

भारतीय गैर न्यायिक

एक सौ रुपये Rs. 100

रु. 100

ONE

HUNDRED RUPEES

भारत INDIA

INDIA NON JUDICIAL

Revenue Stamp Office, Mumbai

L.S.V.No. 140

महाराष्ट्र MAHARASHTRA

- 4 MAR 2009

Proper Officer

Smt. T. S. Sawant

This M.O.U. is entered into on this 6th day of March, 2009 at Mumbai, Maharashtra

Memorandum Of Understanding

BETWEEN

M/s Khemchand, a partnership firm, having its head office at D-53/2, Luxa Road, Varanasi - 221010 and represented by its partner Mr. Ashok Kumar son of late Shri Khemchand residing at D-46/33, E-1, Luxa Road, Varanasi - 221010, (hereinafter referred to as Party No. 1 / First Party) which expression shall mean and include its administrators, legal representatives, assignees, successors in interest, etc.

AND

Vishal Nirmitti Pvt. Ltd., a Company incorporated under the Companies Act, 1956, having its corporate office at "Suryash", S. No. 255/1+2/2, Ashiyana Park-II, Aundh, Pune - 411007, and represented by its Director Mr. Natraj Ladda, son of Shri Gopikishan, residing at Anant, Sector 29, Vashi, Navi Mumbai, (hereinafter referred to as Party No. 2 / Second Party) which expression shall mean and include its administrators, legal representatives, assignees, successors in interest, etc.

Whereas :

- A) The Party No. 1 is in the business of manufacturing Prestress Concrete Sleepers along with other Contracts of Govt., Semi-Govt. bodies etc. having their concrete sleeper manufacturing unit at Pakariya Road in West Central Railway (WCR).



Signature

B) The Party No. 1 has represented to Party No. 2 that all the partners of Party No. 1, on account of various reasons, are desirous of selling and transferring their concrete sleeper manufacturing unit at Pakariya Road (WCR), hereinafter referred to as CSP-Pakariya Road, with the assets on as is where is basis as per schedule A, alongwith the on-going contracts of Railways as on the date of this M.O.U., more particularly described in the table at para C) herein below with all their rights, titles and interest arising therefrom pertaining to Concrete Sleeper Plant of Pakariya Road only in WCR but excluding the land & buildings & Misc. assets which shall be retained by the Party No. 1.

C) The Party No. 1 has represented to Party No. 2 that as on 31/01/2009, the order book position of Pakariya Road unit is as under :

Sr. No.	Contract No	Ordered Qty.	Production Upto 31/01/09	Balance Qty.	Remarks
i)	CS-145	131,000	29,948	101,052	Contract short closed & LD recovered by WCR.
ii)	CS-152	14,000	3,060	10,940	Contract short closed & LD recovered by WCR.
iii)	CS-156	Not Issued	--	--	Nil.
iv)	CS-160	80,000	10,144	69,856	Production to continue upto 31/05/09 by Party No.1at Pakariya Road
v)	Derailing Switch Sleepers (WCR)	286	264	22	Balance quantity to completed before 31/05/09 by Party No.1at Pakariya Road

D) The Party No. 1 has represented to Party No. 2 that the issues pertaining to non-performance of the old pending contracts of CS 145 and CS 152 and / or any other issues will be resolved with the WCR / Railway Board and the Party No. 1 agrees to settle/clear all the liabilities, if any, ascertained by the WCR / Railway Board pertaining to the short closure of these contracts.

E) The Party No. 1 has represented to the Party No. 2 that the Competent Authority of Ministry of Railways, have approved the proposal made by Party No. 1 for shifting of Concrete Sleeper Plant of Pakariya Road in WCR to a new location Kandrori, Firozpur Division in NR by imposing certain terms and conditions vide Railway Board letter No. 2004/Track-II/22/11/5 (Shifting) dated 05/02/2009.



- F) The Party No. 2 has examined in detail and agreed to the terms and conditions imposed by the Railway Board vide their letter No. 2004/Track-II/22/11/5 (Shifting) dated 05/02/2009 while according the permission for transfer of location of the CS Plant at Pakariya Road in WCR to Kandrori station in NR.
- G) The Party No. 1 has agreed to take all the necessary steps to take over the possession of the railway land at Kandrori station from the concerned division of NR and enter into a Tripartite Agreement with the Railway Board and / or the concerned Zonal Railway for transfer of the CSP-Pakariya Road, as referred to at para B) herein above.
- H) The Party No. 2 shall provide all cooperation to Party No. 1 in pursuing the case with Railway authorities for achieving the objectives mentioned at (G) hereinabove and the Party No. 2 agrees to bear all the cost and expenses involved in this process.
- I) The overall time frame agreed to mutually between the Parties for achieving the objectives mentioned in (G) hereinabove is upto 31/03/2009 with a grace period of one month in case of any contingencies.
- J) It is mutually agreed between the parties that till such time the Tripartite Agreement is entered into with the concerned Zonal Railway and / or the Railway Board, the Party No. 1 shall continue to manufacture and supply the Sleepers at CSP-Pakariya Road in WCR against the orders in hand as mentioned at (C) hereinabove so as to complete the entire quantity of Derailing Switches and continue to produce B.G. sleepers against contract CS-160 of 2007 upto 31.5.2009. The quantity of sleepers manufactured upto 31.5.2009 shall be dispatched by the party no 1 to the concerning railways in their own account and the Party no 2 shall arrange the "No Objection" in this respect from the concerning Railway after signing of the Tripartite Agreement.
- K) The Party No. 1 asserts and confirm that it has good and marketable title and full ownership on the assets as per schedule A and there is no charge, lien, encumbrance, hypothecation on the same and the Party No. 1 has every right and authority to make this sale transaction.
- L) The Party No. 1 has represented that they have not made or executed any kind of deals such as lien, charge, sale, hypothecation, etc. on the entire assets including the ongoing contract of the Firm under reference in the past and further covenants that the Party No. 1 shall not deal, negotiate, pledge, create any lien or encumbrance, or agree to sell the assets as per schedule A along with the ongoing contracts to any other person or individual.



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M) The Party No. 2, on the basis of the representation and warranties given by the Party No. 1, has agreed to purchase the Concrete Sleeper Plant of Pakariya Road in WCR in accordance with the terms and conditions set out herein.

Now this MOU witness as under:

1) In consideration of payment of Rs. 1,42,50,000/- (Rupees one crore forty two lacs fifty thousand only) by the Party No. 2 to the Party No. 1, the Party No. 1 hereby agree to sell, transfer, convey and deliver the assets as mentioned herein below at 1) i. in as is where is condition, including orders in hand against on-going contracts of Railways as described in para C herein above, alongwith the rights, titles and interest arising therefrom pertaining to CSP-Pakariya Road. The break up of payment is as under:

- i. One set Bench & Mould t/out 8.5 (including CST)-Rs 42.50 lakhs
- ii. Right to manufacture concrete sleepers and execute orders in hand and future orders and Goodwill - Rs 100.00 Lakhs

2) It is explicitly agreed by and between the Parties that Party No. 2 shall acquire the entire division of Party No. 1's CSP-Pakariya Road only alongwith the Assets as per schedule A and the balance order book position on hand as referred to para C) hereinabove along with all their rights, titles and interest arising therefrom pertaining to the CSP-Pakariya Road & without any liability, including pending litigations with Railway authorities & other statutory authorities, pertaining to CSP-Pakariya Road.

3) a) The Party No. 2 shall not be liable for any liability towards statutory demands or demands arising out of performance / non-performance of past contracts, or ongoing contracts with the Railways, or any other liabilities pertaining to the period prior to the signing of Tripartite Agreement with the Railways though crystallizing at any time in future except of CS-160 contract. If any such liability crystallizes before the consummation of the Tripartite Agreement or otherwise, the Party No. 2 shall deduct such amount from the installments payable to the Party No. 1 as per the payment schedule hereinafter mentioned at para 4) and if any such liability crystallizes after completion of the payment schedule hereinafter mentioned, the Party No. 2 shall claim and recover such amount from the Party No. 1.



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(b) The Party No. 1 explicitly agrees to indemnify the Party No. 2 by way of issue of Indemnity Bond in favour of Party No. 2 in the event of Party No. 2 is required to extend the validity of guarantees towards performance of all previous contracts of Zonal Railway including contracts of CS-145, CS-152 executed by the Party No. 1, till such time as stipulated in the various contracts. The required Guarantee Bond for CS-160 shall be arranged by the party no 2.

4) The Party No. 2 hereby undertake to stand by the terms of this M.O.U. and agrees to make the payment of the consideration amount of Rs 1,42,50,000/- (Rupees one crore forty two lacs fifty thousand only), herein above mentioned in para 1) in three equal installments to the Party No. 1 as per the schedule mentioned hereunder :

a) 1st Installment Rs 47.50 lacs (Rupees forty seven lacs fifty thousand only) paid vide cheque no. 023859 dated 04/04/2009 drawn on State Bank of Hyderabad for Rs 11.00 lacs (Rupees eleven lacs only) & cheque no. 281693 dated 26/04/2009 drawn on HDFC Bank, Pune for Rs 36.50 lacs (Rupees thirty six lacs fifty thousand only).

b) 2nd Installment of Rs 47.50 lacs (Rupees forty seven lacs fifty thousand only) to be paid on approval of the tripartite agreement by the Zonal Railway / Railway Board and signing of the same by the concerned parties.

c) 3rd Installment of Rs 47.50 lacs (Rupees forty seven lacs fifty thousand only) to be paid after one month from the date of approval of the tripartite agreement by the Zonal Railway / Railway Board and signing of the same by the concerned parties.

5) The Party No. 2 shall abide and agree to fulfill all the terms and conditions stipulated by the Railway authorities while approving shifting of the location of Concrete Sleeper Plant of Pakariya Road in WCR to Kandrori station in NR as per Railway Board's letter No. 2004/Track-II/22/11/5 (Shifting) dated 05/02/2009.

6) The Party No. 1 shall provide full particulars of the balance order book position and the status of litigation pending with the Railways & other statutory authorities, status of various statutory liabilities, including staff & workmen dues of the CSP-Pakariya Road, as on the date of execution of the Tripartite Agreement with the Railways to the satisfaction of the Party No. 2.

7) Both the parties agree that if the Tripartite Agreement with the Railways cannot be consummated, the Party No. 1 shall cause to refund the Party No. 2 the entire advance / consideration amount paid by the Party No. 2 to Party no. 1 within a reasonable period of 2 months.



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8) It is explicitly agreed by and between both the parties that irrespective of any other agreement / Tripartite Agreement is entered into by both the parties for submission to the Zonal Railway / Railway Board, the terms & conditions of this M.O.U. shall supersede and prevail upon any such agreement / Tripartite Agreement entered into subsequently as referred to herein above.

9) All questions or differences arising out of or in relation to the execution or interpretation of this M.O.U., which cannot be settled by mutual accord, shall be settled by Arbitration by one or more arbitrators appointed by the parties.

This MOU entered on this 6th day of March, 2009 shall be strictly confidential with the original copy kept with the Party No.1 and the duplicate copy with Party No.2. Further this MOU shall be finally concluded into an agreement on fulfilling of all the conditions of this MOU.



For and on behalf of Party No. 1

Witness



(DILIP BIYANI)



For and on behalf of Party No. 2

Witness



(SHILPA MORE)



SCHEDULE - A

1. Moulds and Benches for 1 in 8 ½ - 1 Set consisting of 21 Benches & 67 Moulds



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