionaire since very long, as a result of its inability of incorporating the changes / comments suggested by AMC and the Independent Engineer, and its failure to plug the gaps in the model. The Independent Engineer and AMC vide various communications, mentioned below and during various Project review meetings informed Concessionaire regarding the issues and shortcomings of the Hydraulic Model submitted by the Concessionaire:
- Letter from Independent Engineer UCPL/15/PMD/368/LTR/564 dated February 1, 2016
 - Letter from Independent Engineer UCPL/15/PMD/368/LTR/500 dated December 28, 2015
 - AMC Letter No. AMC/DE (WS)/Jayakwadi Civil/469/2015 dated September 28, 2015
 - AMC Letter No. AMC/DE (WS)/Jayakwadi Civil/557/2015 dated October 26, 2015
 - AMC Letter No. AMC/DE (WS)/Jayakwadi Civil/508/2015 dated October 07, 2015
 - AMC Letter No. AMC/DE (WS)/Jayakwadi Civil/500/2015 dated October 05, 2015
 - AMC Letter No. AMC/DE (WS)/Jayakwadi Civil/642/2015 dated November 16, 2015

AMC has provided an approval for the revised Hydraulic Model for the distribution system submitted by the Concessionaire vide its letter no. AMC/DE (WS)/Jayakwadi Civil/1046/2016 dated 11.02.2016. It shall be responsibility of the Concessionaire to implement the distribution network accordingly, and bear the cost of the same. It has also been observed that there is no development or progress from the Concessionaire post-approval.

9. The Concessionaire may kindly note that:

AMC has provided an approval for the Drawings for bulk water supply system of head works and WTP vide its letter no. AMC/DE(WS)/Jayakwadi Civil/753/2015 dated December 11, 2015. It shall be the responsibility of the Concessionaire to get the approvals for layout drawings of Head Works and unit sizing structural design from the Independent Engineer and then from AMC, and initiate works. It has also been observed that there is no development or progress from the Concessionaire at the proposed site post-approval

10. The Concessionaire may kindly note that:

- a) It is completely misleading and illogical to state that the submission of the Metering Plan was delayed by inaction on part of AMC. It is not clear how a submission of Metering

Plan can be delayed by AMC's action, and what had stopped the Concessionaire from doing so;

- b) Nowhere AMC has communicated, either in any meeting or letter to delete the metering of consumer connections from the scope of the Concessionaire. The Concessionaire is making completely false claims and creating false documentation in this regard; and
 - c) To discuss various options to facilitate acceleration of metering of consumer connections, and in order to assist in achieving Pre-COD Service Level Requirements, is just one of the normal day-to-day businesses. Such discussions cannot be construed as confusion within AMC. The Concessionaire must appreciate the real issue is about the improvement of the water supply system of the City, which has not been addressed adequately by the Concessionaire.
11. AMC reiterate its stand as post-Appointed Date, it is the responsibility of the Concessionaire to fulfill the Pre-COD Service Level Requirements by adopting various measures, including but not limited to the required shut down, and get it approved by the Independent Engineer and AMC. It may be noted that the Concessionaire has failed to get such required shut down for installing 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. It may also be noted that the Concessionaire has to follow up with the Independent Engineer, and get the submission approved, in order to claim fulfillment of the Pre-COD Service Level Requirements. It may also be noted that, AMC, unless approved by the Independent Engineer, shall not consider any submission as complete and achieved. Therefore, 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;
12. It may please be noted that there is no letter from Concessionaire asking authorization to lodge the FIR against illegal connections. The letter from Concessionaire No. ACWUCL/Aurangabad/2014-15/400 dated January 01, 2015 has only sought authorization to lodge complaints against anyone damaging Project's Facilities, and not for illegal connections. Considering this letter, AMC shall authorize Concessionaire to lodge complaints with Government Instrumentality concerned, against anyone damaging Project Facilities.
13. It may be noted that:
- a) AMC would like to reiterate that while Concessionaire has submitted the household survey data to AMC vide its letter 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. It is advised that the Concessionaire to follow up with the Independent Engineer, and get the submission approved, in order to claim fulfillment of the Pre-COD Service Level Requirements. It

may also be noted that, AMC, unless approved by the Independent Engineer, shall not consider any submission as complete and achieved.

- b) As a part of Household Survey, the Concessionaire has identified 1,16,655 illegal water connections in the City. Despite of having full support, assistance and correspondences made with the concessionaire in this regards time to time 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.

14. AMC reiterate that the proceedings of the meeting has been captured accurately in a Minutes of Meetings, and do not accept Concessionaire's claim;

15. AMC reiterate 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 either Independent Engineer or 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/501/2015 dated 10.10.2015
- AMC letter No. AMC/DE (WS)/ Jayakwadi Civil/449/2015 dated 19.09.2015

16. The Concessionaire may kindly note that:

- a) While submitting the documentation for the MPCB permission, it has submitted the old WTP land cost valued at a price applicable in Year 2012, which should be calculated at its original acquisition year. It was the responsibility of the Concessionaire to submit the correct data for the approval; and
- b) AMC has already supported by deputing a separate Engineer at Nagpur to initialize the online registration process for the Forest Permission, but Concessionaire have not submitted the said application and required documentation till date. It shows the callous attitude of the concessionaire towards this project.

17. It may be noted that the draft MOU submitted by the Concessionaire and approved by AMC didn't have any mention of the coating of the Pipeline and therefore, it is completely baseless to transfer the blame on AMC for not signing the MoU with the MS Pipe Manufacturer. AMC reiterate that the responsibility of non-submission or Concessionaire's inability to sign the MoU with Pipe Manufacturer is completely with the Concessionaire and its default under Clause 2.6 of RFP Document;

18. AMC reiterate its stand, as mentioned hereinabove Point No. 17 of this letter. AMC vide its letter No. 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 No. 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 5356 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;

19. It may be noted that the final draft agreement with AJSSPL submitted by the Concessionaire and approved by AMC didn't have any mention of the coating of the Pipeline and therefore, it is completely baseless to transfer the blame on AMC for not signing the said agreement with the EPC Contractor, AJSSPL. AMC reiterate that the responsibility of non-submission or Concessionaire's inability to sign the Agreement with EPC Contractor is completely with the Concessionaire and its default under Clause 21.5 (e) of the Concession Agreement;
20. Kindly refer your letter no. ACWUCL/Aurangabad/2014-15/452 dated February 16, 2015, which states your average monthly O&M expenditure at about Rs 5.5 crore, the same has been increased to Rs about Rs 6.5 crore in accordance with your letter nos. ACWUCL/Aurangabad/2015-16/765 and ACWUCL/Aurangabad/2015-16/766 dated December 18, 2015. Also in point no. 21 of your referred letter ACWUCL/Aurangabad/2015-16/775 dated 22.12.2015, the Concessionaire has claimed to spent Rs 97.36 crore in first 15 months of operations. Considering these letters, it is not clear about the basis of the Concessionaire's claim of average monthly expenditure of Rs 73.64 lakh. Kindly explain;
21. AMC, from Appointed Date, has paid about Rs 95.12 crore as AOSG, Rs 30.82 crore as user charges and Rs 20.08 crore as a grant totaling of Rs 146.02 crore 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 undesirable expenditure on the improvement of the system;
22. This is a requirement under Clause 21.5 (a) (ii) of the Concession Agreement. 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. Please submit the same;
23. This is a requirement under Clause 21.5 (c) of the Concession Agreement. It may be noted that Concessionaire has not yet submitted any such budget to AMC, Independent Engineer or Independent Auditor, which shall be construed as a default under the said Clause. Please submit the same;
24. It may be noted that post-Appointed Date, it is the responsibility of the Concessionaire to maintain the accurate records, and issue appropriate invoices to the Consumers without or with a minimal discrepancies. Also kindly refer AMC's letter No. AMC/DE(WS)/Jayakwadi Civil/488/2015 dated October 01, 2015, i.e. almost 13 months post Appointed Date, which clearly indicates that Concessionaire's inability to resolve these issues, even after spending a

considerable time in managing the system. Therefore, to transfer the blame on AMC for incorrect invoices should be avoided;

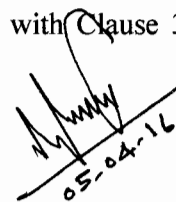
25. AMC reiterate its stand that the Concessionaire is not adhering to the Reporting Requirements in accordance with the **Schedule XVIII** of the Concession Agreement. and it is also observed that the submission of such reports are not in time, or in a format required to measure either the progress of the Project or adherence of the Service Level Requirements. It is advised that the Concessionaire to coordinate with the Independent Engineer, Independent Auditor and AMC for a required format and content of such reports;
26. The AMC reiterate its stand that the Concessionaire has failed to make public relation activities in large and defend negative publicity in media which result in defame the AMC; and
27. AMC reiterate its stand that the Concessionaire had changed the controlling officers of this project in frequent manner which result in slow progress of the project. It may also be noted that the responsibility of delay in implementation of the Project is with the Concessionaire. It may also be noted that:
 - a) There is no obligation on AMC under Clause 27.1, but it is just an assistance provided by AMC to the Concessionaire in obtaining electricity at an economical rate. This assistance cannot be treated as a default, as the same is not an obligation. AMC had already signed the PPA agreement and forwarded to Concessionaire for further process;
 - b) It may be noted that the Concessionaire has failed to fulfill its obligations to meet Pre-COD Service Level Requirements, and AMC, in accordance with the provisions of the Schedule XXIV of the Concession Agreement, has withheld variable Annual Operational Support Grant payable to the Concessionaire vide its letter No. AMC/DE(WS)/ Jayakwadi Civil/601/2015 dated November 05, 2015. AMC shall release the full Annual Operational Support Grant to the Concessionaire in accordance with Schedule XXIV of the Concession Agreement, due in Year 2 of the Concession Period, only on Concessionaire's fulfillment of its obligation under the said Schedule. Hence, considering the Fixed Annual Operational Support Grant payable to the Concessionaire, AMC is actually maintaining the balance at about 2.0x of the applicable Annual Operational Support Grant in its Water Payment Reserve Account, which is 35% more than the required amount. AMC, as and when the Concessionaire fulfill its obligation under Schedule XXIV of the Concession Agreement, shall deposit the additional requisite amount in the Water Payment Reserve Account; and
 - c) The Concessionaire may kindly note that:
 - It shall be Concessionaire's responsibility to submit the appropriate proposal, in consultation and approval of the Independent Engineer, and forward the same to AMC for an appropriate action. AMC shall not be in a position to either accept or process any proposal without Independent Engineer's approval. Kindly submit the complete proposal, with Independent Engineer's approval for the Head works to Paithan Road through Irrigation Colony, land for Gravity Main along the Paithan Road to Aurangabad City, land for MBR;

- The land for 32 ESRs have already been handed over to the Concessionaire, but the same has not been utilized by the Concessionaire and failed to start any construction activity at any of these sites; and
- By declaring Appointed Date, AMC has already allowed to use land within the City for the distribution system. If in case, any additional land is required for the Project, with an approval from PWD, then the Concessionaire is kindly requested to submit the appropriate and complete proposal in consultation and approval of the Independent Engineer to AMC for further process

28. In addition to the points discussed above, it may also be noted that the Concessionaire has consistently failed to deposit its share of the annual fee due to Independent Engineer and Independent Auditor.

It is quite evident from above that in spite of 19 months post-Appointed Date, the Concessionaire failed to fulfill its Conditions Precedent i.e. to achieve Financial Closure by way of securing draw down from its bank for the project, to achieve Pre-COD Service Level Requirements, its obligation under approved quarterly Project Milestones, completely failed to either improve the availability of treated water to the citizens or to improve water supply distribution system within the City, not started any work pertain to increase in water quantum for the city, failed to increase water connections, failed to supply daily water to the citizens, failed to reduce Non-Revenue Water(NRW), failed to run existing water supply scheme at reasonable cost. Therefore, AMC believes that it is difficult for Concessionaire to complete the Project within stipulated period of 36 months of Construction and Rehabilitation Period.

Considering above, AMC requests Concessionaire to submit a satisfactory clarifications to AMC within 15 days of issuance of this notice. It may be noted that, failing on part of Concessionaire to provide any satisfactory explanations to the issues raised above, AMC will be forced to issue a Notice of Intention to Terminate, in accordance with Clause 34.1 (a) of the Concession Agreement.

Handwritten signature in black ink, appearing to be 'M. Mahesh Pathak', with the date '05-04-16' written below it.

Commissioner
Aurangabad Municipal Corporation

Copy to:

1. **Joint Secretary**, Urban Development Department, Mantralay, Mumbai for information.
2. **CEO**, Aurangabad City Water Utility Company Limited, for information and further action.
3. **Mr. Kailas Kejgir**, K N D & Associates Chartered Accountants, for information.
4. **Mr. Mahesh Pathak**, Unity Consultants Private Limited, for information and further action.
5. **Mr. Ajay Saxena**, PPP Expert – Government of Maharashtra, for information.