



J&K Economic Reconstruction Agency
3rd Floor, Rambagh Commercial Complex, Srinagar
13 C/C, Gandhi Nagar, Jammu



Office Order No. 80 JK ERA of 2014
Dated: 23-05-2014

Whereas in order to comply with order dated 30.08.2013 passed by the Hon'ble High Court of Jammu and Kashmir in CMP no.1781/2013, OWP no. 301 of 2007 (writ petition filed by M/s Mirsons & Co.), a Committee of Experts comprising Sh. Vinod Sharma, Director (SG&IR), J&K ERA, Mtr. Shagufta Qazi, Director Finance, J&K ERA, Sh. Alok Mengi, Director Central, J&K ERA, Sh Naresh Lengh, Director Urban, J&K ERA, Sh. D.D.Gurkha, Director Transport, J&K ERA (Via Tele-Conferencing), Sh.Basharat A Malik, Project Manager (JKUSDIP), J&K ERA, Sh S.K.Gandotra, Project Manager (Transport K), J&K ERA was constituted vide order no. 62 JKERA of 2014 dated 06-05-2014 issued by the undersigned to consider the claim of the writ petitioner, M/s Mirsons & Co. in accordance with law, Government orders and in the light of the documents annexed with the application;

Whereas the aforesaid Committee has considered the matter and made a detailed report and its recommendations in regard thereto which is reproduced hereunder:

"The Committee constituted by the CEO, ERA, vide order no.62 JKERA of 2014 dated 06-05-2014 comprising the aforesaid officers, to consider and make a report/recommendations on the claim of M/s Mirsons & Co. pursuant to order dated 30.08.2013 passed by the Hon'ble High Court of Jammu and Kashmir at Srinagar, in CMP no.1781/2013, OWP no.301/2007, filed by aforesaid M/s Mirsons & Co., met and held its meeting on 7th May 2014 in the office Chambers of CEO J&K ERA at Srinagar. The Committee thoroughly perused the relevant records, scrutinized the claim of the aforesaid Company and noticed as under:

1. That in the year 2007 in implementation of the schemes for which loans had been granted and sanctioned to the Organization, i.e., the Economic Reconstruction Agency (ERA) by the Asian Development Bank (ADB) under Loan Package 1 (2151), ending 30-09-2013, the ERA floated IFB/NIT for construction of Mehjoor Bridge on 10-03-2007 (hereinafter referred to as the Bridge). In terms of the IFB/NIT, the last date for submission of Bids was fixed as 16-04-2007;
2. That, M/s Mirsons & Co. Along with four other contractors responded to the aforesaid IFB;
3. That the Technical Bids of the bidders, including that of M/s Mirsons & Co., were opened by the Technical Bid Evaluation Committee on 16-04-2007, in presence of the bidders. On evaluation of the Technical bids by the Technical Bid Evaluation Committee the bid submitted by M/s Mirsons & Co., did not qualify the Technical Eligibility criteria as laid down in the bidding document and, consequently, was evaluated and declared as Non responsive under the terms and conditions laid down in the Bidding document. Resultantly, M/s Mirsons & Co., was excluded from the selection process for allotment of the construction work of the Bridge in question. The Technical Bid Evaluation Report was approved by ADB on 21-05-2007;
4. That, after having participated in the tendering process and having failed to qualify , in the Technical Bid, M/s Mirsons & Co. instituted a writ petition, OWP no.301/2007, before the Hon'ble High Court of J&K. Therein, the petitioner, M/s Mirsons & Co., challenged the issuance of the aforementioned IFB / NIT dated 10-03-2007, principally on the ground that allotment of the work of construction of the bridge

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in question in its favour had been already approved by the competent authority, i.e., respondent no.1 therein, namely, Public Works Department.

5. Records reveal that the Hon'ble Court on 08.06.2007 was pleased to pass an order, the operative portion of which reads as under:

"3.The matter was heard at sufficient length at the very threshold stage with a view to dispose it of finally, but for want of all the requisite documents/records particularly those substantiating the respective claims of petitioner/firm and the respondents relating to allotment of contract and refusal of Central Government to release requisite funds, etc. it does not appear to be practicable at this stage. Accordingly while directing respective counsel to furnish all the documents/materials they rely upon for perusal in original, the matter is currently adjourned to be listed before the Vacation Bench as and when available. Till then and subject to further orders status quo on date shall prevail in the matter. List as directed";

6. That, thereafter, on 15.12.2007 the Hon'ble Court was pleased to pass the following order in the matter:

"1.With agreement the matter is directed to be listed on 29-12-2007. Meanwhile it is provided that respondents would be at liberty to open tenders / bids including financial bids and prepare a comparative statement thereof without however formally allotting the work to any of the enterers/bidders (sic) otherwise than in accordance with orders that may be passed in the matter. This shall, however, be without prejudice to the claims of the petitioners."

7. That, since in terms of the aforesaid Hon'ble Court order dated 15-12-2007, ERA had been directed not to allot the contract formally to any of the bidders, who had participated in the tendering process in question, ERA vide its communication ERA/PM(T)/1831-36 dated 07-01-2008, requested the responsive bidders to extend the Bid Validity Period of the bids submitted by them and directed them to extend the Bid Security Deposits by 15-01-2008. As per the conditions of the Bidding document the Validity of the Bid of the prospective bidders is valid for 120 days only and the Bid security deposit for 28 days after the expiry of Bid validity. However, the responsive bidders neither responded to the letters issued to them in this behalf, nor extended the date of their Bid security deposits with ERA. Consequently, in order to avoid the frustration of the Project and determination of the agreement between ERA and ADB with regard to grant and sanction of loan for the Project, as also to meet the dead line of 30-04-2008 fixed by ADB for award of contracts for all the schemes being funded by it, ERA issued fresh IFB/NIT on 17-01-2008, with the date of receipt of bids fixed as 23-02-2008;

8. That, pursuant to the issuance of the fresh IFB/NIT dated 17-01-2008, M/s Mirsons & Co., vide its application dated 09.02.2008, also applied for supply of Bid documents which was duly issued and supplied to him on 14-02-2008 against proper receipt. **Thereafter, M/s Mirsons & Co. submitted its bid in response to this IFB as well.** However, while doing so, M/s Mirsons & Co. filed CMP no.139/2008 in its aforesaid pending writ petition, OWP no.301/2007, challenging the issuance of aforesaid fresh IFB/NIT by ERA;

9. That in the aforesaid CMP no.139/2008, the Hon'ble Court on 20.02.2008 was pleased to pass an order, the relevant portion of which is extracted below:

"4.On tentative consideration the least that appears is that respondents should have taken the court into confidence before adverting upon the course adopted. Accordingly while posting the matter on 01-03-2008, it is directed that status quo in terms of above

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quoted orders shall prevail in the matter, which shall however not effect receipt of tenders under the fresh tender notice without any action. List as directed."

10. That, in view of the aforesaid orders of *status quo* dated 08.06.2007 and 20.02.2008 passed by the Hon'ble High Court in CMP nos. 533/2007 and 139/2008, respectively, the ERA could not go ahead with the tendering/selection process for allotment of the construction work of the Bridge in question. Meanwhile, in terms of the agreement between the ADB and ERA, the Project life of the loan package sanctioned and granted by ADB with respect to the Bridge in question expired on 30-09-2013, resulting in the closure and winding up of the Project for the construction of the Bridge in question;
11. That M/s Mirsons & Co. again approached the Hon'ble High Court through the medium of CMP (IA) no. 1781/2013, pleading therein, *inter alia*, that pursuant to NIT no. 36-CD1 of 8/2010-11 dated 27-06-2010 issued by Executive Engineer, R&B, Construction Division no. 1st, Srinagar, he had been awarded contract for the construction of Qamarwari Bridge at a total cost of Rs. 958.17 lacs by Chief Engineer, R&B. M/s Mirsons & Co., and that the ERA had started activities prejudicial to its (the petitioner's) rights and interests instead of according consideration to the allotment of construction work qua the Mehjoor Bridge on the analogy of Qamarwari Bridge in its favour. In the aforesaid CMP, M/s Mirsons & Co. made the following prayers:

"In these Premises, it is therefore, prayed that in acceptance of this Application Respondents in particular Respondents 1, 4 to 6 be under the appropriate Orders of this Hon'ble Court directed to consider the case of the Applicant Petitioner for Award of the construction Contract for Design and Construction of 120 M long Four Lane Bridge over Flood Spill Channel at Mehjoor Nagar on the analogy of 100 RM Qamarwari Bridge witnesseth by the Decision of the State Level Contract Committee dated 7-1-2011 read with Allotment Order dated 18-3-2011, and pending such exercise/decision the status quo as directed by this Hon'ble Court vide Order dated 20-02-2008 be directed to be maintained, for the same would meet the ends of justice."

12. That in the aforesaid CMP no.1781/2013, the Hon'ble High Court on 30.08.2013 has been pleased to pass the following orders:

"At request list in the next Regular cause list. Meanwhile, respondents to consider the claim of the petitioner in accordance with law, Government orders and in the light of the documents annexed with the application."

13. That subsequent to the aforesaid order dated 30.08.2013, the Hon'ble High Court on 23.09.2013 passed the following order:

"Learned counsel for the petitioner submitted that the petitioner be permitted to file affidavit so as to enable the respondents to take decision in light of the application. At request list in the next week."

14. That M/s Mirsons & Co. filed the requisite affidavit before the Hon'ble High Court, detailing therein the Lump sum Cost Summary-cum-Statement for the execution on turn key basis of the construction of the Bridge, on the basis of work rate of the construction of four lane Bridge at Zaina Kadal bridge in 1996, and assessed the same to be at Rs. 14,55,49,153.47 (Rupees Fourteen Crores Fifty Lacs Forty Nine Thousand One Hundred Fifty Three and Paise Forty Seven only);

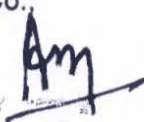
15. That it may be worthwhile to mention here that as on the date of passing of the aforesaid order dated 30.08.2013, there was no subsisting project agreement for grant of loan facility between the ERA and ADB for construction of the Bridge in question. However, the ADB has considered granting of Loan under Loan II Tranche -3 ending


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31-12-2016, where under many new Projects have been / are being undertaken by ERA. The new Projects include Jehangir Chowk Rambagh Flyover Bridge, the construction of which requires the ancillary and subsidiary infrastructures, including, *inter alia*, a Bridge connecting Jawahir Nagar with Southern parts of the City of Srinagar over Flood Spill Channel for diversion of vehicular traffic and to meet the growing traffic demands in this behalf;

16. The Committee having perused the relevant records, scrutinized the relevant technical details, examined the Lump sum Cost Summary-cum-Statement, and having considered the claim of M/s Mirsons & Co., in the background of facts narrated above and on the basis of law governing the filed, the Government orders and documents appended by the Company with its application, CMP no.1781/2013, as directed by the Hon'ble High Court, makes the following report and recommendations:
- i) That there had been no allotment order, much less a formal allotment order, issued by the Public Works Department in favour of M/s Mirsons & Co., under the Projects funded by Ministry of Roads, Transport and Highways (MORTH) under Central Road Fund, nor had any funds been sanctioned by the Government of India for the said purpose. Consequently, as per the Public Works Department, the case was closed as the Scheme had not been approved by the Central Government. Perusal of the documents annexed by M/s Mirsons & Co., to its writ petition, OWP no.301/2007, substantiates the aforesaid factual position;
 - ii) That, upon the incorporation of ERA for undertaking construction of major projects, including roads and bridges, under the Loan Projects granted and sanctioned by the ADB, the ERA floated the IFB/NIT on 10-03-2007 for construction of Mehjoor Nagar Bridge. **M/s Mirsons & Co. Along with four other contractors, submitted its Technical and Price Bids;**
 - iii) **That, upon opening and evaluation of the Technical Bids, by ERA on 10-04-2007 and later on approved by ADB on 21-05-2007, M/s Mirsons & Co. was found not to qualify the eligibility criteria of the Technical Bid, rendering him ineligible. The Company was, consequently, declared Technically Non Responsive Bidder.** The process could not proceed ahead for reasons already recorded;
 - iv) **That upon issuance of Fresh IFB/NIT dated 17-01-2008, by ERA for construction of Mehjoor Nagar Bridge, M/s Mirsons & Co. again submitted its bid, along with four other contractors.** However, the same could not be taken to its logical end in view of the status quo order dated 20.02.2008 passed by the Hon'ble Court.
 - v) That, the construction of Qamarwari Bridge was allotted to M/s Mirsons & Co. by R&B Department. The project, seemingly funded by the Government, had its own technical and financial requirements, which are entirely different than the requirements of ADB funded projects. Therefore, the same cannot form basis to evaluate the technical and financial eligibility of any contractor, muchless of M/s Mirsons & Co. for allotment of construction of Mehjoor Nagar Bridge;
 - vi) That, the Lump sum Cost Summary-cum-Statement submitted by M/s Mirsons & Co. in its affidavit for consideration of ERA is based upon the work rate involved in the construction of Zaina Kadal Bridge in 1996. The said Lump sum Cost Summary-cum-Statement also cannot form the basis for allotment of construction of Mehjoor Nagar Bridge in favour of any contractor, much less M/s Mirsons & Co.;

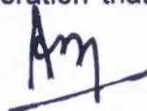


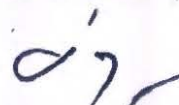


- vii) That the Work Project for the construction of Mehjoor Bridge, for which IFB/NIT was issued by ERA, under the Loan Package 1 (2151) ending 30-09-2013, granted and sanctioned by ADB, has already been closed and wound up by ERA, for the Loan Package 1 (2151) ended on 30-09-2013, after which date all Projects under the said Loan Package 1 were closed.
- viii) That in so far as the Projects being now funded by ADB under Loan 2 Tranche-3 ending 31-12-2016, it needs a mention here that in terms of the specific and strict guidelines of ADB, any Project funded by ADB, has to be put to tendering process through IFB/NIT. As per the agreement with ADB this work of Mehjoor Bridge along with two Grade separators has been approved as One package and can be executed only when put to Bid following ADB's Single Stage –Two Envelope Bidding Procedure . Reference in this connection may be made to Clause 2.6(b) of the ADB Procurement Guidelines . Since the ERA is bound under the terms and conditions contained in the contract executed by it with ADB, that the works funded by the ADB shall be put to tendering process through the medium of NIT/IFB, any deviation there from shall result in the frustration of the Project due to non-observance of guidelines, terms and conditions issued by ADB at the time of grant and sanction of loan amount for the aforesaid Project and will result in its cancellation.
- ix) That the law with respect to grant of contracts and works in favour of private individuals by the Government and its instrumentalities, being public largesse, stands declared and settled by the Hon'ble Supreme Court from time to time right from the decision in *R. D. Shetty's* case which, for facility of reference is quoted hereunder:

"The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure. This proposition would hold good in all cases of dealing by the Government with the public, where the interest sought to be protected is a privilege. It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts, quotas, licences etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm."

17. In light of the aforesaid narration of facts, findings and reasons, the Committee is of the view that it will not be possible, on any count, to accede to the request of M/s Mirsons & Co. to allot the construction work in question to it *de hors* the Rules, law governing the subject, requirements of the Project, muchless on the analogy sought to be pressed into service by the Company, without putting the said work to advertisement and tendering process in accordance with law and the terms and conditions subject to which the ADB has agreed to fund the Project/work in question.
18. The Committee, accordingly, recommends rejection of the claim of M/s Mirsons & Co.
19. The Committee also deliberated upon, discussed and considered the expected fall out of the on going work on the construction of Jehangir Chowk-Rambagh Flyover Bridge. It hardly needs a reiteration that the said project under ADB Loan 2 Tranche-3 ending





31-12-2016, is one of the most major projects undertaken in hand for the loan period ending 31-12-2016. The said Flyover Bridge is a necessity inasmuch as it would alleviate the burden of vehicular traffic on the existing roads, thus, serving a huge public interest. The construction of the said Flyover Bridge, however, essentially demands diversion and bypass of a major portion of the City Traffic through the auxiliary roads / bylanes running through the concerned part of Srinagar City, especially via Jawahir Nagar and Gogji Bagh and over the Northern Spill Channel Bund. However, these auxiliary roads / bylanes do not have the capacity to handle the huge volume of vehicular traffic, particularly during peak hours, consequently, affecting the smooth flow thereof. In order to ensure smooth flow of traffic through the concerned part of Srinagar City, and keeping in view the larger public interest, augmentation of the ancillary infrastructure has become imperative. This augmentation would include construction of a Two lane 100 meter long bridge connecting Jawahir Nagar with Rambagh-Padshahi Bagh Flood Spill Bund somewhere near Jewaharnagar Crossing. The immediate need of this Bridge is also foreseen in view of the fact that with the progression of the work on the construction of the Flyover, we may not be in a position to allow too much traffic over the Rambagh Bridge. However, the construction of the said ancillary and subsidiary projects, including the said Bridge, in order to ameliorate the hardships being faced by the people, need to be undertaken on priority and war footing basis and without any delay. The upgradation and construction of such ancillary and subsidiary infrastructure after serving the immediate necessity of alternative roads to regulate smooth movement of vehicular traffic, would continue to serve public interest even after the completion of the said Flyover Bridge. Therefore, in order to carry out the said purposes, it becomes imperative and essential that the work for the construction of the Bridge connecting Jawahir Nagar with Rambagh-Padshahi Bagh Flood Spill Bund somewhere near Jewaharnagar Crossing is immediately put to tendering process, through IFB/NIT in accordance with the all the requirements as per ADB Norms and norms governing the subject, so that the same is completed at the earliest.

20. In this connection, the Committee has also perused the various orders passed by the Hon'ble High Court. It is revealed that by virtue of order dated 30.08.2013 passed by the Hon'ble High Court in CMP no.1781/2013, the *status quo* orders dated 08.06.2007 and 20.02.2008 passed in CMP nos. 533/2007 and 139/2008, respectively, with respect to the earlier Project (which has since been lost on account of expiry of package of loan period by reason of the status quo orders) stand modified now, inasmuch as the ERA has been directed and allowed to consider the claim of the petitioner, M/s Mirsons & Co., in accordance with law, on the prayer made by M/s Mirsons & Co. itself. Keeping in view of the short life of the present loan package and the eruption of the hard pressing demand of the traffic scenario, which was otherwise visualised, it would be appropriate to forthwith put the construction of the Bridge [connecting Jawahir Nagar with Rambagh-Padshahi Bagh Flood Spill Bund somewhere near Mehjoor Nagar] under the new Project to tender in accordance with the norms and requirements of the present loan package and the ADB guidelines, make allotment of the work to the successful tenderer in accordance with law, so that the requirements of the Project with the ADB in relation to the present projects are strictly met and adhered to, and the opportunity to construct the bridge in question is not again lost for any reason, including loss of time or expiry of the loan Package-2 now granted. This would also provide an adequate opportunity to all the Contractors, including M/s Mirsons & Co., desiring to compete for allotment of the work to participate in the tendering process and afford an equally adequate and further opportunity to the ERA to consider the allotment of the work in accordance with law, as directed by the Hon'ble High Court in terms of order dated 30.08.2013 in CMP no.1781/2013."

Whereas I have minutely gone through the report and recommendations made by the aforesaid Committee and considered the matter in light of the overall fact scenario, law and norms governing the subject, obligation of the ERA in terms of the guidelines of the

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ADB, requirements of the present sanctioned projects and directions of the Hon'ble High Court;

Whereas, on consideration, the report and the recommendations made by the Committee have been found to be factually and technically sound.

Therefore, in acceptance of the report and recommendations of the Committee, the claim of the writ petitioner, M/s Mirsons & Co., is rejected.

Office to forward a copy of this order to M/s Mirsons & Co. for their information.


Chief Executive Officer
J&K ERA

No: ERA/CEO/ISS/Adm/290-97.

Dated: 23-05-14.

Copies forwarded to:

1. Director SG & IR J&K ERA.
2. Director Finance J&K ERA.
3. Director Central J&K ERA.
4. Director Urban J&K ERA.
5. Director Transport J&K ERA.
6. Project Manager (JKUSDIP) ERA Kashmir.
7. Project Manager (Transport) ERA Kashmir.
8. Technical Officer to CEO with the instructions to send the copy to M/s Mirsons Construction Pvt Ltd 215-Karanagar Medical College Road Srinagar.