

Our Ref. : PGTR:Koteshwar-GE/VB

Date: 7th September, 2020

Mr. S.P. Kakkar (Advocate)
17 S.B.M. Complex,e
Haridwar Road
Rishikesh-249201

Subject: Reply to your Notice dated 24.07.2020 on behalf of your client M/s. Kothari Enterprises, Laxman Jhoola Road behind Bhairon Mandir near KBP School, Rishikesh, District Dehradun, Uttrakhand

Dear Sir,

Firstly, please note that the Purchase Order dated 29.05.2018 was issued by ABB India Limited (“**ABB**”) to Gupta Enterprises. Please be informed that National Company Law Tribunal, Bangalore vide its order dated 27.11.2019 approved the demerger scheme wherein Power Grid Business of ABB India Limited was transferred on Going Concern basis to ABB Power Products & Systems India Limited (“**APPSIL**”). Hence, PO was novated from ABB to APPSIL in February 2020 and was provided to Gupta Enterprises.

As such your issuing any notice dated 24.07.2020 to ABB issued by you under instruction of Kothari Enterprises is *void ab intio*. We would like to reply to the same as follows:

1. At the outset we deny all allegations under the afore-referred Notice against APPSIL / ABB as there is no privity of contract and no past business relationship between APPSIL/ ABB and your client and on this sole ground, the Notice is not tenable and liable to be withdrawn.
2. Further, we are not aware of the business relationship or financial arrangements between your Client and our Contractor M/s. Gupta Enterprises who had undertaken the work related to erection and commissioning of equipment namely ICTs and Reactors supplied by us to our customer Power Grid Corporation of India Ltd (“**PGCIL**”) for their project site at 765 kV GIS Sub station at Koteshwar.

ABB Power Products and Systems India Limited
(A Hitachi ABB Joint Venture)
Registered Office
8th Floor, Brigade Opus, 70/401,
Kodigehalli Main Road, Bengaluru-560 092
Phone: 080 22041800

ABB Power Products and Systems India Limited
(A Hitachi ABB Joint Venture)
Manufacturing Facilities – Main Works
Bank of Baroda Road, JD Nagar,
Maneja, Vadodara- 390013 Gujarat
Phone: +91 0265 6724721

CIN: U31904KA2019PLC121597
<https://www.hitachiabb-powergrids.com/in/en>



3. We only came to know about your client when they without having any right to do so, sent an email to our esteemed customer - PGCIL on 25.03.2020 with copy of us, wherein your client had introduced himself as a business partner to the Gupta Enterprises and highlighted its internal payment related issues with Gupta Enterprises, which were not known to APPSIL / ABB at all.
4. In the said email, your client attached a pdf file containing a Power of Attorney (PoA) purportedly issued by our contractor M/s. Gupta Enterprise on 23.03.2019 in favour of your client. By its very nature, it is an illegal instrument howsoever executed, as Gupta Enterprises had no powers under our contract with him to do any such things without prior written consent from Authorized Signatory of APPSIL / ABB and hence, has no bearing on us.
5. Without acknowledging the validity and / or effectiveness of the said PoA, it is stated that page 3 & 4 in the said pdf file attached to the said email dated 25.03.2020 as mentioned in Sr. No. 4 above, are a sham document and are not a part of the said otherwise illegal PoA as it is evident that it was only of two pages and page No. 3 & 4 of the said pdf file are nowhere mentioned in the PoA.
6. Please note that prior to the afore-referred email, APPSIL / ABB was not even aware of any such documents executed between your client and Gupta Enterprises. Please note that as per Clause 15 of the Purchase Order dated 29.05.2018 ("PO") placed by ABB, subsequently novated in the name of APPSIL, upon Gupta Enterprises, any assignment under the PO was strictly subjected to prior written approval of APPSIL / ABB, which was never sought by Gupta Enterprises. Even otherwise, before referring to the PO placed by APPSIL / ABB in the said PoA, your client should have been vigilant enough to read the terms of the PO placed by APPSIL / ABB and asked for a written approval from APPSIL / ABB for any such assignment by Gupta Enterprises. The said clause 15 of the PO is reproduced below for your ready reference:

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“15. ASSIGNMENT AND SUBCONTRACTING

15.1 Supplier may neither assign, nor transfer, encumber nor subcontract the Contract, nor any parts thereof (including any monetary receivable from Customer) without prior written approval of Customer.”

7. Please further note that as per Clause 3.7 of the PO, Gupta Enterprises was solely and exclusively responsible to its subcontractor, and the sub-contractor of our contractor had no recourse to us for their dealing with our contractor. The said clause 3.7 of the PO is reproduced below for your ready reference:

“3.7 Supplier is solely and exclusively responsible for any claims and / or lawsuits filed by its employees and / or subcontractors, and shall, without any limitations, defend, indemnify and hold Customer (and any relevant Customer Affiliate) harmless from and against any claim, proceedings, action, fine, loss, cost, damages and expenses arising out of or relating to any such claims and / or lawsuits, and any noncompliance with legislation, regulation, code of practice, guidance and other requirements of any relevant government or governmental agency applicable to Supplier, its employees or subcontractors....”

Therefore, we cannot be held responsible for any acts and omissions (if any) of Gupta Enterprises in any manner, especially, when APPSIL / ABB was not even aware of any arrangement between Gupta Enterprises and your client.

8. Although in light of above where it is established that your Notice is baseless and without any merits, your notice does not deserve a para wise reply but for the sake of transparency and records except para 1, 2 and 3 of the Notice, which are matter of record, all other paras including concluding para is vehemently denied.



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In light of the above, it is amply clear that APPSIL / ABB was not aware of any business relationship between your client and Gupta Enterprises as the same was done without knowledge and written approval of APPSIL / ABB and therefore, we are in no manner be responsible to pay to your client or even intervene in the matter, and hence, request you to withdraw the Notice immediately and also ask your client to refrain from sending any such baseless and ill-conceived demand notices to APPSIL / ABB or PGCIL. Further, we categorically state that if your client takes any hasty and/or ill-advised action as threatened against us or our end customer PGCIL, the same shall be entirely at their risk, cost and consequences.

It will also not be out of place to record here, that during 8th to 12th June, 2020, representatives of your client illegally attempted to trespass at our project site and caused ruckus with the criminal intent of disrupting our work at project site. We request you to guide your client on the consequences of such act of trespassing and trying to disrupt the work at project site and ask them to stop such practices in future. Incase such illegal act is repeated by your client or its representatives, we shall be forced to take appropriate action including but not limited to initiating criminal proceeding against your client.

Thanking you and assuring you of our best attention at all the times,

Thanking you,

For ABB Power Products & Systems India Ltd.



Authorized Signatory.



Copy to:- PGCIL, Koteshwar