

ECL



ईस्टर्न कोलफील्ड्स लिमिटेड
Eastern Coalfields Limited
(कोल इंडिया की एक अनुषंगी)
(A Subsidiary of Coal India Limited)
(भारत सरकार का एक उपक्रम)
(A Govt. of India Undertaking)

Date :- 15.05.2024

Ref no. GM/BA/termination-BGM /2024-25/ 42

To

The 1. M/S Biswajit Ghosh Mining & Movers (BGM&M)
Babupara, Searsole Rajbari, P.O. - Searsole Rajbari, P.S. Raniganj, Dist:- Paschim
Bardhaman - 713358.

2. M/S Rungta Projects Limited (RPL)
301, Mangalam Building, 24 Hemanta Basu Sarani, Kolkata-700001.

3. M/S Joy Maa Chandi Transport (JMCT)
Vill. - Bazari, P.O. - Sonapur, Dist:- Paschim Bardhaman - 713381.

Sub. Termination of contract along with banning of business of M/s BGM & M-RPL-JMCT(JV) and its constituent partners of Joint Venture for a period of three years from the participating in future tenders of Eastern Coalfield Limited (ECL) against the work of "Hiring of HEMM for removal and Transportation of 1653L.Cum of OB and 196.00 L. Cum Rehandling of OB by outsourcing for the project Nakrakonda-Kumardihi B OC Patch(3 MTY) under Bankola Area'.



Ref. no :-

1. Name of Work:- Hiring of HEMM for removal and Transportation of 1653L.Cum of OB and 196.00 L. Cum Re-handling of OB by outsourcing for the project Nakrakonda-Kumardihi B OC Patch(3 MTY) under Bankola Area'.
2. No. ECL/HQ/CMC/WO/Nakrakonda-Kumardihi B/582 dated: 11.11.2020.
3. Period of work:- 4745 days(13 years).
2. Agreement no. ECL/GM/BA/Agreement/20-21/E-102 dated:08.12.2020
3. Contract value: Rs. 1514,17,79,520.00 (Excl GST)
4. Show Cause notice for termination of contract vide : ECL/NK-KB/Agent/NS/2023-24/1165 dated 25.09.2023
5. Personal hearing notice vide : ECL/NK-KB/Agent/NS/2023-24/1279 dated 05.10.2023

Dear Sir,

You were awarded the work of "Hiring of HEMM for removal and Transportation of 1653L.Cum of OB and 196.00 L. Cum Rehandling of OB for the project Nakrakonda-Kumardihi B OC Patch(3 MTY) under Bankola Area'.

Area management observed that you have performed poorly on the job. Engineer-in-charge issued several letters seeking to improve your performance. The details of letters issued to you are as under:

- a. GM/BA/BGM&M/2021/187 dated 20.09.2021
- b. ECL/GM/BA/E-22 dated 29.11.2021
- c. ECL/GM/BA/E-40 dated 22.01.2022
- d. ECL/GM/BA/E-41 dated 27.01.2022
- e. NK-KB/AGT/2022/5155 dated 06/07.03.2022
- f. NK-KB/AGT/21-22/5691 dated 22.05.2022
- g. NK-KB/AGT/2022/5858 dated 17.06.2022
- h. NK-KB/AGT/21-22/6818 dated 27.10.2022
- i. NK-KB/AGT/22-23/7131 dated 18.12.2022
- j. NK-KB/AGT/23-24/197 dated 05.05.2023
- k. NK-KB/AGT/2023/1051 dated 11.09.2023

In spite of several letters/reminders there was no initiative taken from your end to meet the short fall 'of the targeted production, and you have failed to improve production. your performance since April 2022 to Nov. 2023 are as follow:-

Year wise Target & Achieved OBR (considering hindrance) :-

Month	OBR					
	Target of OBR (in Cum)	OB Hindrance (hours)	Target of OBR after hindrance (in Cum)	Achieved OBR (in Cum)	Shortage of OBR after hindrance (in Cum)	Percentage of Achievement
April 2022	1495204.00	43.30	1405284.09	614223.52	-791060.57	43.71
May 2022	600000.00	101.41	518217.74	528462.90	10245.16	101.98
June 2022	600000.00	177.10	452416.67	467071.15	14654.48	103.24
July 2022	919980.00	192.00	682565.81	550419.40	-132146.41	80.64
August 2022	917806.00	261.00	595833.73	502201.35	-93632.38	84.29
September 2022	2135980.00	226.00	1465519.61	406668.69	-1058850.92	27.75
October 2022	2307796.00	130.00	1904552.08	489849.51	-1414702.57	25.72
November 2022	750000.00	26.00	722916.67	726874.52	3957.85	100.55
December 2022	820000.00	0.00	820000.00	821513.60	1513.60	100.18
January 2023	900000.00	17.00	878750.00	902041.05	23291.05	102.65
February 2023	1160000.00	6.00	1149642.86	982402.38	-167240.48	85.45
March 2023	1580000.00	122.00	1320913.98	886642.62	-434271.36	67.12
Total (FY 22-23)	14186766.00	1301.81	11916613.24	7878370.69	-4038242.55	66.11

Month wise Target & Achieved OBR (considering hindrance) from 01.04.2023 to Nov'2023:-

Month	Target as per NIT	Hindrance (hours)	Target after Hindrance	Executed Quantity	Shortfall/surplus OBR after hindrance (in Cum)	% Achieved after hindrance
	OB (in Cum)		OB (in Cum)	OB (in Cum)		
Apr, 23	1636000.00	46.00	1531477.78	976746.71	-554731.07	63.78
May, 23	1602000.00	46.00	1502951.61	689428.74	-813522.87	45.87
June, 23	1300000.00	137.00	1052638.89	492182.66	-560456.23	46.76
July, 23	1260000.00	450.00	497903.23	271277.93	-226625.30	54.48
Aug, 23	1060000.00	435.00	440241.94	62541.82	-377700.12	14.21
Sep'23	1026000.00	Nil	1026000.00	110300.00	-915700.00	10.75
Oct'23	1506000.00	Nil	1506000.00	0.00	-1506000.00	0.00
Nov'23	-----			7000.00		0.00
Total	9390000	1114	7557213.45	2609477.86	-4954735.59	34.53

[Handwritten signatures]

Thus, it can be seen from the above table that your performance in the F.Y. 2022-23 was 66.11 % and April-23 to November was 34.53% over the work schedule of OB removal mutually agreed by the Engineer in charge and you, Nakrakonda – Kumardihi 'B' OC Patch (3MTY) . You have stopped the work of OB removal completely since 09.11.2023.

Due to your repeated poor performance and complete abandonment of work. ECL has incurred a huge irreparable loss.

Accordingly a Show Cause notice vide letter no.ECL/NK-KB/Agent/NS/2023-24/1165 date 25.09.2023 was served to you by Agent, Nakrakonda-Kumardihi B Colliery, Bankola Area to explain within stipulated time why action should not be taken to terminate your contract for poor performance of your firm as per GTC/Agreement. No appropriate reply received from your side even after completion of stipulated time from the issuance of this letter.

In spite of giving Show Cause notice for termination as stated above the performance of your work had not improved and you have stopped the work since 27.09.2023 (only two days excavation work done in November-2023).

Finally the ECL management has no option left except to terminate the instant contract, a notice of termination vide. ECL/NKC/Agent/termination/2023-24/2017 dated 20.01.2024 has been initiated. Stating that the contract will be terminated under clause no.9(a), 9(b) & 9(c) with imposition of penalty with clause no. 6.2 of GTC of NIT.and clause No. 4(v)(b) of guideline for debarment of firms of CMM from bidding in future tenders of ECL for a period of three(03) years

Due to stoppage of work since 27.09.2023, EIC initiated a letter for engagement of CMPDIL team for jointly final OBR measurement but you did not come or send your authorized representative in the said measurement.

Final measurement has been done by CMPDI team on dated 08.04.2024 & 09.04.2024 and final measurement report has been submitted on 18.04.2024.

In accordance with the CMPDI report, the Final Executed quantity and Balance quantity is given below in the tabular form from 11.11.2020 to the last day of working.

SL. NO.	Item name	Units	Final qty as per work order	Executed Quantity as per measurement	Balance Unexecuted Qty
1	OBR (1-2 Km)	L. cum	300.74	53.35	247.39
2	OBR (2-3 Km)	L. cum	506.56	0	506.56
3	OBR (3-4 Km)	L. cum	418.00	0	418
4	OBR (4-5 Km)	L. cum	427.70	0	427.7
	Total OBR	L. cum	1653.00	22.59	1599.65
5	Rehandling OBR(2-3 km)	L. cum	196.00	97.47	98.53
	Total Re handling	L. cum	196.00	97.47	98.53

The relevant provision of agreement & CMM as referred above are as follow:-

9 (a) makes default in proceeding with the works with due diligence and continues to do so even after a notice in writing from the Engineer-in-charge, then on the expiry of the period as specified in the notice

Or

9(b) fails to achieve a monthly agreed quantity of 75%(Seventy five percent) for a period of 6(six) consecutive month or for cumulative period of six months within any continuous period of 18(eighteen) months, save and except to the extent of non-availability caused by i) a Force Majeure event or ii) an act of omission of company, not occurring due to any default of the contractor.

Or

9 (c) commits default/breach in complying with any of the terms and conditions of the contract and does not remedy it or fails to take effective steps for the remedy to the satisfaction of the Engineer-in-charge, then on the expiry of the period as may be specified by the Engineer-in-charge in a notice in writing

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Penalty on account of loss/damage suffered by employer because of action under Clause No. 9.2 and to compensate for this loss or damage and the employer shall be entitled to recover higher of the following :

Clause No. 9.2 states that:

9.2 On cancellation of the contract or on termination of the contract, the Engineer-in-charge shall have powers:

- a. To take possession of the site and carry out balance work through any other agency.
- b. To give the contractor or his representative of the work 7 (seven) days notice in writing for taking final measurement for the works executed till the date of cancellation or termination of the contract. The Engineer-in-Charge shall fix the time for taking such final measurement and intimate the contractor in writing. The final measurement shall be carried out at the said appointed time notwithstanding whether the contractor is present or not. Any claim as regards measurement which the contractor is to make shall be made in writing within 7 (seven) days of taking final measurement by Engineer-In-charge as aforesaid and if no such claim is received, the contractor shall be deemed to have waived all claims regarding above measurements and any claim made thereafter shall not be entertained.
- c. After giving notice to the contractor to measure up the work of the contractor and to take such whole or the balance or part thereof, as shall be unexecuted out of his hands and to give it to another contractor or take up departmentally, to complete the work. The contractor whose contract is terminated shall not be allowed to participate in future bidding for period of minimum twelve months.

In such an event, the contractor shall be liable for loss/damage suffered by the employer because of action under this clause and to compensate for this loss or damage, the employer shall be entitled to recover higher of the following:

i) Forfeiture of security deposit comprising of performance guarantee and retention money and additional performance security, if any, at disposal of the employer.

Or

ii) 20% of value of incomplete work. The value of the incomplete work shall be calculated for the items and quantities remaining incomplete (as per provision of agreement) at the agreement rates including price variation as applicable on the date, when notice in writing for termination of work was issued to the contractor.

It is being clarified that the above liability is over and above the penalties payable by the contractor on account of shortfall in quantities as per provision of clause 6.

The amount to be recovered from the contractor as determined above, shall, without prejudice to any other right or remedy available to the employer as per law or as per agreement, will be recovered from any money due to the contractor on any account or under any other contract and in the event of any shortfall, the contractor shall be liable to pay the same within 30 days. In case of failure to pay the same the amount shall be debt payable.

Clause No. 4 (v) (b) of guideline for debarment of firms, of CMM, chapter 6 states that:

4. The contracting entity may be debarred from bidding in the following circumstances: -

- i) Withdrawal of Bid as per relevant provisions of tender document.
- ii) If L-1 Bidder fails to submit PSD, if any and/or fails to execute the contract within stipulated period.
- iii) If L-1 Bidder fails to start the work on scheduled time.
- iv) In case of failure to execute the work as per mutually agreed work schedule.
- v) Continued and repeated failure to meet contractual Obligations:
 - a. In case of partial failure on performance, agency shall be debarred from future participation in tenders keeping his present contract alive.



b. On termination of contract.

Therefore, in the interest of ECL, there is no option left but to terminate the instant contract and to ban you with constituent partners of your joint Ventures firm from participation in future tenders of ECL for 3(three) years as per clause 2(v)(b) of Chapter-6 of CMM.


In view of the above competent authority ECFDS officials in its 14th of 2024 meeting held on 03.05.2024 at 06:00 PM and continued on 09.05.2024 at 06:00 PM in Board Room, CMD's office, ECL HQ, Sanctoria (ref.no. ECL/CS/27 (Z-9)/14th of 2024/2 date 14.05.2024) agreed on following action against you.

- a) Termination of contract in full w.e.f. 09.11.2023 as per Clause no. 9(a), 9(b) & 9(c) of GTC.
- b) Penalty on account of loss/damage suffered by employer because of action under Clause No. 9.2 and to compensate for this loss or damage and the employer shall be entitled to recover higher of the following:
- i) Forfeiture of security deposit comprising of performance guarantee and retention money and additional performance security, if any, at disposal of the employer.
Or
- ii) 20% of value of incomplete work. The worked out penalty amounting to Rs. 28371.58 Lakh (equivalent to 20% of the value of incomplete work), being higher of the two for recovery from contractor. Imposition of penalties not limited to Rs 28317.58 lakh to be further assessed by EIC during closure of contract.

The above liability is over and above the penalties on account of shortfall in quantities as per provision of clause 6 of GTC.

- c) Carrying out balance unexecuted work by way of calling a separate open tender as per scope of work the terminated contractor.
- d) Banning of business of the contractor M/S BGM & M-RPL-JMCT(JV) and it is constituent partner of JV as per clause no 9(b) of GTC of NIT/agreement of contract and clause no 4(v)(b) of guideline of debarment of firms, of CMM from bidding in further tenders of ECL for a period of 3(three) years w.e.f. 15.05.2024..

Yours faithfully,


General Manager
Bankola Area.

CC:

1. GM(CMC), CIL/ALL Subsidiaries
2. TS to CMD, ECL
3 TS to D(T) P&P/ D(P)/D(T)OP/D(F), ECL
4. GM (F)Ie/GM(C), ECL
5. All Area GMs, ECL
6. Agent, Nakrakonda Kumardihi B Colliery.
7. Nodal Officer, e- Procurement Cell, ECL, HQ- with a request to ensure that directive of this order is implemented in online E-procurement portal of CIL and HOD System,ECL,HQ for ECL website.