

RICBL Versus Kuenleg Construction Enterprise

examined the claims and resolved in consensus to recommend Nu. 33,25,313.78 to which both the parties had agreed and signed on 13.7.2005.

1.2. Case filed in the Dzongkhag Court.

Ms. Kuenley Construction Enterprise submitted the following five point's petition to the Thimphu Court against the RICBL on 6.2.2006.

- a. Incidental cost incurred by the JVC amounting to Nu. 183,000 to be recovered from the RICBL with interest.
- b. JVC's recommended amount of Nu. 33,25,313.78 (thirty three lakhs twenty five thousand three hundred and thirteen chetrum seventy eight) only has been held back by the RICBL.
- c. Claim for Cost escalation of Nu. 10,976,618.27 for the extended contractual period of 16 months against the total contract period of 46 months.
- d. RICBL refused to pay bills on time in contravention to contract agreement to clear bills within 90 days. Ms. KCE claimed 697,6545.71 as interest on the contract amount up to 31st Dec. 2005.
- e. Operational and demurrages cost amounting to Nu. 2,44,0600.00. The Contractor, KCE, made a total claim of Nu. 23,902,077.76 from the RICBL.

1.3. Decision of the Dzongkhag Court.

- a. The trial Court had imposed Nu. 91,520,56.96 @ 1 % of the contract value of 61,013,713.08 for 15 months applying the principle of equity.
- b. Upheld the JVC's recommended amount of Nu. 33,25,313.78 to be paid to the plaintiff as the delay was attributable to the defendant, RICBL.
- c. Interest on 33,25,313.78 for 3 months @ 15% amounting to Nu. 124557 was admitted to be payable to Ms. KCE by RICBL.

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- d. Interest for 5,00,000 and 22989.87 @ 15% from 14.10.2003 to 10.9.2003 and 10.9.2003 to 3.2.2006 totalling to Nu. 68,219+8046.50=76,265.50 respectively was admitted for payment by RICBL to the plaintiff.
- e. Operational and demurrages claims amounting to Nu. 2440600 were dismissed.
- f. Incidental costs were equally shared between the RICBL and Ms. KCE. The claim was dismissed as both the parties had mutually agreed.
- g. The defendant, RICBL was ordered by the Lower Court to pay a total sum of Nu. 12701183.11 within one month vide judgment No. 17462 dated 22.5.2007.

1.4. Review appeal submitted by RICBL to the High Court.

The RICBL vide letter No. RICBL/HQ-RE/2007/6414 dated 4.6.2007 appealed to the High Court to review the judgment awarded by the Lower Court. The grievances were as under:

- a. Lower Court upheld most of the submissions made by Ms. KCE and clarifications and justification submitted by RICBL based on the contract agreement were not considered.
- b. Liquidity damages of Nu. 91,52,056.96 was imposed to RICBL in contravention to contract clause III.
- c. It was contested that 15 months delay is solely not attributable to RICBL as had concluded by the Lower Court based on the recommendation of the JVC.
- d. JVC's recommended amount of Nu. 33,25,313.78 can not be paid to Ms. KCE, who had failed to comply with the decision defeating the sole objective of forming a JVC.
- e. Numerous considerations were made by awarding additional works to compensate the initial 5 months delay.
- f. Remaining 10 months of delay beyond Contract period of 30 months upheld by Dzongkhag Court was not just and fair.

- g. The Dzongkhag Court had pointed out that another contractor (Ms. Johnson Control (I) Pvt. Ltd.) was invited and additional works awarded breaching clause III of the contract document which was not true as the Ms. KCE had participated in bidding and was disqualified on technical grounds. This was altogether a separate and specialized project within the scope of the contract agreement.
- h. Ms. KCE after concurring later retracted from accepting the decision of the JVC and interest payment of Nu. 1,24,557.00 on the recommended amount of Nu. 33,25,313.78 should not arise.

2. Hearings:

- 2.1. **Preliminary Trial** : 2.7.2007
- 2.2. **Opening Statement** : 3.7.2007
- 2.3. **Rebuttal** : 23.7.07,6.8.07,8.8.07,15.8.07,22.8.07,
31.8.07, 5.9.07
- 2.4. **Evidence** : 11.9.07,13.9.07,19.9.07
- 2.5. **Closing Argument** : 20.9.07

3. Decision of Dzongkhag Thrimkhag:

The delay in the completion of the construction of RICBL building was caused by RICBL as there was an initial delay of five months in getting the site clearance and later there was an additional delay of ten months due to award of additional works to second contractor and also due to change in the original drawings followed by alteration in the structures already built as per their drawings. As such there are fifteen months delays in total.

However, the terms of contract document does not permit Cost Escalation. Therefore, the plaintiff's claims of Nu. 10,976,618.27 as cost escalation beyond the contract period are not admitted in accordance to clause XVI of the contract document.

The normal contractual procedures would require that the contract be awarded to a contractor only after RICBL acquired the site clearance and obtained the approval for the complete drawings. This however was not done.

Besides, RICBL has invited another contractor JCIPL on the site for the additional work on the same project. The nature of work executed by the first and second

contractor on the same building exhibits that the separate time period was essential for them to complete the works.

The defense by RICBL that the delay was due to poor management on the part of KCE in the form of under recruitment of labourers, insufficient stock of cement, bamboo poles and shuttering plates were not proven beyond reasonable doubt.

Further, the decision of the JVC which was duly endorsed by RICBL, KCE and other representatives in the meeting proved that the RICBL was responsible for the delay in the completion of the project.

Clause (x) of the contract document, the RICBL has been empowered to make “any alterations, additions to or substitutions on the original specifications, drawings, designs and instructions, if it appears “necessary to the corporation. It is clear that this clause is mutually agreed clause and should be applied only between the contractor and the corporation. This means any “alterations”, “substitution” and “additions” should be done by the contractor as and when mandated by the corporation. However the corporation deviated from this clause when it awarded the “additional work” of installation of lifts, central heating system and computer cabling to second contractor M/s. Johnson control (I) Ltd. (JCIPL). Therefore, the corporation has breached the terms of contract by this act of hiring second contractor. This shall run against the validity of the clause (x) that is claimed by the defendant, RICBL.

Therefore, the Court upheld the decision of JVC that the delay in the completion of project is not attributable to contractor and such delays of fifteen months were caused by the RICBL. Therefore the law of equity requires that RICBL shall fulfill its implied responsibilities which shall include, providing of construction site as per the terms of the contract and facilities the smooth progress of the project without any hindrances like engagement of JCIPL. The Law of equity requires that the party committing breach of contract make good the loss suffered by the aggrieved party due to breach of contract. Therefore, in accordance to section 209 of Civil and Criminal procedure code, 2001 and clause III of the contract document, the RICBL is liable to pay a sum of Nu. 9152056.96 (Calculated on the basis of 1% liquidated damages on the agreed amount of Nu. 61,013,713.08 for a period 15 months.)

The amount of Nu. 3,325,313.78 payable by the defendant to the plaintiff as per the findings of the Joint Verification Committee (JVC) must be paid by the defendant

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since the JVC found and explicitly stated that the delay in completion of the project was not attributable to the plaintiff. The defendant RICBL accepted the above claims and therefore it has to pay a sum of Nu. 3,325,313.78 to KCE.

The prayer that the RICBL refused to clear the bill after the expiry of 90 days of its submission and therefore incurred loss of Nu. 6976545.71 cannot be entertained holistically as the interest were calculated on amount estimated as cost escalation and incidental expenses for JVC.

The reason being that the plaintiff was well aware that the convening of the JVC meeting by CAB would entail expenses as the CAB was a non-profit making organization and the question of cost escalation is out of scope of contract agreement.

However, in accordance with the chapter 2 section 19 of the Movable and Immovable Property Act, 1999, the plaintiff shall be entitled to interest on the amount Nu. 3325313.78 decided by JVC and agreed by the RICBL from the day it was decided i.e 13th July 2005 till the day the case was registered before the Court i.e on 03/02/2006. After deducting the grace period of 90 days as per the contract, the interest on the said amount for three months @ 15% p.a. amount to Nu. 41566.47 per month for three months amounting to Nu. 124557/- which is payable to KCE.

The defendant RICBL is hereby ordered to pay a sum of Nu. 22989.87 that was retained when the bill of Nu. 500000/- was paid out of Nu. 522989.87 on dated 10/09/2003. In addition, RICBL has to pay interest of Nu. 8046.5 at the rate of 15% per annum on the retained amount of Nu. 22989.87 till the case is registered before the Court. (i.e. from 10/09/2003 to 03/02/2006 in accordance with chapter 2 section 19 of the Movable and Immovable Property Act, 1999,

The plaintiff's claim for the interest on a sum of Nu. 500000 which was delayed for payment from 14/10/2003 to 10/09/2003, is upheld by the court and the defendant is hereby ordered to pay a sum of Nu. 68,219 at the rate of 15 % per annum in accordance with chapter 2 section 19 of the Movable and Immovable Property Act, 1999,

The prayer that an additional demurrage and infrastructural cost after the expiry of 90 days from the date of submission of final bill amounting to Nu. 2440600 shall

not be entertained as non settlement of final bill shall have no relevancy to the operational expenses as the plaintiff's enterprise is an on going concern and it is not solely established for the construction of RICBL building at Thimphu.

The plaintiff's claim for the demurrage for being incapacitated to complete in the succeeding tenders due to financial constraints as a result of non-payment of its bill by RICBL, cannot be entertained by the court for reason being that the opportunity lost by the plaintiff cannot be assessed in a concrete way that it would have succeeded in winning the other tender and that it would have made a profit from them.

The defendant, RICBL, is hereby ordered to pay a total sum of Nu. 12701183.11 (twelve million seven lakhs one thousand one hundred and eighty three point one one) to the plaintiff. Kuenley Construction Enterprise, within a period of one month from the dated of judgment.

In accordance to section 96.5 of the Civil and Criminal Procedure Code, 2001, if no appeal is accorded within ten days from the registration of the judgment in the Court record, it shall be enforced.

4. COURT FINDINGS: ༼ ལྷ་ཕན་གྱིས་ལྷུལ་བའི་རིགས་ དག་བཅོས་མེད་པར་འདྲ་བཤུས། ༽

4.1. Appellant RICBL submission on 3.7.2007 to the High Court in Dzongkha:

དེ་ནི་ཀེ་སི་ཨི་གི་ཚོ་བདག་ ལིང་དཔོན་བགྲམས་པ་ ཀུན་ལེགས་དོ་རྗེ་གིས་ གླིཆོས་༤.༢.༢༠༠༥ལུ་
ང་བཅས་འབྲུག་ཉེན་སྲུང་ལས་འཛིན་གྱི་ཐང་ད་ ཐིམ་ཕུ་ རྫོང་ལག་ ཁྲིམས་ཞབས་ལུ་ ཚུད་དོན་གྱི་ཞུ་
བ་ལུ་ཡོད་པ་བཞིན་དུ་ ཁྲིམས་ཁྲིལ་ པའི་ གྲོས་ཚེད་ཨང་༡༢༠༤༢ གླིཆོས་༢༢.༥.༢༠༠༧
ཅན་མའི་ནང་ ང་བཅས་འབྲུག་ཉེན་སྲུང་ལས་འཛིན་གྱིས་ ཀེ་སི་ཨི་གི་ཚོ་བདག་ལིང་དཔོན་བགྲམས་པ་
ཀུན་ལེགས་དོ་རྗེ་ལུ་ དུལ་འབོར་༡༢,༢༠༡,༡༤༣.༡༡ ༼ ས་ཡ་བཅུ་གཉིས་དང་ འབུམ་བུ་ན་
གཅིག་སྟོང་གཅིག་བརྒྱ་ བརྒྱད་ཅུ་གྲགས་མ་དང་ བེ་སར་ བཅུ་གཅིག་༽ གློད་དགོ་པ་འབད་
བཀའ་རྒྱ་གནང་ཡི་ཟེར་ཞུ་ནི།

རྒྱ་ཆེས་མཐོ་ཁྲིམས་ཞབས་གྲིས་ ཁྲིམས་འོག་དང་མཉམ་གྱི་ཐུགས་བཞེད་གནང་སྟེ་ ང་བཅས་འབྲུག་
ཉེས་སྲུང་ལས་འཛིན་གྱིས་གོང་འཁོད་གྱི་གནད་དོན་སྐོར་ལས་ གཤམ་འཁོད་དོན་ཚན་ཚུ་ ལྷོ་ཆོག་
པའི་གོ་སྐབས་གནང་བར་ལྷ།

༡༽ དེ་ཡང་ ཐིམ་ཕུ་ རྫོང་ཁག་ཁྲིམས་ཞབས་གྲིས་ ཀེ་སི་ཨི་གི་ཚོ་བདག་ ལིང་དཔོན་བགྲེས་པ་
ཀུན་ལེགས་དོ་རྗེ་གིས་བདེན་ལུངས་ག་ལུ་མི་དེ་ལུ་ གཞི་བཞག་སྟེ་ གོ་སྐོར་བཏོན་གནང་བུག། དེ་
འབད་ཕན་ ང་བཅས་འབྲུག་ཉེས་སྲུང་ལས་འཛིན་གྱིས་བཀོད་མི་ རྒྱ་མཚན་དང་ བདེན་ལུངས་ ལ་
གསལ་ཚུ་ལུ་ ཆ་གནས་མཛད་མ་གནང་པས་ཟེར་ལུ་འོ། ཉེ་མར་ སྤོན་འགོའི་ཚུང་དོན་སྐབས་
འབྲུག་པ་ལྟན་བཀག་སྐྱོམ་སྐྱོན་ཚོགས་གྱི་ བཏྲག་ཞིབ་གྱི་འབྲེལ་ཕན་དེ་གིས་ ང་བཅས་ལས་འཛིན་ལ་
ཐུག་ལས་ཁྲིམས་ཞབས་ལུ་ ལུ་ཞིབ་ཅར་ནི་ཚུ་ ལེགས་ཤོམ་ཅིག་ ཕ་ལས་ལུ་མ་ཚུགས་ཟེར་ལུ་འོ།

༢༽ རྫོང་ཁག་ཁྲིམས་ཞབས་གྲིས་གོ་སྐོར་ དོན་ཚན་༤ པའི་དགོངས་དོན་དང་འབྲེལ་བ་ཅིན་
འབྲུག་ཉེས་སྲུང་ལས་འཛིན་གྱིས་ ཀེ་སི་ཨི་གི་ཚོ་བདག་ ལིང་དཔོན་བགྲེས་པ་ ཀུན་ལེགས་དོ་རྗེ་ལུ་
ཉེས་རྒྱུད་དུལ་ལམ་ ༩,༡༥༢.༠༥༦ རྩ་ཡ་དགུ་ དང་འབྲུམ་གཅིག་སྟོང་ཕྱག་ལྔ་བཅུ་དགཉིས་དང་
བརྒྱ་མེད་ལྔ་བཅུ་དུག། སྤོད་དགོཔ་འབད་ཨིན་མས། དེ་ཡང་ རྫོང་ཁག་ཁྲིམས་ཞབས་ལས་
ཁག་འབག་ཡིག་འགན་དོན་ཚན་༣ པ་ལུ་གཞི་བཞག་སྟེ་ ཞག་དུས་ ༧༥ གི་དོན་ལས་ཨིན་མི་
ཁག་འབག་དུལ་འབོར་ ༦,༠༡༣,༢༡༣.༠༤ རྩ་ཡ་དགུ་ལྔ་དེ་གཅིག་དང་ འབྲུམ་མེད་སྟོང་ཕྱག་
བཅུ་གསུམ་དང་ བདུན་བརྒྱ་ ལེབ་བཅུ་གསུམ་དང་ བེ་སར་བཅུ་མེད་བརྒྱད་༽ འབད་མིའི་གུ་
ཉེས་ཚད་ རྒྱ་ཆ་༡ ཕྱིས་བརྒྱབས་ཉེ་ གོང་དུལ་དེ་ བཏོན་བཏོན་མ་ཨིན་མས་ཟེར་ལུ་འོ། མ་གཞི་
ལ་གསལ་འབད་ལུ་བ་ཅིན་ ང་བཅས་ཕ་ཕན་གཉིས་གྱི་ ཁག་འབག་འགན་རྒྱའི་དོན་ཚན་༣ པའི་

ནང་གསལ་ “ལག་འབག་པ་གིས་ ཞག་དུས་ ཏུས་ཚོད་ ༤ ཚེད་, གི་ནང་ ལྟ་ ༥ ཚེད་, ཚོར་
 དགོཔ་དང་ ཞག་དུས་ལྟེ་ག་ རྩོགས་པ་ད་ ལྟ་ ༥ ཚེད་, ཚོར་དགོཔ་དང་ ཞག་དུས་ ༤ ཚེད་ ལུ་
 ལྟ་ ༤ ཚེད་, ཚོར་ཞིན་མ་ལས་ ལག་འབག་གི་ལྟ་གར་ ཏུས་ཚོད་ལར་དགིག་དགིག་མཇུག་བསྟུ་
 དགོཔ་འབད་ཡིན། གལ་སྲིད་ མཇུག་བསྟུ་མ་ཚུགས་པ་ཅིན་ ལག་འབག་ དངུལ་འབོར་ལས་ ལྷ་
 རིམ་བཞིན་དུ་ བརྒྱུ་ཚེད་, རེ་ ཉེས་རྒྱུད་བཀའ་ཚུགས་ཡིན། ཡང་ཅིན་ཁོར་འེ་ ལྷོ་འདོད་ལྟར་
 ལག་འབག་དངུལ་འབོར་ ༤, 073, 273.02 རྩིས་ཡ་དུག་ཚུ་རེ་གཅིག་དང་ འབུམ་མེད་སྟོང་ཕྱག་
 བརྒྱ་གསུམ་དང་ བདུན་བརྒྱ་ ལེབ་བརྒྱ་གསུམ་དང་ བེསར་བརྒྱ་མེད་བརྒྱད་ གུ་ བརྒྱུ་ཚེད་, 0
 ལས་ལྷག་བཀའ་ཚུགས་ཡིན་པའི་ལར་ ལག་འབག་པ་ནས་ དངུལ་དེ་ ལྷོག་འཇལ་གྱི་ ཐོག་
 དབང་བཀོད་མ་ཚུགས་ཡིན།” འགན་ཡིག་གི་དོན་ཚན་འདི་དང་འབྲེལ་བ་ཅིན་ ཉེས་རྒྱུད་དང་ ཉེས་
 ལྷ་ཚུ་ ལག་འབག་པ་ལུ་ ཐོག་ཞི་ཡིན་མ་མ་གཏོགས་ ང་བཅས་ལས་འཛིན་ལུ་ ཐོག་དགོཔ་མེད་
 ཟེར་ལུ་ཞི། ལྷ་མ་ཚན་དེ་ལས་བརྟེན་ རྩོང་ལག་ ལྷིམས་ཞབས་ལས་ ལྷོས་ཐག་བཅད་གནང་མི་ལུ་
 ང་བཅས་ལས་འཛིན་གྱིས་ ལུ་ལས་འཛིན་ལེན་འབད་མི་ཚུགས་ཞི་མས་ཟེར་ལུ་ཞི།

3 ། མཉམ་འབྲེལ་ཞིབ་དཔྱད་ཚུགས་པ་རྩིས་ལྷོ་གིས་ ལག་འབག་གི་ལྟ་ཚུ་ ཏུས་ཚོད་ལར་
 མཇུག་བསྟུ་མ་ཚུགས་པའི་ལྷོ་བཞོལ་དེ་ ལག་འབག་པ་ ལ་ཐུག་ལས་མེན་པས་ཟེར་ བཀོད་དེ་
 ཡོད་པ་ཡིན་མ་འོང་། ཡིན་རུང་ མཉམ་འབྲེལ་ཞིབ་དཔྱད་ཚུགས་པ་རྩིས་ལྷོ་གིས་ ཞལ་
 འཛོམས་ལན་ཐེངས་ ༥ ཚུགས་ཡོད་པ་ད་ ལྷོ་ 75 གི་རིང་ ཏུས་ཚོད་ལར་ ལྟ་མཇུག་བསྟུ་མ་
 ཚུགས་པའི་ ལྷོ་བཞོལ་དེ་ ང་བཅས་འབྲུག་ཉེན་རྲུང་ལས་འཛིན་ ལ་ཐུག་ལས་ འབུམ་མེད་ལྷོང་
 ལྷོང་མ་ཡིན་མས་ཟེར་བའི་ རོས་འཛིན་ཡང་ལྷོང་ལྷོང་མ་མེད་ཟེར་ལུ་ཞི། དེ་འབད་ཕན་ད་ རྩོང་ལག་

ཁྲིམས་ཞབས་ཀྱིས་ མཉམ་འབྲེལ་ཞིབ་དཔྱད་ཚོགས་པ་གི་ གྲོས་ཚོད་དང་འབྲེལ་བ་ཅིན་ གོང་གི་
ལཱ་གི་ཕྱི་བཤོལ་ཚུ་ འབྲུག་ཉེན་སྲུང་ལས་འཛིན་ ལ་སྲུག་ལས་ ཐོན་ཐོན་མ་ཡིན་མས་ཟེར་ སྲུགས་
ཐག་བཅད་གནང་སྟེ་ཡིན་མས་ཟེར་ལུ་ཞེ། མ་གཞི་ མཉམ་འབྲེལ་ཞིབ་དཔྱད་ཚོགས་པ་ ཚོགས་དགོ་
མི་དེ་ཡང་ ཀེ་སི་ཨི་གི་ཚོ་བདག་ཡིང་དཔོན་བགྲེས་པ་ ཀུན་ལེགས་དོ་རྗེ་ ཁོར་གིས་ ང་བཅས་རྩ་
ཕན་གཉིས་ཀྱི་བར་ན་ མོས་མཐུན་མཉམ་འབྲེལ་གིས་འབད་ནིའི་ ཐབས་ལམ་གྱི་ དམིགས་ཡུལ་
བསྐྱེད་དེ་ འབྲུག་གི་བཟོ་སྐྱོད་ཚོགས་པ་ལུ་ ལུ་བ་ འབད་མ་བཞིན་དུ་ ང་བཅས་འབྲུག་ཉེན་སྲུང་ལས་
འཛིན་གྱི་ལ་སྲུག་ལས་འབད་རུང་ ཚུང་ཉོག་ཚུ་གར་ ཉིང་སང་སངས་བཟོ་ནི་གི་དོན་ལས་ གཤེ་
དག་དག་ ལྷག་བསམ་བསྐྱེད་ཅི་ཟེར་ལུ་ཞེ།

༤། ཀེ་སི་ཨི་གི་ཚོ་བདག་ ཡིང་དཔོན་བགྲེས་པ་ ཀུན་ལེགས་དོ་རྗེ་གིས་ མཉམ་འབྲེལ་ཞིབ་
དཔྱད་ཚོགས་པ་ །རྗེ་མི་སི་༽གི་མཐའ་དཔྱད་གྲོས་བཅུད་ལུ་ ཆ་གནས་འབད་མ་བརྟུབ་པར་ ཁྲིམས་
ཀྱི་འདུན་སར་ ལུ་བཅར་འབད་སྟོན་དེ་ མཉམ་འབྲེལ་ཞིབ་དཔྱད་ཚོགས་པ་ །རྗེ་མི་སི་༽ ཚོགས་
དགོ་པའི་ ཐབས་ལམ་དདིགས་ཡུལ་ལུ་ ཆར་བཞག་མ་བརྟུབ་ཟེར་ལུ་ཞེ། རྒྱ་མཚན་དེ་ལས་
བརྟེན་ མཉམ་འབྲེལ་ཞིབ་དཔྱད་ཚོགས་པ་གིས་ གྲོས་བཅུད་ནང་ དཔུལ་ཀྱི་མ་^{3,324,373,24}
།ས་ཡ་གསུམ་དང་ འབྲུམ་གསུམ་སྟོང་ཕྲག་ཉི་ལུ་རྩ་ལྔ་དང་ སུམ་བརྒྱ་ལེབ་བཅུ་གསུམ་དང་ བེ་
སར་ བརྟན་ཚུ་དོན་བརྒྱུད་༽ པོ་དེ་ཀེ་སི་ཨི་གི་ཚོ་བདག་ ཡིང་དཔོན་བགྲེས་པ་ ཀུན་ལེགས་དོ་རྗེ་
ལུ་ སྟོན་དགོ་པ་འབད་ཡོད་མི་དེ་ ཆ་གནས་མེད་པ་ཡིན་ཟེར་ལུ་ཞེ། དེ་འབད་ནི་དེ་གིས་ ང་བཅས་
འབྲུག་རྒྱལ་ཉེན་སྲུང་ལས་འཛིན་གྱིས་ ཀེ་སི་ཨི་གི་ཚོ་བདག་ ཡིང་དཔོན་བགྲེས་པ་ ཀུན་ལེགས་དོ་
རྗེ་ལུ་ཚོང་ལག་ཁྲིམས་ཞབས་ཀྱི་གྲོས་ཚོད་དང་འབྲེལ་ཏེ་ གོང་དཔུལ་དཔུལ་ཀྱི་མ་^{3,324,373.24}

སྒྲིལ་ཡོད་པའི་གསུང་དང་ འབྲུམ་གསུམ་སྟོང་ཕྱག་ཉེ་ལྷན་པུ་ཚ་ལུ་དང་ སུམ་བརྒྱ་ལེབ་བརྩུག་སུམ་དང་ བེ་
སར་ བདུན་ཅུ་དོན་བརྒྱད་ ། སྟོན་དགོཔ་ཅིག་ ལྷན་པུ་ཚ་ལུ་མཐོང་པས་ཟེར་ལུ་ནི།

༥། ཀེ་སེ་ཨི་གི་ཚོ་བདག་ ལིང་དཔོན་བགྲེས་པ་ ཀུན་ལེགས་དོ་རྗེ་གིས་ ལུ་བཀོད་འབད་ཡོད་པ་
བཞིན་ཏུ་ འགོ་ཐོག་ ཟླ་རོ་༥ ཀི་རིང་ ཨིམ་གྱི་བཟོ་བཀོད་འབད་ སྟོན་མ་ཚུགས་པའི་ཐང་ རྒྱུད་
འབྲུམ་ཚུ་ ལེ་ཤ་ཅིག་ར་ སྟོན་ཅི་ཟེར་ལུ་ནི། ང་བཅས་ལས་འཛིན་གྱིས་ ལག་འབག་པ་ལུ་ རྒྱུད་
འབྲུམ་དང་འབྲེལ་བའི་ མཐུན་ཚུན་གྱི་ཆ་རོགས་འབད་མི་དེ་ རྒྱུད་འབྲུམ་ལས་ལྷག་སྟེ་ ལེ་ཤ་ཅིག་
རང་འབད་འབད་མ་གཏོགས་ ཡིག་རིགས་འགན་རྒྱ་ལས་འགལ་བའི་ ལུ་འབད་དགོཔ་མེད་ཟེར་
ལུ་ནི། ཐོང་གསལ་ ལྷར་ཀེ་སེ་ཨི་གིས་ རོས་ལེན་མེད་པའི་ ཉོག་བཤད་བཀོད་མི་ཚུ་གར་ ང་
བཅས་ལས་འཛིན་གྱིས་ ཀེ་སེ་ཨི་ལུ་ གློ་གཏང་ཉིང་གཏང་གི་ལེགས་པའི་སྤང་བ་ཡོད་མི་དེ་ མེད་པ་
བཏང་དཔ་བརྩུམ་ཅིག་ཨིན་མས། དཔེ་འབད་བཅིན་ གློ་གཏང་པའི་མི་གིས་ ཉིང་བརྒྱུམ་ཨིན་ཟེར་
སྤྲོ་བའོ་བརྩུམ་ཅིག་ ཡར་སོང་ཡི་ཟེར་ལུ་ནི། ང་བཅས་ལས་འཛིན་གྱིས་ ཀེ་སེ་ཨི་ལུ་ ལག་འབག་
གི་ལུ་ ཉིང་བཀལ་བྱིན་ཡོད་པ་མ་ཚང་ མཐུན་ཚུན་དང་ཆ་རོགས་ འབད་བྱིན་ཡོད་མི་དེ་ལུ་ ལུ་
ཆེས་ཁྲིམས་ལྷན་རྒྱུས་རིན་པོ་ཆེའི་ཞབས་ལས་ གཞིགས་ཞིབ་འཇུག་གནང་ཟེར་ལུ་ནི་ཨིན།

༦། ལག་འབག་ཞག་དུས་ ཟླ་རོ་༣༠ ཨིན་མ་ལས་ ཟླ་རོ་༡༠ ལྷི་བཤོལ་ལུགས་ཡོད་མི་དེ་ ང་
བཅས་འབྲུག་ཉེན་སྲུང་ལས་འཛིན་ལུ་ ཐོག་པ་ཨིན་ཟེར་ ཀེ་སེ་ཨི་གིས་ བཀོད་ཡོད་པ་བཞིན་ཏུ་
རྫོང་ལག་ཁྲིམས་ཞབས་ལས་འབད་རུང་ དེ་བཞིན་རོས་ལེན་མཚན་དེ་ ཐུགས་ཐག་བཅད་གནང་མི་
དེ་ ཁྲིམས་འོག་དང་མཉམ་གྱི་ རྒྱུད་སྲུག་མ་སྟོམས་པས་ཟེར་ལུ་ནི། དེ་འབད་ཨིན་པ་ཅིན་ལག་

འབག་པའི་ ལ་ཐུག་ལས་ཡང་ ཞག་དུས་ཀྱི་འཐུས་ཤོར་ ལེ་ཤ་ཅིག་བྱུང་མིའི་སྐོར་ལས་ ང་
བཅས་ལས་འཛིན་གྱིས་ར་ཁུངས་དང་སྐྱགས་ཏེ་ བྲིམས་ཞབས་ལུ་བྱ་ནི་ལེ་ཤ་ཡོད་ཟེར་བྱ་ནི།

༡༽ ང་བཅས་ལས་འཛིན་གྱིས་ ལག་འབག་འགན་རྒྱུའི་དོན་ཚན་¹⁰ པ་དང་མ་འཁྲིལ་བར་
ལག་འབག་གི་ལུ་རྟེང་བཀའ་སློག་རིག་ཀམ་ཕུས་ཀྱང་གི་ སློག་ཐག་སྤྲོད་ནི་ སློག་མའི་ལྟེ་བ་
འཇུགས་ནི་ དེ་ལས་ ལི་པ་ཐྱི་བཅུ་གཉི་གོ་དོན་ལས་ ལག་འབག་པ་གཞན་ རེ་སི་ཨན་པི་ཨལེ་
ཟེར་མི་ལུ་སྤྲོད་ལུག་ཟེར་ བྲིམས་ཞབས་ལས་དེ་འབད་བཀའ་གནང་མ་ཨིན་མས། དེ་གི་སྐོར་ལས་ལ་
གསལ་འབད་བྱ་བ་ཅིན་ རེ་སི་ཨན་པི་ཨལེ་ཟེར་མི་ལུ་སྤྲོད་མིའི་ ལག་འབག་ལུ་དེ་ ལག་སོ་སོ་
ཨིན་མ་མ་ཚད་ ཀེ་སི་ཨི་དང་ཅིག་ལར་ ལུ་དོན་དེ་གི་སྐོར་ལས་ འགན་རྒྱ་ཡང་ བཟོ་བཟོ་ཤམ་མེད་
ཟེར་བྱ་ནི། རེ་སི་ཨན་པི་ཨལེ་ཟེར་མི་ལུ་སྤྲོད་མིའི་ ལུ་གི་དབྱེ་བ་དེ་ཡང་ ལུ་གཞན་བཟུམ་མེན་པར་
དམིགས་བསལ་གི་ཁྱད་ཚེས་དང་ལྡན་པའི་རང་བཞིན་ རྒྱ་སྤྲོད་བྱིམ་ འཛིན་སྐྱོང་ཆེག་བསྐྱེལ་ལམ་
ལུགས་ཀྱི་ཅིག་ཨིན་ཟེར་བྱ་ནི། ཀེ་སི་ཨི་ ཁོ་རང་ཡང་ ལག་འབག་འགན་བསྐྱར་ནང་ བཅའ་མར་
གཏོགས་ཡོད་པ་ཨིན་རུང་ ཁོ་ར་ལུ་ལུ་དོན་དེ་ལུ་མཁོ་བའི་ ལག་རྩལ་གི་སྤུས་ཚད་ མེད་པ་ལས་
བཟོན་ འགན་བསྐྱར་ནང་ལས་ མཐར་འཁྲོལ་མ་རྒྱུགས་པ་ཨིན་ཟེར་བྱ་ནི། རོ་མ་རང་འབད་བ་ཅིན་
ཀེ་སི་ཨི་ཁོ་ར་ ལུ་གི་དོན་ཁུངས་གཞི་ཡང་མེད་པར་ ལག་འབག་འགན་བསྐྱར་ནང་ བཅས་མར་
གཏོགས་མི་དེ་གིས་རང་ ལག་འབག་གི་ལུ་དེ་ མ་པ་ལས་རང་ སོ་སོ་ཨིན་པའི་ རྒྱ་མཚན་སྟོན་
མས་ཟེར་བྱ་ནི། དེ་འབད་ནི་དེ་གིས་ ང་བཅས་ལས་འཛིན་གྱིས་ ལག་འབག་འགན་རྒྱུའི་དོན་ཚན་
¹⁰ པ་ལས་ འགལ་འགལ་ཤམ་མེད་ཟེར་བྱ་ནི།

༤། དེ་མ་ཚད་ མཉམ་འབྲེལ་ཞིབ་དཔྱད་ཚོགས་པ་ རྒྱ་མི་སྤྱོད་ཀྱིས་ ང་བཅས་ལས་འཛིན་གྱིས་
 དངུལ་ཀྲམ་ ཀེ་སི་ཨི་ལུ་ ༣,༣༢༥,༣༡༣.༢༤ གུ་ སློང་དངུལ་ཀྲམ་ ༡༢༧,༥༥༢ རྒྱ་འབྲུམ་གཅིག་
 དང་ སློང་ཕྱག་ཉེ་ལུ་ཚ་བཞི་དང་ ལེ་བརྒྱ་ ལེ་ཅུ་དངུལ་ཀྱི་ ཕྱིས་བརྒྱབས་ཏེ་ སློང་དགོས་འབད་
 ཐག་བཅད་ཡོད་མི་དེ་ཡང་ རྫོང་ཁག་ཁྲིམས་ཞབས་ལས་ ང་བཅས་ལས་འཛིན་གྱིས་ སློང་དགོས་
 འབད་ བཀའ་རྒྱ་གནང་སྟེ་ཨིན་མས་ཟེར་བུ་ནི། གནད་དོན་དེ་གི་སྐོར་ལས་ ལྷ་ཆེས་མཐོ་ཁྲིམས་
 ཞབས་ཀྱི་ལྷན་རྒྱས་ཚུ་ལུ་བུ་ཕེན་ མཐའ་མཚུགས་གི་ཕྱི་དངུལ་ ༣,༣༢༥,༣༡༣.༢༤ པོ་དེ་ ཀེ་སི་
 ཨི་ ཁོར་གིས་ མཉམ་འབྲེལ་ཞིབ་དཔྱད་ཚོགས་པ་ རྒྱ་མི་སྤྱོད་ གི་ རྒྱོས་ཚོད་ལུ་ ཆ་གནས་
 འབད་དེ་ ལེན་མ་བརྟུབ་ཨིན་མ་ལས་ ད་རེས་འབད་ཕན་ ང་བཅས་འབྲུག་ཉེན་སྲུང་ལས་འཛིན་
 གྱིས་ ཀེ་སི་ཨི་ལུ་ དངུལ་འབོར་དེ་གུ་ སློང་ཕྱིས་བརྒྱབ་སྟེ་ སློང་དགོས་ཕྱི་མིན་འདུག་ཟེར་ཞི་ནི།
 ལྷ་ཆེས་ཁྲིམས་ལྷན་རྒྱས་རིན་པོ་ཆེའི་ཞབས་ལས་ ཁྲིམས་འོག་དང་མཉམ་གྱི་ རྒྱགས་བཞེད་གནང་
 སྟེ་ ཐིམ་ཕུ་ རྫོང་ཁག་གོས་ཚོད་དེ་ལུ་ གཞིགས་ཞིབ་དང་ བསྐྱར་ཞིབ་མཚན་གནང་ཟེར་བུ་ནི་དང་
 དེ་མ་ཚད་ གོང་ལུས་ནང་མ་ཚུད་པའི་རིགས་ ལུལ་ལས་ ཚུད་དོན་གྱི་སྐབས་བབ་དང་འབྲེལ་ཏེ་
 ཁ་གསལ་ལུ་ཚོགས་པའི་ གོ་སྐབས་གནང་བར་བུ་རྒྱུ་དང་འབྲེལ་ གལ་སྲིད་ རྫོང་ཁག་ལུ་ཡིག་ནང་
 འཁོད་ཡོད་མི་དོན་ཚན་ཚུ་ དུམ་གཏེག་ གོ་བཟང་འཕྲོད་མ་ཚུགས་པ་གཞིགས་པ་ཕེན་ དབྱིན་སྐད་
 ཐོག་ལས་ཡོད་མི་དེ་ ལུ་ཡིག་དེ་རང་ངོས་ལེན་མཚན་གནང་ནི་ཡོད་པའི་ རྒྱགས་རྗེ་གཞིགས་གནང་
 བར་བུ་ན།

4.2. **Defendant Kuenleg Construction Enterprise submission on 23.7.2007 to the High Court in English:**
 May I take this opportunity to kindly apprise that the dispute between Kuenley Construction Enterprise (KCE) and RICBL has been ongoing for

the last five years. During the first one and half years, we tried our best to sort out the matter amicably with the RICBL management.

With no cooperation from RICBL, we requested for arbitration by a joint Verification Committee (JVC). The JVC passed a decision after one and half years. Which was not adhered to by RICBL. On 6th February 2006 (six months after the JVC decision), we filed a case at the Dzongkhag Thrimkhag, Thimphu. On 22 May 2007, the judgment numbered 17462 was passed, instructing RICBL to pay KCE Nu 12,701,183 against the total claims of Nu. 23,902,077.76.

On 3rd July 2007 RICBL appealed to the High Court ¹. In response to the appeal, I would like to present the following justifications:

1. RICBL letter point 1: “That the Dzongkhag Court has upheld most of the submissions/ justifications made by M/s KCE based on which the verdict has been passed. However, most of the justifications/clarifications/ evidences provided by the RICBL had not been considered. The management of RICBL would like to submit that during the course of the Court case, the management of RICBL had been pre-occupied with the ACC investigations, which deterred RICBL in adequately defending against the charges”.

In my defence, I would like to submit that both KCE and RICBL had over fifteen months to submit all justifications/clarifications/evidences to the Dzongkhag Thrimkhag. It is highly inappropriate and contemptible for the RICBL management to claim that the Dzongkhag Thrimkhag considered the justifications of KCE only. Further, RICBL’s reasons in failing to defend the case adequately appear weak and unconvincing, based on the amount and the timing of the two cases.

2. RICBL letter point 2: “That as per the verdict passed by the Dzongkhag Court, vide decision no. 4, RICBL had been imposed liquidity damages amounting to Nu. 9,152,056.96. The Dzongkhag Court has applied clause III of the contract document to determine the above amount of the fine, which is 1% per month on the contract value of Nu. 61,013,713.08 for 15 months. However, we would like to submit that as per clause III of the contract document “ if the contractor fails to complete 1/8th of the

work in 1/4th of the time, 3/8th of the work in half the time, 3/4th of the work in 3/4th of the time and full work in stipulated period, the corporation may levy charges for compensation for liquidated damages at the rate of 1% of the agreement amount per month or a lesser amount limited to a maximum of 10% of the agreement amount as he may decide, and the contractor shall not have any claim for refund of that amount”. Based on this clause, the contractor is liable for liquidity damage in contrary to the penalty levied to RICBL. Hence, RICBL would like to strongly disagree to the applicability of this clause against RICBL”.

In my defence I would like to submit that, in my claims before the Dzongkhag Thrimkhang I had filed for cost escalation amounting to Nu. 10,976,618.27 based on the cost indices derived by the JVC for the delay period of 16 months attributable to RICBL. Since there was no decision passed for this escalation claim made by KCE, and decision no.4 by the Dzongkhag Thrimkhang orders that RICBL pays KCE a sum of Nu. 9,152,056.96 as liquidated damages calculated on the basis of clause III of the contract document, I would be grateful if the Hon’ble Court could kindly review my claim for cost escalation as submitted and as stated in the summary of Court Findings(pages no 173 paragraph h. ii and iv.) of the judgment.²

3. RICBL letter point 3: “That the joint Verification Committee (JVC) may have indicated that delay in the completion of the project is not attributable to the contractor. However, the JVC during the eight rounds of meeting had also never concluded that 15 months of delay was attributed solely by RICBL. On the other hand, the Court had concluded that the above delay was attributed by RICBL based on JVC’s decision. JVC had been formed on the request of M/s KCE to the construction association of Bhutan (CAB) with the sole objective of finding an amicable solution to dispute between RICBL and M/s KCE and as such, RICBL on many occasions had been very compromising with the aim of setting dispute once and for all”.

In my defence, I would like to submit that, since the onset of the dispute, KCE tried to arrive at an amicable solution with RICBL which is testified by the fact that KCE requested for an arbitration after one and

half years of discussion with the RICBL and that too only after exhausting all forms of appeal and cooperation from the RICBL. I believe that with some cooperation and compromise from the RICBL, the case could have been solved in an amicable and speedy fashion without the legal battle. For the kind information of the Hon'ble Court, the JVC was formed on the request of the KCE with the approval of the Chairman of the RICB Board as per the term and conditions of the contract³. One of the responsibilities of the JVC was to find the cause of delay in the project. In-depth discussion and deliberation was held on this issue based on the arguments of the two parties, which can be validated by the Minutes of the JVC meetings. The findings of both the JVC and the Dzongkhag Thrimkhang (based on documents and evidences submitted by both parties) attributed the delay to RICBL.

4. RICBL letter point 4: "That M/s KCE failed to comply with the final decision of JVC by approaching the Dzongkhag Court defeated the sole objective of forming a Joint Verification committee. Therefore, the amount of Nu. 3,325,313.78 made payable to M/s KCE by the JVC stands invalid. Hence, it is not justifiable for the RICBL to pay the above amount as per court's decision."

In my defence, I would like to submit that it failed to comply with the decisions of the JVC and not KCE as accused above and as all the documents and evidence submitted will confirm. I would appreciate if the Hon'ble Court could kindly note that my claims are based on RICBL's commitment and the work executed by me substantiated by supporting documents and evidence and hence well justified. In this light, RICBL's statement that the payment is not justified is dishonorable.

The JVC passed the following decisions in 2005:

- That RICBL pay KCE a sum of Nu. 3,325,313.78 against KCE's claim for quantity and rate difference in the final bill.
- That KCE forego a sum of Nu. 3,119,643.78 in favour of RICBL from its final bill.
- JVC also recommended that RICBL pay KCE the cost difference in cement and timber based on the claims made by KCE prior to the

handing over of the construction site, as the delay in the completion of the project over and beyond the construction period of 30 months from the day of award of the contract was not attributable to the contractor.

I would like to report that even after six months of passing of the decision by JVC and despite several requests and reminders from KCE; RICBL did not honour the decisions of the JVC by refusing to take any action thereby compelling KCE to file the case.

5. RICBL letter point 5: “That in several instances, on the request of M/s KCE, RICBL had made numerous considerations to compensate the initial delay of five months in handing over the approved drawings of the construction. RICBL had no other reason to go beyond the contract terms and conditions other than to help the contractor. The denial of above facts by M/s KCE is sheer breach of good faith and trust that RICBL placed on M/s KCE. RICBL would like to appeal to the Royal Court of Justice to analyze the rationale behind RICBL being so considerate towards M/s KCE in awarding additional works and making other considerations”.

In my defence, I would like to submit that KCE was never informed by the RICBL that the additional works were awarded as compensation for the delay. Therefore, no such documentation or communication exists to authenticate this statement. The additional works were awarded to KCE as per existing rates in the Bill of Quantities (BOQ) that saved the RICBL management time and money. Further, the work in Phuentsholing was awarded to KCE on the basis that we execute the works as per the existing rates of contractors that had executed similar works in the past. May I reiterate that the subject of compensation for the delay was never mentioned for this work too. The awarding of additional works on existing rates is common in most projects. In the event the RICBL management can prove with sufficient supporting documents and evidence that the work was accepted by KCE as a compensation for the initial delay, KCE is willing to forego the claims for the initial 5-month delay period.

6. RICBL letter point 6: “That the remaining ten months of delay beyond contract period of 30 months implicating RICBL by M/s KCE and which

was upheld by the Dzongkhag Court is not just and fair. Most of the delays attributed by the contractor have not been taken into account for which RICBL has enough evidences to prove before the Court of Law”.

In my defence, I would like to submit that both the parties had sufficient time to submit all evidences regarding the cases. At this advanced stage of the case, I doubt whether the RICBL is in possession of any new evidences that would challenge the decisions of both the JVC and the Dzongkhag Thrimkhang. Based on all the evidences and supporting documents submitted by the two parties, both the JVC and the Dzongkhag Thrimkhang ruled that KCE was not responsible for the total delay of 16 months in the completion of the project. The issue was also debated extensively during the JVC meetings. Considering that five years have lapsed since the start of the dispute and taking into account all the time and opportunities lost, we plead that the Hon’ble Court look into a speedy and just decision in this matter.

7. RICBL letter point 7: “That the Court has also pointed out that RICBL had invited another contractor M/s Johnson control (I) Pvt. Ltd (JCIPL) on the project site for the “additional work” of installation of lifts, central heating system and computer cabling thereby concluding RICBL of breaching clause X of the contract document. RICBL would like to submit that the contract work awarded to M/s JCIPL is different project and not part of the contract signed between RICBL and M/s KCE. The separate project (Integrated building Management System) awarded to JCIPL is a work of specialized nature. Although M/s KCE participated in bidding for the said project, M/s KCE was disqualified on technical grounds. The mere fact that M/s KCE has also participated in the tender without any contention proves that the contract was altogether a different project. Therefore, RICBL has not breached clause X of the contract document as concluded by Dzongkhag Court”.

In my defence, I would like to submit that Clause X of the contract document states, ***“the time for completion of the work shall be extended in the ratio of the cost of altered, additional or substituted work to the original cost of the contract.”*** Based on this, KCE had claimed that appropriate time extension be awarded with the inclusion of the ***“work of specialized nature”***. Had the work been awarded to M/s

KCE, an appropriate time extension would have been awarded according to clause X of the contract document. Although the work was awarded to M/s JCIPL as a separate contract, I think it is imperative to report to the Hon'ble Court that the said works were executed in the same construction site and the building which hampered and delayed the Works executed by KCE. All documents supporting this statement were submitted to both the JVC and Dzongkhag Thrimkhang.

8. RICBL letter Point 8: "That the Dzongkhag Court also ordered RICBL to pay Nu. 124,557/- as interest on the amount of Nu. 3,325,313.78 decided by JVC. However, RICBL would like to submit to the Court that it was M/s KCE who declined to accept the final amount of Nu. 3,325,313.78. Therefore, the payment of interest does not arise as it was M/s KCE who defaulted the decision of JVC".

In my defence, I would like to submit that KCE did not refuse to accept the amount, and as such there is no documentary evidence. The decision of the JVC was "defaulted" by RICBL as presented in point 3 page 2. Subsequent to the JVC decision, the RICBL management^{4 & 5} inquired whether KCE had additional claims beside the above – decided amount. I then requested for my claims for initial cement and timber cost escalation which was recommended by the JVC and I proposed 15th December 2005 as the deadline for the payment of the claims stressing that otherwise KCE would have to approach higher authorities as per the laws of the Kingdom. Following an exchange of communication and a final reminder, the RICBL management⁶ informed that the matter would be taken up with their board. Consequently, KCE filed a case with the Dzongkhag Thrimkhang and claimed interest for the time that had lapsed from the time of submission of our final bill in July 2002 until December 31st 2005 after deduction of the 90-day period as per the contract terms and conditions.

All relevant documents and evidences have been submitted. If any additional information or documents are required, we would be most willing to submit them.

With the above submission, it is my sincere hope that Your Honour will understand that our claims are not unfounded but are based on RICBL's commitment to KCE and actual work completed by KCE. I have

executed the works to the best of my ability and have abided by all my commitments and the conditions of the contract.

- 4.3. **Appellant RICBL submission on 6.8.2007 to the High Court in English:**
We beg to have the honour to submit the following in response to the submission made by Major Kuenleg Dorji (Retd), proprietor of M/s Kuenleg Construction Enterprise (KCE) vide his letter dated 23rd July 2007 and also in justification to our appeal to the Royal Court of Justice.

1. KCE point 1: “That both KCE and RICBL had over fifteen months to submit all justifications/Clarifications/evidences to the Dzongkhag Thrimkhang. It is highly inappropriate and contemptible for the RICBL management to claim that the Dzongkhag Thrimkhang considered the justifications of KCE only. Further, RICBL’s reasons in failing to defend the case adequately appear weak and unconvincing, based on the amount and the timing of the cases”.

In our defense, we would like to submit that our justifications were not adequately taken into consideration and it may be little possible for us to abide by the decision passed by the Dzongkhag Court. Hence, we have submitted our appeal to the High Court and we thank the Royal Court of Justice for considering to hear our appeal.

2. KCE point 2: “That in my claims before the Dzongkhag Thrimkhang I had filed for cost escalation amounting to Nu. 10,976,618.27 based on the cost indices derived by the JVC for the delay period of 16 months attributable to RICBL. Since there was no decision passed for this escalation claim made by KCE, and decision no. 4 by the Dzongkhag Thrimkhang orders that RICBL pays KCE a sum of Nu. 9,152,056.96 as liquidated damages calculated on the basis of Clause III of the contract document, I would be grateful if the Hon’ble Court could kindly review my claim for cost escalation as submitted and as stated in the summary of Court Findings (Page no. 173 paragraph h. ii and iv) of the judgment”.

In our defense, RICBL would like to submit to the Royal Court of Justice that in accordance to clause XVI of the contract document signed between the corporation and the contractor, cost escalation is not

permitted. Further, as per Clause III of the contract document, liquidity damage is not applicable to the Corporation but is applicable to the contractor. Hence we request Hon'ble Dasho to kindly honour our contract agreement.

3. KCE point 3: "That since the onset of the dispute, KCE tried to arrive at an amicable solution with RICBL which is testified by the fact that KCE requested for an arbitration after one and half years of discussion with the RICBL and that too only after exhausting all forms of appeal and cooperation from RICBL. I believe that with some cooperation and compromise from the RICBL, the case could have been solved in an amicable and speedy fashion without the legal battle. For the kind information of the Hon'ble Court, the JVC was formed on the request of KCE with the approval of the Chairman of the RICB Board as per the terms and conditions of the contract. One of the responsibilities of the JVC was to find the cause of delay in the project. In-depth discussion and deliberation was held on this issue based on the arguments of the two parties, which can be validated by the Minutes of the JVC meetings. The finding of both the JVC and the Dzongkhag Thrimkhang (based on documents and evidences submitted by both parties) attributed the delay to RICBL".

In our defense, RICBL would like to submit that it was also our intention and desire from the very beginning to have a solution to the dispute and we had many rounds of discussion with KCE. However, since we could not come to a compromise, we had to agree to a third party intervention to amicably resolve the dispute. It may kindly be noted that RICBL has been very cooperative and compromising all throughout the eight rounds of JVC meetings. The attribution of delays totally to RICBL needs further review by the Hon'ble judges as JVC has never indicated that delay was solely attributed by RICBL.

4. KCE point 4: "that it was RICBL that failed to comply with the decisions of the JVC and not KCE as accused above and as all the documents and evidence submitted will confirm. I would appreciate if the Hon'ble Court could kindly note that my claims are based on RICBL's commitment and the work executed by me substantiated by supporting documents and evidence and hence well justified. In this

light, RICBL's statement that the payment is not justified is dishonorable. I would like to report that even after six months of passing the decision by JVC and despite several requests and reminders from KCE, RICBL did not honour the decision of the JVC by refusing to take any action thereby compelling KCE to file the case".

In our defense, RICBL would like to submit that after eight rounds of deliberations, JVC recommended that RICBL should further pay a sum of Nu. 3,325,313.78 to which M/s KCE had also agreed. In line with the decision of JVC, RICBL wrote to M/s KCE to confirm if this recommended amount was to be considered as final payment against all disputed claims and that there would be no further claim over and above the recommended amount. However, M/s KCE continued with their claim Nu. 2,281,466.79 in addition to the amount recommended by the JVC, thereby leaving no room for RICBL to pay the recommended amount of Nu. 3,325,313.78. Hence, we still submit that it was KCE who did not abide by the decision of the JVC.

5. KCE point 5: "that KCE was never informed by the RICBL that additional works were awarded as compensation for the delay. Therefore, no such documentation or communication exists to authenticate this statement. The additional works were awarded to KCE as per the existing rates in the Bill of Qualities (BOQ) that saved the RICBL management time and money. Further, the work in Phuentsholing was awarded to KCE on the basis that we execute the works as per the existing rates of contractors that had executed similar works in the past. May I reiterate that the subject of compensation for the delay was never mentioned for this work too. The awarding of additional works on existing rates is common in most projects. In the event the RICBL management can prove with sufficient supporting documents and evidence that the work was accepted by KCE as a compensation for the initial delay, KCE is willing to forego the claims for the initial 5- months delay period".

In our defense, RICBL would like to submit the following:

- a. Though M/s. KCE argues that the award of additional works in Phuentsholing at the existing rate is common in most projects and

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not to compensate for the delay in handing over of the construction site, the Hon'ble Judge may kindly note that it was on the request of KCE and his understanding with the RICBL management to divert his mobilized resources till the project takes of that the following considerations were made without floating tenders.

1. Construction work of 1 no. Class III and 1 no. Class IV building at Phuentsholing at a contract of Nu. 3,942,028.00.
2. Construction of Water tank at Thimphu for a work value of Nu. 847,893.76.
3. Retaining wall construction at Phuentsholing for a work value of Nu. 839,932.94.

If it were not to compensate M/s KCE for the initial delay of five months, the additional works could have been awarded to the initial contractors who constructed similar buildings of RICBL in Phuentsholing and not to M/s KCE. The above considerations were made on good faith and understanding between the contractor and the then management of RICBL.

- b. While KCE now refutes our claim of additional works to compensate for the initial delay of five months, we would now like to submit that the following considerations have been made, as requested by him vide his letter dated 14.10.98 and 14.4.99, to compensate for the initial delay.

1. RICBL waived off 10% interest amounting to Nu. 94,475.83 chargeable on the initial mobilization advance at the request of M/s KCE. Further the above mobilization advance had not been recalled although the work had not been started by M/s KCE.
2. RICBL paid Nu. 61,000.00 to the contractor being 2% interest payment on the performance guarantee bond issued from the BDFC for a period of six months.
3. Also at the request of M/s KCE, RICBL released 75% secured advance amounting to Nu. 8,170,451.00 without interest in addition to initial mobilization advance though the contract term does not permit such secured advance payment if initial mobilization payment is given.

6. KCE point 6: “that both the parties had sufficient time to submit all evidences regarding the case. At this advanced stage of the case, I doubt whether the RICBL is in possession of any new evidences that would challenge the decisions of both the JVC and the Dzongkhag Thrimkhag. Based on all evidences and supporting documents submitted by the two parties, both the JVC and the Dzongkhag Thrimkhag ruled that KCE was not responsible for the total delay of 16 months in the completion of the project. This issue was also debated extensively during the JVC meetings. Considering that five years had lapsed since that start of the dispute and taking into account all the time and opportunities lost, we plead that the Hon’ble Court look into a speedy and just decision in this matter”.

In response to his above submission, RICBL would like to submit the following;

- In view of the continued allegation that the total delay is attributable to RICBL, the actual period of delay needs to be segregated into delay before the handing over of the site and delay after commencement of the project.
- Contract work was awarded on 1st May 1998 vide our letter RICB/RE/98/209 and it was specifically asked of the contractor to call on us within 31st May 1998 to sign the agreement and complete other formalities. However, M/s. KCE did not comply with this request and the contract agreement was formally executed only on 22nd August 1998.
- The delay on the part of the Corporation to hand over the site, after formal signing of the agreement, till 9th November 1998 has been adequately compensated as referred in point 5 above.

As for the remaining 10 months, we would once again like to submit that the delay is attributable to the contract and not to RICBL because there had been delay in the construction work since the starting of the project by the contractor against which RICBL site engineers had reminded M/s KCE a number of times to accelerate the work progress.

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RICBL would like to briefly outline the following points that had been the cause of the delay in the construction period, in contradiction to what the contractor has reasoned out.

- a. M/s. KCE failed to complete the construction of Five Hydrant Water Tank within the stipulated time period which also contributed to the delay in completion of the project. He was also informed vide Letter no. RICB/RE/99/311 dated 07.07.1999 that the delay in handing over the water tank to Thimphu City Corporation is not to be considered as hindrance and no time extension for such delay shall be permitted for the construction of Office Building. Reference may kindly be made to M/s KCE's letter dated 08/11/99 wherein they have also accepted the delay in handing over the water tank had also hampered the progress of the office Building Construction.

Below are the associated reference letters:

- i. Letter no. RICB/RE/TH/99/10259 dated 01.07.1999 and RICB/RE/99/311 dated 7.07.1999 indicates that there was delay in handing over of the Fire Hydrant water tank.
- ii. RICBL letter no. RICB/TH/RE/99/10779 dated 20th July 1999 to Thimphu City Corporation for taking over of the Fire Hydrant Water Tank.
- iii. Thimphu City Corporation letter no.80/TCC/ENG/99-2000/3399 dated 21st July 1999 stating the reasons for not being able to take over the Water Tank.
- iv. RICBL no. RICB/RE/TH/99/11639 dated 12.08.99 to M/s KCE regarding taking over of the Water Tank by RICBL.
- v. Handing/ Taking over letter dated 11.08.1999 between RICBL and Thimphu City Corporation.
- vi. M/s KCE letter dated 08.11.1999 consenting to the late handing over of the Water Tank.

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Therefore, the water tank that was supposed to have been completed by 20.12.1998 could be handed over to Thimphu City Corporation only on 11.08.1999 thereby leading to delay of more than **seven months** exclusively made by the contractor. This delay of water tank by the contractor had hampered the Office building construction works which the contractor had overlooked.

b. The Contractor had been reminded several times to expedite the work progress that had been lagging behind. Following are the documents supporting our stand:

1. Letter no. RICB/RE/TH/99/11367 dated 04.08.1999 – deployment of insufficient labourers.
2. Letter no. RICB/RE/TH/99/14476 dated 31.08.99- again deployment of insufficient labourers and poor management of materials which led to delay.
3. Minutes of the meeting at the site between RICBL and KCE team dated 06/09/99 on the work delay issue.
4. Letter no. RICB/RE/TH/99/17992 dated 30.10.99 – reminder of work behind schedule.
5. Letter no. RICB/SITE/TH/2002/169 dated 10.01.2002 – addresses the delays caused by M/s KCE and deployment of insufficient labourers.
6. M/s KCE letter dated 17.01.2001 – hindrances in transportation of cement which is supposed to have caused delay in work progress.
7. M/s KCE's letter dated 20/10/2001 – inability to carry out cement work in severe winter month.

c. As is evident from above the Contractor had delayed the work right from the inception of the project due to deployment of less number of labourers and poor material management.

- d. On the request of M/s KCE vide letter 20/10/2001 and on the recommendation of the RICBL's Project Engineers, time extension was granted till December 2001 on the condition to expedite the work and complete within the stipulated time.

In all correspondences granting extension of time period, it was explicitly mentioned that there shall be no cost escalation and M/s. KCE never made it a point to contest on this issue. Therefore, M/s KCE's claim on cost escalation does not stand justified.

However, even after considering the time extension the contractor could not complete the work on time, which is till December 2001. It was provisionally taken over by RICBL on 1st April 2002 but the final handing/taking over was done only on 15th June 2002. Therefore, the delay in completion of the project was mainly attributable to M/s KCE, for which RICBL would now like to appeal for Liquidated Damages as per the clause III of the Contract Document.

7. KCE point 7: "that Clause X of the contract document states, 'the time for completion of the work shall be extended in the ratio of the cost of altered, additional or substituted work to the original cost of the contract.' Based on this, KCE had claimed that appropriate time extension be awarded with the inclusion of the "work of specialized nature". Had the work been awarded to KCE, an appropriate time extension would have been awarded according to clause X of the contract document. Although the work was awarded to M/s JCIPL as a separation contract, I think it is imperative to report to the Hon'ble Court that the said works were executed in the same construction site and building which hampered and delayed the works executed by KCE. All documents supporting this statement were submitted to both JVC and the Dzongkhag Thrimkhang".

In our defense, RICBL would like to state that M/s KCE has contended that the corporation has breached clause X of the contract document by awarding additional works of installation of lift, central heating system and computer cabling to a second contractor, M/s Johnson Control (I) Pvt. Ltd. (JCIPL) and arrived as one of the basis for the decision to impose the liquidity damages on the corporation.

In this regard, we would like to once again submit to the Hon'ble Judges that the Corporation did not breach the contract clause. The contract work awarded to M/s JCIPL is all together a different project and not a part of the contract entered into between RICBL and M/s KCE. The said project awarded to M/s JCIPL does not constitute alteration, addition or substitution of work of original project awarded to M/s KCE. The separate project (Integrated Building Management System) awarded to JCIPL is a work of specialized nature and M/s KCE did not qualify on technical grounds though M/s KCE also participated in building for the said project.

The Royal Court of Justice may kindly note that the mere fact that M/s KCE has also participated in the tender without any contention proves that the contract is all together a different project. Clause X of the contract document states that alteration, addition and substitution of work related to the original project may be carried out through the same contractor. In accordance with this clause all civil works necessitated with the installation of lift, central heating system and computer cabling (work awarded to JCIPL) was given to M/s KCE. However, in some instances, he did not execute the work, which, if interpreted in accordance with the Dzongkhag Court's decision, would tantamount to breach of the terms of contract by M/s KCE.

8. KCE point 8: "that KCE did not refuse to accept the amount and as such there is no documentary evidence. The decision of the JVC was "defaulted" by RICBL as presented in point 3 page 2. Subsequent to the JVC decision, the RICBL management inquired whether KCE had additional claims beside the above decided amount. I then requested for my claims for initial cement and timber cost escalation which was recommended by the JVC and I proposed 15th December 2005 as the deadline for the payment of the claims stressing that otherwise KCE would have to approach higher authorities as per the laws of the kingdom. Following an exchange of communication and a final reminder, the RICBL management informed that the matter would be taken up with their board. Consequently, KCE filed a case with the Dzongkhag Thrimkhang and claimed interest for the time that had lapsed from the time of submission of our final bill in July 2002 until

December 31st 2005 after deduction of the 90-day period as per the contract terms and conditions”.

In our defense, RICBL would like to submit that the Dzongkhag court’s decision to impose interest on delay in payment of bill, amount withheld in lieu of unfinished works and amount decided as payable by JVC in accordance with Chapter 2 section 19 of the Movable and Immovable act needs further review by Royal Court of Justice. There is no written evidence of the rate of interest being fixed as payable between the contractor and RICBL, as per contract terms and conditions, incase of delay in settlement of bills, neither does the decision of JVC stipulates the time frame for payment of the decided amount nor does it stipulate the rate of interest payable. Therefore, we would like to request the Hon’ble Judges to kindly uphold section 18 of chapter 2 of the Movable and Immovable Property Act and discharge RICBL from payment of interest.

4.4. **Defendant Kuenleg Construction Enterprise submission on 8.8.2007 to the High Court in English:**

In response to RICBL Letter No. RICBL/KCE-RE/TH/2007 dated 6th August 2007 we would like to *once again* present the following for the Hon’ble Court’s reference and perusal:

1. With reference to RICBL point no. 1: May I report to the Hon’ble Court that both parties were granted **sufficient time to submit documentary evidences prior to the judgment** passed by the Dzongkhag Thrimkhang. Based on the evidences submitted, we believe that it is the prerogative of the Hon’ble Court to decide whether RICBL’s *“Justifications were adequately taken into consideration or not”*.
2. With reference to RICBL point no. 2: I would like to submit to the Hon’ble Court that Clause XVI of the contract document does state that the contractor shall **not claim any escalation for the contract period**. As per the contract document, the **contract period** was stipulated as **thirty months-** for which escalation is not being claimed. However, the **construction period** was delayed by **sixteen months** and both the JVC and the Dzongkhag Thrimkhang concluded that the **delay** was **“NOT ATTRIBUTABLE TO THE CONTRACTOR”**. Therefore, the cost

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escalation claimed by us is for the **delayed period only and not the contract period**. In this context, we would be grateful if the Hon’ble Court could kindly review our claim. Your Honour, RICBL’s appeal to implicate KCE for liquidated damages under Clause III of the tender document, is unjustified as it has been **proven twice** that the the **delay was not attributable to contractor**. The decision for RICBL to pay KCE a sum of Nu. 9,152,056.96 as liquidated damages was passed by the Dzongkhag Thrimkhang and not appealed for or claimed by KCE.

With regards to the other appeals made by RICBL in the said letter, I would like to report to Hon’ble Court that based on all the necessary documentary evidences submitted; the Dzongkhag Thrimkhang passed its Judgment. Furthermore, additional documents for the Hon’ble court’s kind reference were submitted by us on 23rd July 2007.

In light of the above clarification and justifications, we would be highly grateful if the Hon’le Court would kindly pass a prompt and just decision.

**4.5. Appellant RICBL submission on 8.8.2007 to the High Court in English:
RA Bills for Construction of RICBL Office Building in Thimphu**

S/no	Description	Bill Submission Date	Bill Amount	Deductions	Remarks	
1	1st R/A bill	28.06.1999	2,938,023.15	2,000,000.00	mobilization advance	vide KCE letter dated 28.06.1999
2	2nd R/A bill	21.10.1999	5,850,401.39	1,420,681.00	mobilization advance	vide KCE letter dated 21.10.1999
3	3rd R/A bill	06.01.2000	7,601,944.17			
4	4th R/A bill	05.04.2000	10,813,197.15	483,037.64	175,680.00	Insurance premium
					61,591.27	interest on mobilization advance for ‘98
					245,766.37	interest on mobilization advance for ‘99
5	5th R/A bill	10.07.2000	15,762,868.09	1,419,295.50	secured advance	
6	6th R/A bill	20.10.2000	21,321,618.21	2,000,000.00	secured advance	vide KCE letter dated 20.10.2000
					temporary advance	

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					(taken on 14.09.2000)	
7	7th R/A bill	22.03.2001	25,034,031.83	10,317.84		interest on mobilization advance till 6.4.2000
				500,000.00	secured advance	
8	8th R/A bill	26.07.2001	30,187,422.55	2,000,000.00	secured advance	
				3,000,000.00	temporary advance taken on (05.07.2001)	
9	9th R/A bill	20.08.2001	35,194,622.49	2,000,000.00	secured advance	vide KCE letter dated 20.08.2001
10	10th R/A bill	15.10.2001	41,932,505.19	1,367,674.50	served advance	vide KCE letter dated 15.10.2001
11	11th R/A bill	27.12.2001	47,488,918.22		served advance	vide KCE letter dated 27.12.2001
				25,498.04		interest on mobilization advance till 31.01.2002
12	12th R/A bill	03.04.2002	50,613,687.29	569,500.00		interest on mobilization advance till 03.04.2002
13	13th R/A bill	15.07.2002	57,234,386.13	6,000,000.00	temporary advance	

PERCENT PROGRESS BASED ON R/A BILLS.

S/No.	Month	Date	Value of work to be completed	Percentage completion	Bill Submission date	Bill Amount paid M/s K.C.E	% Completed	Remarks
1	0	8/12/1998	0.00		8/12/1998	0.00		
2	7.5	22/07/1999	7,154,298.27	12.50	21/10/1999	5,850,401.39	10.22	As per 2 nd R/A bill
3	15	8/3/2000	21,462,894.80	37.50	5/4/2000	10,813,197.15	18.89	As per 4 th R/A bill
4	22.5	22/10/2000	42,925,789.60	75.00	22/03/2001	25,034,031.83	43.74	As per 7 th R/A bill
5	30	7/6/2001	57,234,386.13	100.00	20/08/2001	35,194,622.49	61.49	As per 9 th R/A bill

Note:

1. Site handed over on 09/11/1998.

2. Work to be commenced by 08/12/1998
3. As per Clause III of the tender document 1/8th of the work to be completed in 1/4th of the time, 3/8th of the work in 1/2 the time, 3/4th of the work in 3/4th of the time and full work in the stipulated period.
Tender amount as per BOQ is Nu. 61,013,713.08.

4.6. **Appellant RICBL submission on 15.8.2007 to the High Court in English:**

We beg to have the honour to submit the following in response to the submission made by Major Kuenleg Dorji (Retd), proprietor of M/s Kuenley Construction Enterprise (KCE) vide his letter dated 8th August, 2007.

In response to KCE's point 1, we would like to submit that, we felt the need to make further justifications, as the verdict of the Dzongkhag Court favored otherwise and hence appeal to the High Court. We once again thank Your Honour and the Royal Court of Justice for consenting to hear our appeal.

In response to KCE's point 2, we would like to reproduce the contents of Clause XVI and further submit as follows:

“The contractor shall not ask for any escalation in rates over the agreed rates/ amount during the construction period and after the completion of the work for any materials due to rise in market price because of Government policies, tariffs, ect. Including labour as required to complete the work under the contract. **The quoted rate of the contractor shall be considered valid for the entire work till the completion of the project**”.

While it is mentioned that the contractor shall not ask for any escalation during the construction period and after completion of the work in the first two lines of the clause, **it has been further qualified that the rate quoted shall be valid for the entire work till completion of the project. Consenting to abide by such terms has been endorsed by M/s. KCE, which they now pretend to have overlooked.**

Therefore whether the construction took 16 months or more, the rate quoted and agreed would be the rate applicable till the completion of the project. It had explicitly been communicated to M/s. KCE that there would be no cost escalation for the time extension granted and M/s. KCE did not have any contention then.

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With regard to the issue on the delay, we stand by our submission made to the Royal Court of justice vide our submission dated 06/08/2007.

As for the implication of the liquidated damages apropos clause III of the tender document, we would once again like to appeal to the Royal Court of Justice that as per the clause III, the liquidated damage is applicable on the contractor and not the Corporation. Since the Dzongkhag Thrimkhag in their decision had directed the Corporation to pay liquidated damage of Nu. 9,152,056.96, to M/s. KCE, we have counter claimed the liquidated damage from M/s. KCE as per the Contract document. And we would like to appeal the Royal Court of Justice to kindly honour the contract document entered into between the Contractor and the Corporation.

PROGRESS REPORT

S/no	Month	Works Executed	% Progress	Remarks
1	December 1998	1. Surface excavation for building area done but no site clearance.		
		2. Excavation for column footings – 9 nos.		
2	January 1999	1. Surface excavation	2.0%	Heavy boulders and seepage in 3 footings hampered the work progress.
		2. Excavation for column footings – 31 pillars.		
3	February 1999	1. Surface excavation	3.0%	Boulders had to be chisel dressed as blasting in the area was prohibited which hampered the work progress a lot.
		2. Foundation cutting for column footing- 46 nos.		
		3. stone soiling in foundation trenches-17 nos.		
4	March 1999	1. Surface excavation	4.50%	
		2. Foundation cutting for column footing – 50 nos.		
		3. Stone soiling in foundation trenches – 18 nos.		
		4. PCC in foundation – 35 nos.		
		5. Erection of columns (reinforcement) – 35 nos.		

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		6. Providing base plate in foundation – 35 nos.		
5	April 1999	1. Foundation cutting for column footings – 50 nos. 2. Stone soling in foundation – 35 nos. 3. PCC in foundation – 35 nos. 4. Erection of columns (reinforcement)-35 nos. 5. RCC work in foundation – 35 nos. 6. Providing base plate in foundation – 35 nos. 7.	5.50%	
6	May 1999	1. Foundation cutting for column footing – 50 nos. 2. Stone soling & PCC in foundation – 41 nos. 3. PCC in foundation – 35 nos. 4. Erection of columns – 41 nos. 5. RCC work in foundation – 41 nos. 6. Providing base plate in foundation – 41 nos. 7. RRM under plinth beam – 62 mtr. 8. RRM, PCC, Soling and earth work for boundary wall – 55 mtr.	6.70%	
7	June 1999	1. Erection of columns – 48 nos. 2. Casting of plinth beam – 5 grids. 3. boundary wall – 379 ft.	8.50%	
8	October 1999	1. Shuttering and reinforcement work for basement roof slab at grid D to E between grid 5 to 8. 2. Counter for retaining wall casted for 6 counterforts. 3. earthwork for RCC retaining wall and last column for grid G.	14.0%	
9	December 1999	1. Counter fort retaining wall casted for 9 counterforts.	15.50%	

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		2. Basement roof slab casted		
		3. Columns casting upto 3.6 m high at ground floor.		
10	13/09/2000	1. Casting of 1 st floor roof slab complete as of date.		Ref. RICBL letter dated 13/09/2000. Casting of 2 nd floor roof slab to be taken up by 16/08/2000, but contractor failed due to shortage of materials at site. RICBL site engineers letter to M.D dated 21/08/2000.
11	06/10/2000	1. Casting of 2 nd floor roof slab complete. 2. Hollow block masonry works at basement, ground and 1 st floor complete including plastering. 3. Marble cladding at outer face of building at basement, ground and 1 st floor complete. 4. Marble and mosaic flooring at ground and 1 st floor in progress. 5. Window frames fixed at basement, ground and 1 st floor.	40.0%	

Note:

- 1 M/s KCE Letter dated 08/11/99 clearly states that handing/ taking over of the Fire Hydrant tank hampered the work progress. Also demolishing of old water tank also hampered the work progress by a month. Earthwork in excavation also delayed the work progress by almost three months.
 - 2 During severe winter period (Mid November 2000 till end of January 2001) all cement related works were stopped.
 - 3 There had been delay right from starting of the project and numerous reminders to KCE had been written to expedite the work progress.
- 4.7. **Defendant Kuenleg Construction Enterprise submission on 15.8.2007 to the High Court in English:**
As ordered by Your Honour on 8th August 2007, we are herewith submitting the following:-

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Annexure I: Details of Timber procurement for the construction works of the RICBL Head Office at Thimphu after the specified contractual period of 30 months.

Annex II: Details of Cement procurement for the construction works of the RICBL Head Office at Thimphu after the specified contractual period of 30 months.

Annexure III: Copy of minutes of the site meeting held during the construction phase of the RICBL Head Office Building at Thimphu.

Annexure IV: Copy of documents pertaining to cost escalation claim for the delayed period of 16 months, over and above the contractual period of 30 months and copy of Mode of Final Payment as specified in the Contract Document.

With the submission of the above documents, we would be grateful if the Hon'ble Court could kindly pass a prompt and just decision.

Annexure I : Details of Timber procurement for the construction works of the RICBL Head Office at Thimphu after the specified contractual period of 30 months.

SI. No.	Supplier	Bill No.	Date	Quality (cft)
1	Army Welfare Sawmill	8888	27/13/00	214.96
2	Army Welfare Sawmill	1836	24/04/00	79.94
3	Tobgay Sawmill	13	6/01/00	491.52
4	Tobgay Sawmill	17	30/05/00	343.15
5	Tobgay Sawmill	18	3/06/00	466.12
6	Tobgay Sawmill	23	5/07/00	437.31

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7	Tobgay Sawmill	24	14/07/00	475.57
8	Tobgay Sawmill	25	21/07/00	338.70
9	Tobgay Sawmill	059	23/07/00	260.68
10	Tobgay Sawmill	27	10/08/00	356.88
11	Tobgay Sawmill	28	18/08/00	431.44
12	Rabten Sawmill	994	21/06/00	207.30
13	Rabten Sawmill	1004	3/07/00	258.07
14	Rabten Sawmill	1035	22/08/00	233.18
15	Rabten Sawmill	1107	4/10/00	118.10
	TOTAL			4,712.92

Annexure II : Details of Cement procurement for the construction works of the RICBL Head Office at Thimphu after the specified contractual period of 30 months.

Sl. No.	Supplier	Bill No.	Date	Quality (cft)
1	Yeshey Cement Agent	142	27/10/00	40.00

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2	Yeshey Cement Agent	149	16/11/00	16.00
3	Yeshey Cement Agent	168	31/12/00	8.00
4	Yeshey Cement Agent	186	6/2/01	8.00
5	Yeshey Cement Agent	203	14/03/01	15.50
6	Yeshey Cement Agent	221	23/04/01	24.00
7	Yeshey Cement Agent	226	7/05/01	16.00
8	Yeshey Cement Agent	241	26/05/01	44.00
9	Yeshey Cement Agent	242	26/05/01	8.00
10	Yeshey Cement Agent	276	11/08/01	40.00
11	Yeshey Cement Agent	290	25/09/01	8.00
12	Yeshey Cement Agent	310	26/11/01	24.00
13	Yeshey Cement Agent	359	15/01/02	16.00
14	Yeshey Cement Agent	373	2/3/02	8.00
15	Yeshey Cement Agent	374	2/3/02	8.00
16	Yeshey Cement Agent	389	28/03/02	8.00

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17	Yeshey Cement Agent	392	7/4/02	16.00
18	Yeshey Cement Agent	403	17/04/02	8.00
19	Yeshey Cement Agent	411	30/04/02	4.00
20	Yeshey Cement Agent	437	11/06/02	8.00
	TOTAL			327.50

Annexure III : Copy of Minutes of the Site meetings held during the Construction phase of the RICBL Head Office Building at Thimphu.

1. RICBL/RE/TH/99/11896 dated 19/08/99
2. Minutes of Site Meeting held on 14/06/00
3. Minutes of the Site Meeting. Copy received on 13/6/00
4. Minutes of the Site Meeting held on 01/8/00 & 02/08/00
5. Minutes of the Site Meeting Held on 01/08/00
6. Minutes of the Site Meeting held on 27/11/00
7. Minutes of the Site Meeting held on 08/01/01
8. Minutes of the Site Meeting held on 01/02/01
9. Minutes of the Site Meeting held on 21/02/01
10. Minutes of the Site Meeting held on 31/03/01
11. Minutes of the Site Meeting held on 23rd April to 25th April 2001
12. Minutes of the Site Meeting held on 30/04/01
13. Minutes of the Site meeting held on 08/05/01
14. Minutes of the Site Meeting held on 10/08/01
15. Minutes of the Site Meeting held on 10/08/01
16. Minutes of the Site Meeting held on 11/09/01
17. Minutes of the Site Meeting held on 9/10/01
18. Minutes of the Site Meeting held on 12/10/01
19. Minutes of the Site Meeting held on 01/03/02
20. Minutes of the Site Meeting held on 18th November to 10th December

Annexure IV: Copy of documents pertaining to cost escalation claim for the delayed period of 16 months over and above the contractual period of 30

months and copy of Mode of Final Payment as specified in contract Document.

1. Copy of Clause XVI of Contract Document: Increase in rates of material and labour.
2. Copy of notice inviting Tender: Time for completion of work specified as 30 months.
3. Copy of Clause VII of terms and conditions of tender document.
4. Copy of forwarding letter dated 6th March 1998 for tender submission specifying that rates submitted by KCE as being “inclusive of the expected cost escalation for the stipulated construction period of 30 months”.
5. Copy of Clause XIII – Payment to contractor. “Final payment for the work shall be made within the three months form the date of completion certificate recorded by the engineer”.

4.8. **Appellant RICBL submission on 22.8.2007 to the High Court in English:**

We beg to have the honour to submit the following as directed by the Hon’ble Court on the 15th of August 2007 and also in reference to the submission made by M/s. KCE vide his letter dated 15th August 2007.

1. Statement desired by the Hon’ble Court in regard to the payment of Nu. 3,942,028.00 for award of construction of 1. no class III and 1 no. class IV building at Phuentsholing, Nu. 847,893.76 for construction of water tank at Thimphu and Nu. 839,932.94 for construction of retaining wall at Phuentsholing.

We hereby submit that the above constructions are not part of the Thimphu Office building project and the amounts paid are also not included in the final payment made against the construction of Thimphu Office buildings.

2. Submission of correspondences between RICBL and KCE regarding the payment of the amount of Nu. 3,325,313.78 decided by JVC as directed by the Hon’ble Court. (**Attachment I**)

- a) RICBL's letter No. RICBL/GAD/34/2005/14809 dated 15.11.05
- b) KCE's letter dated 20th November 2005
- c) RICBL's letter No. RICBL/HQ/RE/2005/15094 dated 26.11.05
- d) KCE's letter dated No. 05.12.05
- e) RICBL's letter No. RICBL/GAD/JVT/2005/15605 dated 14.12.05

In accordance with our assurance intimated to KCE vide our letter 15605 dated 14th December 2005 that the matter would again be put up in the Board meeting scheduled for the 29th of December 2005, the management did put up the matter to the Board. The Board upon reviewing the reply of KCE directed the management to inform M/s. KCE if the amount of Nu. 3,325,313.78 plus the cost of cement escalation is acceptable as final settlement of his claim.

This was accordingly intimated through phone to KCE by the then Chief Executive Officer but KCE again did not agree with the decision.

- 3. Submission on hindrances to the work, as directed by the Royal Court of Justice.

(Attachment II)

We beg to submit that unfortunately hindrance book as such has not been maintained by both the parties. However, the following are the supposed hindrances, which KCE claims obstructed the progress of the construction work. While the following were acknowledged as hindrances by the Corporation, at time of considering time extension for completion of the project, it was done with the sole motive of assisting the contractor.

In essence, M/s. KCE, being in the construction line of business, should have foreseen the inability of carrying out cement related work in winter months and should have scheduled his work accordingly, should have anticipated the possibility of road blocks during monsoon months and should have stocked sufficient materials. Only the unforeseen situation of finding large boulders at the site could be accounted as hindrance.

- a. Hindrance in the transportation of cement and other materials due to road block during monsoon months.

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- b. Inability to carry out cement related work during winter months as the temperature was below minimum required.
 - c. Unexpected large boulders found at the construction site during excavation of foundation. The breaking down of the boulders had to be done manually as blasting was prohibited in the town area.
4. Submission on work done between January 2002 to April 2002 as directed by the Hon'ble court. **(As listed in Attachment III).**
5. Submission on the compensations made for initial delay and other considerations made to M/s. KCE.
- i) Compensations made for initial delay in handing over of drawing/site after issue of work order. (Attachment IV).*
- b) Waived of 10% interest amounting to Nu. 94,475.83 chargeable on the initial mobilization advance at the request of KCE.
 - c) Paid Nu. 61,000.00 to KCE being the interest payment on the performance guarantee bond issued from BDFC for a period of six months on KCE's request.
 - d) Released 75% secured advance amounting to Nu. 8,170,451.00 without interest in addition to the initial mobilization advance on the request of KCE. He would otherwise have to arrange the finance from other sources on interest.
 - e) Awarding of construction work of two buildings (One class III and one class IV) at phuntsholing, construction of water tank at Thimphu and construction of retaining wall at Phuentsholing to divert his mobilized recourses till the Thimphu office building construction project takes off. Though KCE now refutes that these additional works were not considered to compensate for initial delay, we would once again like to submit to the Royal Court of Justice that these additional works were considered on utmost good faith and trust that existed between the contractor and RICBL then. His denial now that these works were not considered to compensate for the initial delay in handing over of the drawing of the construction is sheer breach of fiduciary relation that existed between us then. Otherwise there was no justification for us to make such considerations.

- ii) *Other considerations made to KCE. (Attachment V)*
- a) Considered advances against running bills so as not to hamper the on-going project.
 - b) Considered time extension for completion of the project without imposing liquidity damages.
 - c) Initially waived off deduction of 5% security deposit from every running bills.
 - d) Changed specification of two major BOQ items mainly to reduce the usage of cement and timber. The specification of external walls were changed from chisel dressed stone to marble block and then again from marble block to hollow concrete block with Rajasthan marble cladding on his request. The flooring was changed from timber flooring to Mosaic/Rajasthan marble flooring.
 - e) Revision of extra earth transportation charges from Nu. 138.17 per m³ to Nu. 146.69 per m³. We have paid extra Nu. 53,572.06 for extra earth transportation of 6287.8 cu.m.
 - f) Changing of champ timber to mixed conifer timber for doors, windows and flooring. We could have stuck to our specification of champ timber and he would have had to arrange it somehow. But we entertained his request to assist him.
 - g) Assisted him in getting champ timber approval from the Department of Forest and obtained approval of 16,000 cft although we were not obliged to do so.
 - h) Relaxed clause IX (c) of the Tender terms and conditions, i.e. release of secured advance even when mobilization advance was considered.
6. With regard to the submission of details of timber and cement procured after the specified contractual period, by KCE, we beg to submit the following as there seems to be difference in the interpretation of the actual date of commencement of work and the contract period of 30 months.

M/s. KCE calculates the contract period of 30 months to commence from 1st June 1998 and feels that it should end by November 2000. **We beg to submit to the Royal Court of Justice that the actual work could not have commenced when the site and the drawings have not been handed over at all.** Hence the actual contract period and commencement of work will have to be reckoned from the day the site is

handed over. While it is possible that he may have mobilized some resources we have adequately compensated for the delay as highlighted under point 3. i, (a,b&c) above, on the request of KCE. Further to divert his supposed mobilized resources, we have considered extra construction works submitted under point 3, ii, (d) above, though he unfortunately now refutes that the extra work was not considered to compensate the delay.

On the other hand, we would like to submit that the construction site and drawings were formally handed over to KCE only on 9th November 1998. *It was also communicated to KCE vide our letter RICB/RE/98/391 dated 13th August 1998 that the actual date of commencement of work shall be reckoned from the day we had over the site and the drawings.* Therefore, the contract period 30 months should be reckoned from 9th November 1998 and should accordingly run up to 8th May 2001.

In view of the above submission on the contract period, we would like to submit that the procurement of timber was all made within the contract period and not after the contractual period as appraised by KCE, which is evident from the submissions made by KCE to the Royal Court of Justice. Even for cement, we beg to differ with the details of cement supposed to have been procured after the contractual period, as is again evident from his submission.

We request the Royal Court of Justice to kindly take into account the repeated accommodation and many considerations made by the corporation to M/s. KCE. We appeal to the Royal Court of Justice to kindly honour the contract document entered into between the Contractor and the Corporation and pass a fair and just decision.

4.9. **Defendant Kuenleg Construction Enterprise submission on 22.8.2007 to the High Court in English:**

As ordered by Your Honour on 15th August 2007, we are herewith submitting the letter written to us by RICBL Vide their reference No. RICB/RE/98/391 dated August, 1998.

4.10. **Statement of Lamkey Tshering, Former M.D of RICBL submitted on 31.8.2007 to the High Court in English:**

I would hereby like to submit that the Board of Directors during the meeting held on 29th December 2005 had directed the RICBL to negotiate with M/s. KCE, if the amount of Nu. 3,325,313.78 recommended by JVC plus the cost of cement escalation is acceptable to him as final settlement of claim against RICBL. Accordingly the directives of the Board was conveyed to Major Kuenleg Dorji (Retd), Proprietor of M/s. KCE, through telephone.

I regret to submit that I cannot remember the exact date of the telephone conversation but it was within a week's time of the Board meeting, which was held on 29th December 2005.

4.11. **Appellant RICBL submission on 31.8.2007 to the High Court in English:**

As ordered by your Honour on 22.08.2007, we are submitting the following documents:

Annexure 1: Timber consumption for RICBL Building construction for the entire construction period.

Annexure 2: Cement consumption for RICBL Building construction for the entire construction period.

Annexure 3: Timber consumption for RICBL Building construction for the period beyond may 2001.

Annexure 4: Cement consumption for RICBL Building construction for the period beyond May 2001.

Annexure 5: Timber purchased from 18.07.1998 to 26.04.1999 for RICBL Building construction as per bills submitted by M/s. KCE to RICBL.

Annexure 1:

STATEMENT OF TIMBER CONSUMPTION FOR RICBL BUILDING CONSTRUCTION FOR THE ENTIRE CONSTRUCTION PERIOD.

A. Main Building:

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S/N	Description	Quantity	Co-efficient		Quantity consumed	
1	Traditional cornice in m/c					
	- at floor 1 level	407.3	0.00190	cu.m/ m	0.7 74	Cu.m
	- at floor 3 level	133.32	0.05630	cu.m/ m	7.5 06	Cu.m
	- at Phana	133.32	0.07560	cu.m/ m	10. 079	Cu.m
2	Centering & shuttering					
	- foundation	192.5	0.01350	cu.m/ sq.m	2.5 99	Cu.m
	- lintels, beams	3185.47	0.01650	cu.m/ sq.m	52. 560	Cu.m
	- columns	2002.21	0.01730	cu.m/ sq.m	34. 638	Cu.m
	-staircase	136.82	0.01550	cu.m/ sq.m	2.1 21	Cu.m
	- suspended floors	4112.17	0.01680	cu.m/ sq.m	69. 084	Cu.m
	- wall	809.92	0.01440	cu.m/ sq.m	11. 663	Cu.m
3	Undressed wood work in mixed conifer	10.91	1.05	cu.m/ cu.m	11. 456	Cu.m
4	M.C Eavesdboard	463.11	0.0061	cu.m/ m	2.8 25	Cu.m
5	19mm thick blue pine panelling on walls	195.65	0.022	cu.m/ sq.m	4.3 04	Cu.m
6	Dressed wood work in frames of doors and windows mixed conifer	4.43	1.05	cu.m/ cu.m	4.6 52	Cu.m
7	Wooden flooring (40mm thick) in mixed conifer	377.15	0.04600	cu.m/ sq.m	17. 349	Cu.m
8	Wooden skirting 6" in M/C	23.17	0.0263	cu.m/ sq.m	0.6 09	Cu.m
9	Blue pine beading over panelling (50 x 20mm M/C)	1100.12	0.0011	cu.m/ m	1.2 10	Cu.m
10	Glazed shutter for windows- Mixed conifer	67.56	0.034	cu.m/ sq.m	2.2 97	Cu.m
11	Wooden staircase railing in M/C	15.8	0.019	cu.m/ m	0.3 00	Cu.m
12	Removing/ remoulding and refixing wooden bead	210.46	0.0011	cu.m/	0.2	Cu.m

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				m	32	
13	Wooden staircase in M/C.	7.9	0.06	cu.m/ m	0.4 74	Cu.m
Total Timber Consumption (Mixed Conifer & Blue Pine)					236.731 cu.m	
					8454.695 cf.t	
1	Dressed wood work in frames of doors and windows- Champ wood	18.39	1.05	Cu.m/ cu.m	19.310	Cu.m
2	38 mm thick glazed shutter for windows- Champ wood	361.23	0.034	Cu.m/ sq.m	12.282	Cu.m
3	Wooden flooring (40mm thick) in champ wood	30.75	0.04600	Cu.m/ sq.m	1.415	Cu.m
Total Timber Consumption (Champ)					33.006	Cu.m
					1178.7 79	Cf.t

Total Timber Quality	=	9633.474 cf.t
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Annexure 2:

**STATEMENT OF CEMENT CONSUMPTION FOR RICBL BUILDING
CONSTRUCTION FOR THE ENTIRE CONSTRUCTION PERIOD.**

A. Main Building:

S/No	Description	Unit	Quantity	Co-efficient	Quantity consumed	
1	Plain Cement Concrete					
	a. 1:2:4	cu.m	14.29	0.3213	MT/cu.m	4.591 MT
	b. 1:3:6	cu.m	204.47	0.2200	MT/cu.m	44.983 MT
	c. 1:4:8	cu.m	227.66	0.1700	MT/cu.m	38.702 MT
2	RCC 1:1:5:3					
	a. Footing, base of columns					
	b. Columns					
	c. Walls					
	d. Staircase					
	e. Beams, suspended floors					
		cu.m	1837.54	0.40300	MT/cu.m	740.529 MT
3	R.C.C 1:2:4	cu.m	5.96	0.3231	MT/cu.m	1.926 MT
4	Bhutan type cornice in RCC					
	- at floor one level	m	156.42	0.01387	MT/cu.m	2.170 MT

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		- at floor two level	m	130.4	0.01367	MT/cu.m	1.783	MT
		- at floor four level	m	84.6	0.03033	MT/cu.m	2.566	MT
		- at floor five level	m	31.7	0.03033	MT/cu.m	0.961	MT
		- at Phana	m	116.3	0.00359	MT/cu.m	0.418	MT
5		RRM in C.M 1:6	cu.m	48.62	0.0825	MT/cu.m	4.011	MT
6		HCCB masonry						
	a.	200mm	sq.m	1974.2	0.03694	MT/cu.m	72.927	MT
	b.	150mm	sq.m	1891.6	0.02650	MT/cu.m	50.127	MT
	c.	100mm	sq.m	299.36	0.01769	MT/cu.m	5.296	MT
7		Plastering work						
	a.	15mm cement plaster 1:6	sq.m	26.5	0.00430	MT/cu.m	0.114	MT
	b.	12mm cement plaster 1:6	sq.m	5078.21	0.00360	MT/cu.m	18.282	MT
	c.	15mm cement plaster 1:4	sq.m	1100.91	0.00654	MT/cu.m	7.200	MT
	d.	6mm cement plaster 1:4	sq.m	1541.9	0.00274	MT/cu.m	4.225	MT
	e.	15mm cement plaster 1:4	sq.m	3.44	0.00654	MT/cu.m	0.022	MT
	f.	20mm thick raised band	sq.m	159.63	0.0076	MT/cu.m	1.213	MT
8		40mm thick P.C.C (1:2:4) flooring	sq.m	409.38	0.01506	MT/cu.m	6.165	MT
9		20mm thick Marble stone flooring c.m 1:4	sq.m	1837.18	0.01351	MT/cu.m	24.820	MT
10		20mm thick marble cladding in c.m 1:4	sq.m	1193.36	0.01351	MT/cu.m	16.122	MT
11		Mosaic flooring (40mm thick)	sq.m	2054.24	0.01180	MT/cu.m	27.780	MT
12		20mm thick Granite skirting	sq.m	65.24	0.00360	MT/cu.m	0.235	MT
13		Coloured glazed tiles in C.M 1:3	sq.m	602.27	0.01044	MT/cu.m	6.288	MT
14		Plinth protection 1:3:6	sq.m	208.2	0.01100	MT/cu.m	2.290	MT
15		Full Brick masonry (1:4) – 5 th level	cu.m	8.57	0.09500	MT/cu.m	0.814	MT
16		Making bracket for Daishu in RCC 1:2:4	each	26	0.01440	MT/cu.m	0.374	MT
17		Traditional Daishu carving	each	52	0.02330	MT/cu.m	1.212	MT
18		Half brick masonry in c.m 1:4	sq.m	4	0.00950	MT/cu.m	0.038	MT
19		Neat cement punning	sq.m	256.59	0.00220	MT/cu.m	0.564	MT
20		Iron holdfasts embedded in C.C 1:3:6	each	994	0.00108	MT/cu.m	1.074	MT
							1089.822	MT
		Total for Main Building				or	21796.445	Bags

B		Lift:						
1	P/L C.C 1:4:8		cu.m	2.12	0.1700	M/T cu.m	0.360	MT
2	P/L RCC 1:1:5:3 in column		cu.m	7.68	0.40300	M/T cu.m	3.095	MT
3	P/L RCC 1:1:5:3 in wall		cu.m	15.94	0.40300	M/T cu.m	6.424	MT
4	P/L RCC 1:1:5:3 in beam and slab		cu.m	23.77	0.40300	M/T cu.m	9.579	MT
5	P/L 15mm thick plaster in cement mortar 1:4 in c		Sq.m	79.01	0.00654	M/T cu.m	0.517	MT
							19.975	MT
		Total for lift				or	399.506	bags

RICBL Versus Kuenleg Construction Enterprise

C.	Retaining Wall						
1	P/L CC 1:4:8	cu.m	15.9	0.17000	MT/ cu.m	2.703	MT
2	P/L RCC 1:1:5:3 in column	cu.m	84.82	0.40300	MT/ cu.m	24.182	MT
3	P/L RCC 1:1:5:3 in wall	cu.m	114.46	0.40300	MT/ cu.m	46.127	MT
						83.013	MT
	Total for Retaining Wall					1660.257	bags

D.	Site Development						
1	P/L C.C 1:4:8	cu.m	76.04	0.1700	MT/cu.m	12.927	MT
2	C.R.M Wall (1:4)	cu.m	95.41	0.114	MT/cu.m	10.877	MT
3	P/L C.C 1:3:6	cu.m	109.18	0.2200	MT/cu.m	24.020	MT
4	RRM (1:6)	cu.m	506.09	0.0825	MT/cu.m	41.752	MT
5	C.C 1:2:4 for water tank	cu.m	16.66	0.3213	MT/cu.m	5.353	MT
6	15mm cement plaster in C.M 1:6	sq.m	1157.36	0.00430	MT/cu.m	4.977	MT
7	HCCB masonry (150 mm) in c.m 1:4	sq.m	27.26	0.02650	MT/cu.m	0.722	MT
8	HCCB masonry (200mm) in c.m 1:4	sq.m	30.13	0.03694	MT/cu.m	1.113	MT
9	Full brick masonry in C.M 1:4	cu.m	56.398	0.09500	MT/cu.m	5.358	MT
10	15mm cement plaster in C.M 1:3	sq.m	25.2	0.00877	MT/cu.m	0.221	MT
11	Neat cement punning	sq.m	286.61	0.00220	MT/cu.m	0.631	MT
12	Sunk pointing to wall	sq.m	67.29	0.00760	MT/cu.m	0.511	MT
13	RCC 1:2:4	cu.m	5.3	0.3231	MT/cu.m	1.712	MT
14	40mm thick flooring 1:2:4	sq.m	956.63	0.01506	MT/cu.m	14.407	MT
15	15mm cement plaster in C.M 1:3	sq.m	14.68	0.00877	MT/cu.m	0.129	MT
16	Half brick masonry work (1:4) – flower bed	sq.m	46.84	0.00950	MT/cu.m	0.445	MT
						125.154	MT
	Total for Site Development					2503.084	bags

Total Cement Consumption	1317.965 MT
	26,359.29 bags

Annexure 3:
STATEMENT OF TIMBER CONSUMPTION FOR RICBL BUILDING CONSTRUCTION
FOR THE PERIOD BEYOND MAY 2001

S/No.	Description	quantity	Co-efficient	Quantity consumed
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RICBL Versus Kuenleg Construction Enterprise

1	Traditional cornice in m/c	23.96	0.07600	cu.m/m	1.821	cu.m
2	Centering & shuttering	176.93	0.01350	cu.m/sq.m	2.389	cu.m
3	Undressed wood work in mixed conifer	10.91	1.05	cu.m/cu.m	11.456	
4	M.C Eavesdboard	463.11	0.0061	cu.m/m	2.825	cu.m
5	19mm thick blue pine paneling on walls	195.65	0.022	cu.m/sq.m	4.304	cu.m
6	Dressed wood work in frames of doors and windows - mixed conifer	1.23	1.05	cu.m/cu.m	1.292	cu.m
7	Wooden flooring (40mm thick) in mixed conifer	377.15			0.000	cu.m
8	Wooden skirting 6" in M/C	23.17	0.0263	cu.m/sq.m	0.609	cu.m
9	Blue pine beading over paneling (50 x 20mm M/C)	1100.12	0.0011	cu.m/m	1.210	cu.m
10	Glazed shutter for windows – Mixed conifer	67.56	0.034	cu.m/sq.m	2.297	cu.m
11	Wooden staircase railing in M/C	15.8	0.019		0.300	cu.m
12	Removing/ remoulding and refixing wooden bed	210.46	0.0011	cu.m/m	0.232	cu.m
13	Wooden staircase in M/C	7.9	0.06	cu.m/m	0.474	cu.m
14	Dressed wood work in frames of doors and windows - champ wood	0.8	1.05	cu.m/cu.m	0.840	cu.m
15	38mm thick glazed shutter for windows – champ Wood	361.23	0.034	cu.m/sq.m	12.282	cu.m
16	Wooden flooring (40mm thick) in champ wood	30.75	0.04600	cu.m/sq.m	1.415	cu.m

Total Timber consumption	43.744 cu.m
	1562.298 cf.t

Annexure 4:

STATEMENT OF CEMENT CONSUMPTION FOR RICBL BUILDING CONSTRUCTION FOR THE PERIOD BEYOND JUNE 2001

1. Main Building:

S/No	Description	Unit	Quantity	Co-efficient	Quantity consumed	
1	Plain Cement Concrete:					
a.	1:2:4	cu.m	14.29	0.3213	MT/cu.m	4.591 MT
b.	1:3:6	cu.m	7.42	0.2200	MT/cu.m	1.632 MT
c.	1:4:8	cu.m	70.06	0.1700	MT/cu.m	11.910 MT

RICBL Versus Kuenleg Construction Enterprise

2		RCC 1:1:5:3						
	a.	Footing, base of columns						
	b.	Columns						
	c.	Walls						
	d.	Staircase						
	e.	Beams, suspended floors						
			cu.m	28.78	0.40300	MT/cu.m	11.598	MT
3		R.C.C 1:2:4	cu.m	0.25	0.3231	MT/cu.m	0.081	MT
4		Bhutan type cornice in RCC						
		- at floor one level	m	0	0.01387	MT/cu.m	0.000	MT
		- at floor two level	m	0	0.01367	MT/cu.m	0.000	MT
		- at floor four level	m	24.36	0.03033	MT/cu.m	0.739	MT
		- at floor five level	m	0	0.03033	MT/cu.m	0.000	MT
		- at Phana	m	24.36	0.00359	MT/cu.m	0.087	MT
5		RRM in C.M 1:6	cu.m	9.46	0.0825	MT/cu.m	0.780	MT
6		HCCB masonry						
	a.	200mm	sq.m	441.05	0.03694	MT/cu.m	16.292	MT
	b.	150mm	sq.m	383.65	0.02650	MT/cu.m	10.167	MT
	c.	100mm	sq.m	123.59	0.01769	MT/cu.m	2.186	MT
7		Plastering work						
	a.	15mm cement plaster 1:6	sq.m	26.5	0.00430	MT/cu.m	0.114	MT
	b.	12mm cement plaster 1:6	sq.m	3117.76	0.00360	MT/cu.m	11.224	MT
	c.	15mm cement plaster 1:4	sq.m	810.09	0.00654	MT/cu.m	5.298	MT
	d.	6mm cement plaster 1:4	sq.m	1040.17	0.00274	MT/cu.m	2.850	MT
	e.	15mm cement plaster 1:4	sq.m	3.44	0.00654	MT/cu.m	0.022	MT
	f.	20mm thick raised band	sq.m	159.63	0.0076	MT/cu.m	1.213	MT
8		40mm thick P.C.C (1:2:4) flooring	sq.m	409.38	0.01506	MT/cu.m	6.165	MT
9		20mm thick Marble stone flooring c.m 1:4	sq.m	760.83	0.01351	MT/cu.m	10.279	MT
10		20mm thick marble cladding in c.m 1:4	sq.m	46.02	0.01351	MT/cu.m	0.622	MT
11		Mosaic flooring (40mm thick)	sq.m	1514.95	0.01180	MT/cu.m	17.876	MT
12		20mm thick Granite skirting	sq.m	65.24	0.00360	MT/cu.m	0.235	MT
13		Coloured glazed tiles in C.M 1:3	sq.m	602.27	0.01044	MT/cu.m	6.288	MT
14		Plinth protection 1:3:6	sq.m	208.2	0.01100	MT/cu.m	2.290	MT
15		Full Brick masonry (1:4) – 5 th level	cu.m	8.57	0.09500	MT/cu.m	0.814	MT
16		Making bracket for Daishu in RCC 1:2:4	each	26	0.01440	MT/cu.m	0.374	MT
17		Traditional Daishu carving	each	52	0.02330	MT/cu.m	1.212	MT
18		Half brick masonry in c.m 1:4	sq.m	4	0.00950	MT/cu.m	0.038	MT
							126.980	MT
		Total for Main Building				or	2539.600	Bags

B		Lift						
1		P/L C.C 1:4:8	cu.m	2.12	0.1700	M/T	0.360	MT

RICBL Versus Kuenleg Construction Enterprise

					cu.m		
2	P/L RCC 1:1:5:3 in column	cu.m	7.68	0.40300	M/T cu.m	3.095	MT
3	P/L RCC 1:1:5:3 in wall	cu.m	15.94	0.40300	M/T cu.m	6.424	MT
4	P/L RCC 1:1:5:3 in beam and slab	cu.m	23.77	0.40300	M/T cu.m	9.579	MT
5	P/L 15mm thick plaster in cement mortar 1:4 in c	Sq.m	79.01	0.00654	M/T cu.m	0.517	MT
						19.975	MT
	Total for lift				or	399.506	bags

C.	Retaining Wall						
1	P/L RCC 1:1:5:3 in wall	cu.m	2.08	0.40300	MT/cu.m	0.838	MT
						0.838	
	Total for lift					16.765	bags

D.	Site Development						
1	P/L C.C 1:4:8	cu.m	51.89	0.1700	MT/cu.m	8.821	MT
2	C.R.M Wall (1:4)	cu.m	56.26	0.114	MT/cu.m	6.414	MT
3	P/L C.C 1:3:6	cu.m	109.18	0.2200	MT/cu.m	24.020	MT
4	RRM (1:6)	cu.m	68.69	0.0825	MT/cu.m	5.667	MT
5	C.C 1:2:4 for water tank	cu.m	16.66	0.3213	MT/cu.m	5.353	MT
6	15mm cement plaster in C.M 1:6	sq.m	1142.68	0.00430	MT/cu.m	4.914	MT
7	HCCB masonry (150 mm) in c.m 1:4	sq.m	27.26	0.02650	MT/cu.m	0.722	MT
8	HCCB masonry (200mm) in c.m 1:4	sq.m	30.13	0.03694	MT/cu.m	1.113	MT
9	Full brick masonry in C.M 1:4	cu.m	56.398	0.09500	MT/cu.m	5.358	MT
10	15mm cement plaster in C.M 1:3	sq.m	25.2	0.00877	MT/cu.m	0.221	MT
11	Neat cement punning	sq.m	286.61	0.00220	MT/cu.m	0.631	MT
12	Sunk pointing to wall	sq.m	67.29	0.00760	MT/cu.m	0.511	MT
13	RCC 1:2:4	cu.m	5.3	0.3231	MT/cu.m	1.712	MT
14	40mm thick flooring 1:2:4	sq.m	956.63	0.01506	MT/cu.m	14.407	MT
15	15mm cement plaster in C.M 1:3	sq.m	14.68	0.00877	MT/cu.m	0.129	MT
16	Half brick masonry work (1:4) – flower bed	sq.m	46.84	0.00950	MT/cu.m	0.445	MT
						80.437	MT
	Total for Lift					1608.740	bags

	228.231 MT
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RICBL Versus Kuenleg Construction Enterprise

Total Timber consumption	4,564.61 bags
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Annexure 5:

TIMBER PURCHASED FROM 18.07.1998 TO 26.04.1999 FOR RICBL BUILDING CONSTRUCTION

S/no	Supplier	Bill no.	Date	Quantity	Unit	Rate	Amount	Remarks
A	TIMBER							
1	Phubgyel Saw mill	1626	18.07.98	183.94	cft.	86.31	15875.86	Mixed Conifer
2	Phubgyel Saw mill	1690	18.11.98	134.32	cft.	86.31	11593.16	Mixed Conifer
3	Tobgay Sawmill	003	21.11.98	432.81	cft.	87.81	38005.05	Mixed Conifer
4	Tobgay Sawmill	004	21.11.98	249.64	cft.	87.81	21920.89	Mixed Conifer
5	Tobgay Sawmill	007	04.12.98	539.82	cft.	87.81	47401.59	Mixed Conifer
6	Tobgay Sawmill	008	04.12.98	240.3	cft.	87.81	21100.74	Mixed Conifer
7	Tobgay Sawmill	012	11.12.98	247.04	cft.	87.81	21692058	Mixed Conifer
8	Tobgay Sawmill	013	11.12.98	464.36	cft.	87.81	40775.45	Mixed Conifer
9	Tobgay Sawmill	014	16.12.98	366.92	cft.	87.81	32034.29	Mixed Conifer
10	Tobgay Sawmill	024	05.02.99	206.66	cf.t	87.81	18146.81	Mixed Conifer
11	Tobgay Sawmill	023	05.02.99	487.38	cf.t	99.9	48689.26	Blue pine
12	Army saw mill	233	12.02.99	168.15	cf.t	98.4	16545.96	Blue pine (DWBI)
13	Tashi Geleg	nil	16.01.99	98.2	cf.t			Mixed conifer
14	Tashi Geleg	nil	16.01.99	923.81	cf.t			Mixed conifer
15		45827		322.1	cf.t.			Mixed conifer. As per Forest Produce movement order issued by Range Officer, Paro.
16				170	cf.t.			Mixed conifer. As per Forest Produce movement order issued by Range Officer, Paro.
17				163	cf.t.			Mixed conifer. As per Forest Produce movement order issued by Range Officer, Paro.
18	Army Saw mill	230	10.02.99	222.09	cf.t.	120	26650.80	Champ (DWBI)
				222.41	cf.t.	98.4	21885.14	Blue pine
19	Army Saw mill	234	12.02.99	151.58	cf.t.	120	18189.60	Champ (DWBI)
20	Dhendup Wood Base Industry	1027&1022	01.03.99	272.429	cf.t.			Champ (DWBI)
21	Dhendup Wood Base Industry	1239,1040&1041	05.03.99	273.37	cf.t.			Champ (DWBI)
22	Dhendup Wood Base Industry	1084&1085	18.03.99	277.41	cf.t.			Champ (DWBI)
23	Dhendup Wood Base Industry	1352	31.03.99	239.44	cf.t.			Champ (DWBI)
24	Dhendup Wood Base Industry	1353&1354	31.03.99	187.18	cf.t.			Champ (DWBI)
25		12932	26.04.99	270.57	cf.t.			Champ. DFO, Wangdue div. Lobesa.
	Total Quantity		=	7514.929	cf.t			

RICBL Versus Kuenleg Construction Enterprise

Total Quantity of Mixed Conifer	=	4742.92 cf.t
Total Quantity of Blue pine	=	877.94 cf.t
Total Quantity of Champ	=	1894.069 cf.t
Total Timber Quality	=	<u>7514.929</u> cf.t

4.12. **Defendant Kuenleg Construction Enterprise submission on 31.8.2007 to the High Court in English:**

May I take this opportunity to counter point by point, the allegations made by RICBL vide letter No. RICBL/KCE-RE/TH/619 dated 22nd August 2007.

1.RICBL Point 1

As stated in my earlier submissions, the construction of buildings and retaining wall at Phuentsholing and water tank at Thimphu **were not awarded to KCE as compensation for delays** in the commencement of the RICBL Head Office project at Thimphu. Justifications along with documentary evidences authenticating this statement have been submitted to JVC and the Dzongkhag Thrimkhang.

2.RICBL Point 2

KCE requested RICBL to make the payment of Nu.3,325,313.78 as was decided by the JVC. May I reiterate that this amount was **due to KCE by RICBL for work completed** and handed over as **verified by the JVC and accepted by the RICBL**. However, RICBL refused to make this payment because of claims made by KCE for cement and timber cost escalation during the initial delay period. RICBL never inquired whether the payment of the above amount plus the cost difference of the cement would be acceptable to KCE. RICBL's statement "this was accordingly intimated through phone to KCE by the then CEO but KCE again did not agree with the decision" is **incorrect**. RICBL should produce **documentary evidence to validate this statement to the Hon'ble Court** for review. (Please refer to Annexure I for documentary evidence)

3.RICBL Point 3

In context to RICBL's statement regarding scheduling of work, may I inform the Hon'ble Court that KCE was **unable to comply** with the original work **schedule** due to disruption caused by the six months delay in handing over the site to KCE by RICBL. With regard to RICBL's accusation on

maintenance of sufficient cement stock, a copy of the KCE's cement stock register was submitted to the Dzongkhag Thrimkhang, which will fully negate this statement. May I add here that the cement in stock for slab casting was being utilized for other works during monsoon months. Cement was being supplied on a regular basis by our deputed cement agent – this supply chain was disrupted by road blocks between Thimphu and Phuentsholing. To offset this disruption, a proposal to source this shortage of cement from Sarpang was put up to the RICBL management by their Project Engineer. As far as we are aware, there was no response to the proposal. (Please refer to Annexure II for documentary evidence)

I submit that a proper hindrance book was not maintained by both RICBL and KCE, but all documentary evidence regarding hindrances, delay in completion time and appropriate time extension awarded were submitted. **Both JVC and the Dzongkhag Thrimkhang found the delay was not attributable to KCE, refuting RICBL's statement that "While the following were acknowledged as hindrances, the Corporation at the time of considering time extension for completion of the project, it was done with the sole motive of assisting the contractor, and proving this statement totally without foundation. As substantiated by KCE to the JVC and the Dzongkhag Thrimkhang, delay in the completion of the project was not just due to the natural hindrances stated by RICBL but also due to delay in RICBL handing over the necessary drawings on time, taking timely decisions, additional works and changes in the project. Further, the contract for lift, computer cabling systems and central heating system that was awarded to JCIPL added to the hindrances. (Evidence for the same were already submitted)**

4. RICBL Point 4

The minutes of the meeting held at RICB head office building on 1st March 2002 verifies that the project was **still under implementation** as per the **requirement** of the **RICBL**. Despite our repeated pleas through correspondences and in site meetings for provision of drawings/instructions well in advance for proper scheduling of work plan, RICBL never adhered to any set plans. Instead RICBL kept on adding on additional items to be constructed or made. It is logical that additional works mean additional time is needed.(Please refer to Annexure III for documentary evidence)

5.RICBL Point 5

5.i)b) RICBL waived off 10% interest on the mobilization advance as requested by KCE to **compensate the “demurrage”** evolved due to delay in commencement of the work. However, interest on the mobilization advance was paid after commencement of the work from 1st November 1998 as per RICBL’s requirement.(Please refer to Annexure IV for documentary evidence)

5.i)c) Payment of interest on the performance guarantee bond issued from BDFC was also a compensation for the **“demurrage”** evolved due to delay by RICBL in providing the drawings and site for commencement of the work.(Please refer to Annexure IV for documentary evidence)

5.d) 75% secured advance was requested by KCE as **compensation for demurrage incurred by KCE on grounds of delay for the mobilization of manpower and materials.**(Please refer to Annexure V for documentary evidence)

5.i)e) As submitted in my letters to the Hon’ble Court, I would like to request the RICBL to present the documentary evidence to verify their statement that the additional works were given as compensation for the initial delay. I believe that the **“good faith and trust”** that existed between KCE and RICBL was jeopardized when **RICBL did not uphold** their own **written commitment** and verbal promises. Therefore it is clearly evident that any “breach of fiduciary relation” was on the part of the RICBL.(Please refer to Annexure VII for documentary evidence)

5.ii)a) As per clause XIII - Payment to contractor of the Contract Terms and Conditions”, payment has to be made **within twenty days of submission** of running bills. All advances taken against running bills had to be requested since **RICBL did not verify and settle KCE’s** running bills within the **stipulated time period** of twenty days.(please refer to Annexure VIII for documentary evidence)

5.ii)b) Since the **delay** in the completion of the works was **attributed to RICBL by both the JVC and the Dzongkhag Thrimkhang**, the question of imposing liquidity damage on KCE should not even arise. In this context, may I report that the contract document does not state that KCE shall not

claim liquidated damage on account of delays found attributable to RICBL. As a result, I would now like to request the Hon'ble Court to **uphold the judgment passed by the Dzongkhag Thrimkhag** on account of **liquidated damages payable to KCE** by RICBL for the sixteen months delay period.

5.ii)c) The deduction of 5% security deposit from every running bill was waived off **in substitution of performance bond** submitted by KCE valid till the expiry of the defect liability period.(Please refer to Annexure IX for documentary evidence)

5.ii)d) All changes in specifications were suggested by KCE based on the non-availability of the materials specified in the BoQ and was approved by RICBL. This was done to **facilitate project implementation by both parties** and as such cannot be considered as RICBL's assistance to KCE.(Please refer to Annexure X for documentary evidence)

5.ii)e) Against RICBL dictated rate of Nu.138.17 per m³, Nu.146.69 per m³ was the negotiated rate for disposal of surplus and unwanted excavated earth beyond fifty meters to a site designed by the City Corporation. This work was not specified in the BOQ and had to be negotiated as an **additional/new item**. Thus, payment made on a negotiated rate for actual work done cannot be termed as assistance.

5. ii) f&g) As the client, any assistance from RICBL in acquiring the sanction order for 16,000/- cft of champ was a requirement. This **did not bear any financial implications** on either party. While the approval was granted by DoF, the extreme scarcity of champ in the open market, led to KCE's suggestion to change the specification to mixed conifer for doors, windows and flooring. Again, this was a proposal made by KCE and accepted by RICBL based on the circumstances and keeping the overall progress of the project in mind. This should not be considered as assistance from RICBL as due to this change, the project benefited.

4.ii) h) Please refer to point 5 i) d)

RICBL Point 6

As submitted in my letters to the JVC, Dzongkhag Thrimkhag and the Hon'ble Court, I would like to report that the **work order** was issued to

KCE on 1st May 1998. With the subsequent release of the mobilization advance and submission of the performance guarantee bond, KCE's **actual contract period** commenced from **1st June 1998**. Therefore, the **thirty month** construction period ended on **30th November 2000**.

May I report to the Hon'ble Court that the **compensation and considerations** mentioned by RICBL have been **refuted repeatedly with appropriate supporting documents and evidences**; not only in this letter but in KCE's submission to the JVC, Dzongkhag Thrimkhang and the Hon'ble Court. The Hon'ble Court may kindly refer point 5 i) b,c,d,e and 5ii) a) b) c) d) e) f) g) and h). KCE would now like to strongly insist that the RICBL submit **documentary evidence** that can **prove KCE accepted** the additional work as **compensation** for the delay.

Your Honour, KCE accepts that the construction site and the drawings were handed over only on 9th November 1998, six months and eight days after the award of the contract. As per the tender terms and conditions, our **tender rates are valid for a period of ninety days** after submission of tender document within which the contract is awarded. The construction period as stipulated by the client comes into effect after one month of award of contract. Although the work order was issued in May 1998 and site handed over in November 1998, RICBL insists the thirty months period be reckoned from November 1998. In this context, KCE would like to raise a hypothetical question. **If the project was delayed further by a year or more, would KCE be bound to honour the contract for another thirty months beyond that period or would rates be re-negotiated?** KCE believes that the rates would be renegotiated. Therefore because of the delay in the commencement of the work, KCE requested for the cost difference of cement and timber only, although KCE could have asked for **re-negotiation of all the items**. Based on the assurances made by RICBL, KCE proceeded with the project. Upon completion and submission of the final bill, KCE requested RICBL to honour their own commitment as per evidences submitted. I would like to report to the Hon'ble Court that at that point, KCE was willing to claim only the cost of cost escalation towards cement and timber, while forgoing other escalation claims. However, since RICBL did not honour their own written commitment even after repeated reminders, KCE was compelled to take legal action. As a result claims based on cost escalation for the delay period of sixteen months plus interest applicable, the

payment due to KCE from its final bill (Nu.3,325,313.78 as per JVC decision), plus the interest applicable based on contract terms and conditions (Clause XIII – final payment for the work shall be made within three months from the date of completion certificate recorded by the engineer) were made. In addition, KCE would now like to request the Hon'ble Court to kindly **uphold the independent judgment passed by the Dzongkhag Thrimkhag on liquidated damages payable to KCE.**(Please refer to **Annexure XI for documentary evidence**)

As per the order of the Hon'ble Court, the statement of procurement of timber and cement after the expiry of the thirty month construction period (1st June 1998-30th November 2000), was submitted. May I report that KCE's claim for escalation is not based just for timber and cement but on the whole works executed and bills submitted after the construction period of thirty months.

I would like to take this opportunity to submit that in RICBL's appeal to the Hon'ble Court, point no. 1 of the letter stated that the **justifications, clarifications and evidences** provided by the RICBL were not considered by the Dzongkhag Thrimkhag. However, the subsequent submissions of the RICBL to the Hon'ble Court **does not raise** this pertinent issue. I believe that it is in the interest of the Hon'ble Court and the case that the **RICBL re-submit the unconsidered evidences** that could facilitate prompt decision making.

Further, I would like to report to the Hon'ble Court that KCE is indeed **"unfortunate"** that an esteemed institution like the **RICBL** would **contravene** their own **written commitments** to KCE and refuse to settle bills for a building that was handed over five and half years ago and is currently under use by RICBL. This is in spite of KCE promptly attending to any negligible defects as and when asked for by RICBL.

During the course of the dispute, KCE has given full cooperation and submitted all relevant evidences to expedite the case. **While all evidence, supporting documents and justifications have been submitted,** the RICBL **persists in raising the same issue with no new evidences or justifications** to contest the judgment of the JVC and the Dzongkhag Thrimkhag. As a private citizen, it is my earnest hope that the Hon'ble

Court will understand and consider the **opportunity costs I have foregone, value of time lost in addition to the mental torture the case has caused me in the last five and half years.** In light of this, I would like to sincerely request the Hon'ble Court for a speedy and just decision as the obstacles being created by RICBL is not acceptable.

Lastly but not the least, it is my ardent request that the Royal Court of Justice only take into account statements supported by authentic documentary evidence. These statements should be based on my claims filed with the Thimphu Dzongkhag Thrimkhag as stated under:-

1. Costs incurred during joint verification.
2. Outcome of JVC amounting to Nu. 3325,313.78
3. Claims of cost escalation beyond the specified contract period.
4. Claims on interest.
5. Claims of additional overhead and infrastructure cost.

- 4.13. **Appellant RICBL submission on 5.9.2007 to the High Court in English:**
We beg to have the honour to submit the following in response to the submissions and allegations made by M/s. KCE vide his letter dated 31st August 2007.

1. KCE's point I.

As stated in my earlier submissions, the construction of buildings and retaining wall at Phuentsholing and water tank at Thimphu were not awarded to KCE as compensation for delays in the commencement of the RICBL Head Office project at Thimphu. Justifications along with documentary evidences authenticating this statement have been submitted to JVC and the Dzongkhag Thrimkhag.

Our response.

We once again beg to reiterate our submission made to the Hon'ble Court vide our letter RICBL/HQ-RE/207/6410 dated 4th June 2007, (point 5), RICBL/KCE-RE/TH/2007 dated 6th August 2007 (point 5, a) and RICBL/KCE-RE/Th/619 dated 22.08.07 (point 5, I(e) that the additional works were considered to KCE as compensation on utmost good faith and trust. His denial now is a sheer breach of the strong fiduciary relation that existed between us then.

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A copy of the note by the then Managing Director (Dasho Sangay Khandu) present Secretary of the National Land Commission, dated 12.08.98, deciding to award the construction of two buildings at Phuentsholing to M/s. KCE, based on the request of KCE, has already been submitted to the Hon'ble Court . To quote some sentences of the note – Para 2, quote” M/s. Kuenley Construction, who has been awarded the work of construction of the RICB head office building at Thimphu, has made a request to award the contract to him on the same terms and conditions as that of the three contractors. His contract at Thimphu has been delayed due to non-receipt of the drawings from the City Corporation at Thimphu” unquote.

Point 5 of the note, quote “ Since the contractor in question is already prepared for immediate execution, his resources for Thimphu work could be diverted till the head office works in Thimphu takes off” unquote.

To support this note, we are also attaching RICBL's letter No. RICB/PLG/RE/98/390 dated 13th August 1998 by our General Manager, Mr. Gyem Tshering to KCE, awarding the construction work of one class III and one class IV building at Phuentsholing, based on his letter dated 1st June 1998.

(Copy of the note is again attached together with above referred letter of Mr. Gyem Tshering for ready reference and as evidence).

We once again beg to submit to the Royal Court of Justice that it can be seen from the above that there was no other reason for awarding the works directly to him than to compensate for the initial delay, when we could have easily awarded the contract to the previous contractors who were already engaged in similar building construction in Phuentsholing.

The existence of good faith and trust and consideration of additional works as compensation for the initial delay can be amply validated by the two officials (Dasho Sangay Khandu and Mr. Gyem Tshering), who were directly involved in the project then. We request the Royal Court of Justice to kindly cross verify the above facts with them.

The fact that M/s. KCE now refutes our submission and challenges the RICBL to prove with specific written evidence defeats all norms of trust and

good faith that people can have on each other. It is also a warning to the Corporation in particular and entire society in general that people cannot be trusted on the basis on relation, so called good faith and fiduciary relation that may exist at any point of time.

2. KCE's point 2.

KCE requested RICBL to make the payment of Nu.3,325,313.78 as was decided by the JVC. May I reiterate that this amount was due to KCE by RICBL for work completed and handed over as verified by the JVC and accepted by the RICBL. However, RICBL refused to make this payment because of claims made by KCE for cement and timber cost escalation during the initial delay period. RICBL never inquired whether the payment of the above amount plus the cost difference of the cement would be acceptable to KCE. RICBL's statement this was accordingly intimated through phone to KCE by the then CEO but KCE again did not agree with the decision is incorrect. RICBL should produce documentary evidence to validate this statement to the Hon'ble Court for review.

Our response

The detailed correspondences between RICBL and KCE on the above matter and subsequent commitment to pay the cost escalation for cement amounting to Nu. 872,588.40 over and above the amount of Nu.3,325,313.78, recommended by JVC in final settlement of claim, by the then CEO, Mr. Lamkey Tshering has already been submitted to the Royal Court of Justice during our submission made on 22nd August 2007 vide of our letter RICBL/KCE-RE/Th/619. Unfortunately what KCE pretends to overlook is the decision of the JVC members, duly endorsed by Major Kuenley Dorji (Retd.) too during the 4th JVC meeting held on 14th February 2005, that RICBL will not be involved in the perusal for the cost escalation. Therefore his claim for cost escalation for cement and timber directly with the RICBL management was unjustified and could not be entertained by RICBL. KCE, with the support of the other members of the JVC committee, should have taken up the matter separately.

KCE's denial of the commitment made by the then CEO, Mr. Lamkey Tshering in line with the Boards directives to pay cost escalation for cement amounting to Nu.872,588.40 in addition to the recommended amount of Nu.3,325,313.78 by JVC as final settlement over the phone is again sheer

breach of trust and faith. The Royal Court of Justice may kindly verify the fact from Mr. Lamkey Tshering.

3. KCE's point 3.

In context to RICBL's statement regarding scheduling of work, may I inform the Hon'ble Court that KCE was unable to comply with the original schedule due to disruption caused by the six months delay in handing over the site to KCE by RICBL. With regard to RICBL's accusation on maintenance of insufficient cement stock, a copy of the KCE's cement stock register was submitted to the Dzongkhag Thrimkhag, which will fully negate this statement. May I add here that the cement in stock for slab casting was being utilized for other works during monsoon months. Cement was being supplied on a regular basis by our reputed cement agent – this supply chain was disrupted by road blocks between Thimphu and Phuentsholing. To offset this disruption, a proposal to source this shortage of cement from Sarpang was put up to the RICBL management by their project engineer. As far as we are aware, there was no response to the proposal.

I submit that a proper hindrance book was not maintained by both RICBL and KCE, but all documentary evidence regarding hindrances, delay in completion time and appropriate time extension awarded were submitted. Both JVC and the Dzongkhag Thrimkhag found the delay was not attributable to KCE, refuting RICBL's statement that "while the following were acknowledged as hindrances, the Corporation at the time of considering time extension for completion of the project, it was done with the sole motive of assisting the contractor, and proving this statement totally without foundation. As substantiated by KCE to the JVC and the Dzongkhag Thrimkhag, delay in the completion of the project was not just due to the natural hindrances stated by RICBL but also due to delay in RICBL handing over the necessary drawings on time, taking timely decisions, additional works and changes in the project. Further, the contract for lift, computer cabling systems, and internal heating system that was awarded to JCIPL added to the hindrances.

Our response

We do not understand as to how KCE can argue that the original work schedule could not be maintained due to disruption caused by the initial six

months delay in handing over the site when the approved drawings were not even handed over. We would like to request the Royal Court of Justice to kindly record that the site and the drawings could be handed over only on 9th November 1998 and it was explicitly intimated to him that the project commencement date would be reckoned from the date the site is handed over. His non-contention on the project commencement date at that time and his claims now proves that his intentions were all premeditated. It may kindly be recorded that only after repeated verbal and written follow up from our side, KCE submitted their work schedule on 9th August 1999.

While KCE may have maintained their cement stock register, the inadequacy of cement for our Office building project can be substantiated from our repeated correspondences on the inadequacy of cement stock at site. KCE also accepts that cement was used in other work (possibly works other than RICBL building project) and that their supply chain of cement was disrupted by road blocks between Thimphu and Phuentsholing. The fact that there was delay in casting the slab only proves that there was shortage of cement, which is the main component for slab casting. Delay due to shortage of materials and disruption of the work schedule thereby is the sole responsibility of the contractor. RICBL is not concerned with regard to the source of materials but the fact that there was inadequate stock of cement, which disrupted work, goes to prove their poor material management, which caused delay.

Our project engineer may have submitted a proposal for alternative source to the shortage of cement faced by KCE though they were not obliged to do so. If it was not with the intention to help KCE and to keep the project work with the time schedule, there can be no other reason. As highlighted above, we could have been least bothered about the source of materials and how KCE keeps with the schedule. It is ironical that KCE took it to be the Corporation's obligation and even demanded extra charges from the Corporation to procure cement from Sarpang. The management could not entertain such dictatorial terms of the contractor and declined the proposal.

JVC in its findings may not have attributed the delay to KCE but as submitted in our earlier submissions, it has also never been referred that the delay was on the part of RICBL. Realizing the fact that there were many other issues attributable to both the parties that attributed to the delay, the

JVC arrived at the item, quantity and cost difference in its many rounds of meetings and decided that RICBL pay an extra sum of Nu. 3,325,313.78, which was agreed by both parties. Circumstances that caused delay from the contractor's side have been submitted to the Royal Court of Justice and will be further produced during the evidence stage if the Court deems necessary.

4. KCE's point 4.

The minutes of the meeting held at RICB head office building on 1st March 2002 verifies that the project was still under implementation as per the requirement of the RICBL. Despite our repeated pleas through correspondences and in site meetings for provision of drawings/instructions well in advance for proper scheduling of work plan, RICBL never adhered to any set plans. Instead RICBL kept on adding on additional items to be constructed or made. It is logical that additional works mean additional time is needed.

Our response

We would like to draw KCE's attention to Clause X of the contract document "Alterations, Additions and Substitution of Works" and clause X of the Terms and Condition "Architectural and Structural drawings/plans of work may be subject to minor change in future, if required". As per the normal practice in any construction industry, details of designs and drawings are normally given to the contractor depending on the progress of the work and site condition. Alteration, Additions and Substitution of work to the original specifications are made as per the requirement of the client. It is the responsibility of the client to grant adequate time extension for such addition, alteration and substitution of works, which RICBL considered. Further payment for such alteration, addition and substitution of work has also been made to KCE. If KCE had made proper work schedule and adhered to the schedule with adequate material and manpower, the additional works could also have been completed well on time.

It is very clear now that KCE had all along planned this tactics to jeopardize the project work and then demand for compensation. The Royal Court of Justice may kindly take note of such contractors who will not deliver as per the contract and yet demand compensation. He has always demanded and he had his ways, which has encouraged him to do this. If not taken to task, such

contractor will degenerate the construction industry and the Bhutanese society.

5. *KCE's point 5, i (b,c, d)*
- b) *RICBL waived off 10% interest on the mobilization advance as requested by KCE to compensate the demurrage evolved due to delay in commencement of the work. However, interest on the mobilization advance was paid after commencement of the work from 1st November 1998 as per RICBL's requirement.*
 - c) *Payment of interest on the performance guarantee bond issued from BDFC was also a compensation for the demurrage evolved due to delay by RICBL in providing the drawings and site for commencement of the work.*
 - d) *75% secured advance was requested by KCE as compensation for demurrage incurred by KCE on grounds of delay for the mobilization of manpower and materials.*

Our response

We do not wish to make further submissions on the above points as KCE acknowledges the considerations made under these points, in reference to our submission made vide our letter RICBL/KCE-RE/TH/619 dated 22nd August 2007, as compensations for the demurrage evolved due to the delay in handing over of the drawings and site and commencement of work. The fact that KCE has accepted the above considerations made by the RICBL is prima-facie that KCE has been adequately compensated for the initial delay of six months. Hence we request the Royal Court of Justice to kindly totally eliminate the issue of delay of initial 6 months brought under contention by KCE.

6. *KCE point 5, i (e)*
- As submitted in my letters to the Hon'ble Court, I would like to request the RICBL to present the documentary evidence to verify their statement that the additional works were given as compensation for the initial delay. I believe that the good faith and trust that existed between KCE and RICBL was jeopardized when RICBL did not uphold their own written commitment and verbal promises. Therefore it is clearly evident that any breach of fiduciary relation was on the part of the RICBL.*

Our response

As submitted in point 1 above.

7. *KCE point 5 ii, (a)*

As per clause XIII - Payment to contractor of the Contract Terms and Conditions. Payment has to be made within twenty days of submission of running bills. All advances taken against running bills had to be requested since RICBL did not verify and settle KCE's running bills within the stipulated time period. Of twenty days.

Our response

Consequent upon submission of bills, the quantity, number of items of the schedule had to be verified and hence there could be some delay. But RICBL always considered advances against the bills submitted so as not to hamper their work.

8. *KCE's point 5 ii (b)*

Since the delay in the completion of the works was attributed to RICBL by both the JVC and the Dzongkhag Thrimkhang, the question of imposing liquidity damage on KCE should not even arise. In this context, may I report that the contract document does not state that KCE shall not claim liquidated damage on account of delays found attributable to RICBL. As a result, I would now like to request the Hon'ble Court to uphold the judgment passed by the Dzongkhag Thrimkhang on account of liquidated damages payable to KCE by RICBL for the sixteen months delay period.

Our response

In contradiction to the submission made by KCE, we would like to submit that JVC has never explicitly attributed RICBL for delay. KCE may point out to the Royal Court of Justice the section/clause of the contract document, which the proprietor, Major (retd.) Kuenley Dorji, has endorsed, which states that the contractor can claim for liquidity damage. Clause III of the contract document stipulates that the corporation may levy liquidity damage on the contractor and since the delays were not caused by RICBL based on the evidences already submitted, it is irrational and illogical that the liquidity damages should be levied on RICBL.

9. *KCE's point 5 ii (c)*

The deduction of 5% security deposit from every running bill was waived off in substitution of performance bond submitted by KCE valid till the expiry of the defect liability period.

Our response

We do not understand why KCE now pretends not to understand the clause on Security deposit and Performance Bond. In actual practice the Performance Bond and the Security Deposit has different purposes. Under Clause II - Security deposit is meant to cover the defect liability period of twelve months from the actual date of completion of the work. On the other hand the Performance Bond under clause XXI is for the guarantee for execution and fulfillment of the contract. His submission to the Hon'ble Court is a distortion of the fact and denial that waiving off of deducting 5% security deposit from the running bills in the initial stages were special assistance to KCE which also forms part of the compensation made for the initial delay.

10. *KCE's point 5 ii (d,e,f,g & h)*

d) *All changes in specifications were suggested by KCE based on the non-availability of the materials specified in the BoQ and was approved by RICBL. This was done to facilitate project implementation by both parties and as such cannot be considered as RICBL's assistance to KCE.*

e) *Against RICBL dictated rate of Nu.138.17 per m³, Nu.146.69 per m³ was the negotiated rate for disposal of surplus and unwanted excavated earth beyond fifty meters to a site designed by the city Corporation. This work was not specified in the BOQ and had to be negotiated as an additional/new item. Thus, payment made on a negotiated rate for actual work done cannot be termed as assistance.*

f&g) *As the client, any assistance from RICBL in acquiring the sanction order for 16000/- cft of champ was a requirement. This did not bear any financial implications on either party. While the approval was granted by DoF, the extreme scarcity of champ in the open market, led to KCE's suggestion to change the specification to mixed conifer for doors, windows and flooring. Again, this was a proposal made by KCE and accepted by RICBL based on the circumstances and keeping*

the overall progress of the project in mind. This should not be considered as assistance from RICBL as due to this change, the project benefited.

Our response

The above claim made by RICBL, which has also been accepted by KCE, is clear evidence that all our considerations were made to assist KCE. KCE's submission that requests were made by him and approved by RICBL itself proves that RICBL went out of its way just to assist KCE. RICBL could have refused his requests and insisted on complying with the original BOQ and other terms and conditions, which could have further hindered the progress of the construction work for which KCE would have been directly responsible for the delay. RICBL has compromised in the quality of the project by accommodating the many requests made by KCE. KCE now pretends to be oblivious of the above considerations and forgets to what extent RICBL went to accommodate in every possible ways and comply with all his requests.

KCE's claims that our assistance in acquiring sanction order for 16000cft of champ wood did not bear any financial implication does not hold good. The use of manpower, other resources and time spent on the particular work by the RICBL culminates to loss of opportunity cost. It is very sad that when RICBL has time and again entertained the request of KCE, the KCE instead of being thankful, has come out with such denial which are unimaginable. Instead of being grateful, such is the regretful attitude taken by KCE now.

11. KCE's point 6.

As submitted in my letters to the JVC, Dzongkhag Thrimkhang and the Hon'ble Court, I would like to report that the work order was issued to KCE on 1st May 1998. With the subsequent release of the mobilization advance and submission of the performance guarantee bond, KCE's actual contract period commenced from 1st June 1998. Therefore, the thirty month construction period ended on 30th November 2000.

May I report to the Hon'ble Court that the compensation and considerations mentioned by RICBL have been refuted repeatedly with appropriate supporting documents and evidences; not only in this letter but in KCE's submission to the JVC, Dzongkhag Thrimkhang and the Hon'ble Court. The Hon'ble court may kindly refer point 5 i) b,c,d,e,f.g and h. KCE would now

like to strongly insist that the RICBL submit documentary evidence that can prove KCE accepted the additional work as compensation for the delay.

Your Honour, KCE accepts that the construction site and the drawings were handed over only on 9th November 1998, six months and eight days after the award of the contract. As per the tender terms and conditions, our tender rates are valid for a period of ninety days after submission of tender document within which the contract is awarded. The construction period as stipulated by the client comes into effect after one month of award of contract. Although the work order was issued in May 1998 and site handed over in November 1998, RICBL insists the thirty months period be reckoned from November 1998. In this context, KCE would like to raise a hypothetical question. If the project was delayed further by a year or more, would KCE be bound to honour the contract for another thirty months beyond that period or would rates be re-negotiated? KCE believes that the rates would be renegotiated. Therefore because of the delay in the commencement of the work, KCE requested for the cost difference of cement and timber only, although KCE could have asked for re-negotiation of all the items. Based on the assurances made by RICBL, KCE proceeded with the project. Upon completion and submission of the final bill, KCE requested RICBL to honour their own commitment as per evidences submitted. I would like to report to the Hon'ble Court that at that point, KCE was willing to claim only the cost of cost escalation towards cement and timber, while forgoing other escalation claims. However, since RICBL did not honour their own written commitment even after repeated reminders, KCE was compelled to take legal action. As a result claims based on cost escalation for the delay period of sixteen months plus interest applicable, the payment due to KCE from its final bill (Nu.3,325,313.78 as per JVC decision), plus the interest applicable based on contract terms and conditions (Clause XIII – final payment for the work shall be made within three months from the date of completion certificate recorded by the engineer) were made. In addition, KCE would now like to request the Hon'ble Court to kindly uphold the independent judgment passed by the Dzongkhag Thrimkhag on liquidated damages payable to KCE.

I would like to take this opportunity to submit that in RICBL's appeal to the Hon'ble Court, point no. 1 of the letter stated that the justifications and evidences provided by the RICBL were not considered by the Dzongkhag

Thrimkhang. However, the subsequent submissions of the RICBL to the Hon'ble Court does not raise this pertinent issue. I believe that it is in the interest of the Hon'ble Court and the case that the RICBL re-submit the unconsidered evidences that could facilitate prompt decision making.

During the course of the dispute, KCE has given full cooperation and submitted all relevant evidences to expedite the case. While all evidence, supporting documents and justifications have been submitted, the RICBL persists in raising the same issue with no new evidences or justifications to contest the judgment of the JVC and the Dzongkhag Thrimkhang. As a private citizen, it is my earnest hope that the Hon'ble Court will understand and consider the opportunity costs I have foregone, value of time lost in addition to the mental torture the case has caused me in the last five and half years. In light of this, I would like to sincerely request the Hon'ble Court for a speedy and just decision as the obstacles being created by RICBL is not acceptable.

Our response

In continuation to our submission and justifications made to the Royal Court of Justice vide our letter RICBL/KCE-RE/TH/619 dated 22nd August 2007, we would once again like to submit that the actual contract period and the date of commencement of work should be reckoned from 9th November 1998 in contradiction to KCE's claim to commence from 1st June 1998 because of the following reasons.

- It was communicated to KCE vide our letter RICB/RE/98/391 dated 13th August 1998 that the actual date of commencement of work shall be reckoned from the day we hand over the site and the drawings and the site and the drawings were handed over only on 9th November 1998.

- KCE did not have any contention on this communication then and executed the work. Hence there is no justification for this claim. Otherwise KCE should have responded immediately with his contentions or grievances, which could have been redressed appropriately then. It would be out of context to bring this issue now.

- Adequate compensation for the initial delay has been made by RICBL and KCE has also accepted in his submission to the Hon'ble Court vide his letter

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dated 31st August 2007, except for the direct awarding of three additional construction works, which can be cross verified with Dasho Sangay Khandu, the then Managing Director and Mr. Gyem Tshering, General Manager of RICBL.

- The KCE's contention that the contract period be commenced from 1st June 1998 is baseless as the site and drawings were handed over only on 9th November 1998.

M/s. KCE now argues that their tender rates were valid for a period of ninety days only after submission of tender. If it be so, KCE knew that there was delay of six months and could have comprehended the consequences of such delay. Yet KCE went ahead to execute the work without any contention knowing fully well about the delay and even when it was communicated to him that the date of commencement of work shall be reckoned from the date we hand over the site and drawings. In this context, RICBL would also like to raise a hypothetical question to KCE. Despite knowing that the project and the contract was delayed and that it warranted re-negotiation of the rates, why did KCE decide to proceed with the contract work when the contract document executed was on "No Cost Escalation Basis. Is it not logical and rational that KCE should have rejected the contract altogether on ground of delay at that point of time?

RICBL can see only one reason for KCE's non-contention then;

- KCE was adequately compensated for the delay in handing over the site and was fully satisfied with the compensation package graciously accorded to him by RICBL and also of the fact that there existed a very strong bond of trust and fiduciary relation between the RICBL management and KCE then.

OR

- All their claims and accusations now, their denial of compensations and consideration by the RICBL were all premeditated.

KCE's claim now that the RICBL had assured to pay for cost escalation of timber and cement cannot be substantiated. Except for cost escalation of cement, cost escalation of timber was never assured by the management.

KCE may submit evidence of RICBL committing to pay for cost escalation of timber so that the commitment can be reviewed again.

As regard to KCE's submission that RICBL submit unconsidered evidences, the Royal Court of Justice may kindly note that the RICBL has appealed to the Higher Court as our earlier justifications, clarifications; evidences submitted to the Lower Court were not considered adequately and therefore are being resubmitted to the Hon'ble Court for further review.

We would like to submit to the Royal Court of Justice that despite unconditional considerations and compensations to KCE, for which we are now subjected to Audit objections, we have unnecessarily been dragged into a legal battle by KCE. RICBL, as a reputed institution, would also not like to enter into such unwarranted legal proceedings. While we would like to ensure that payments due and eligible are given to the contractor, we are also responsible to safeguard the interest of our share holders including the Royal Government of Bhutan as a Major shareholder. It is not only KCE, but RICBL also have been subjected to tension, has forgone opportunity costs and lost valuable time. As an institution rendering public service, this unwarranted legal battle has caused much loss directly and indirectly to the Corporation. If such claims are entertained, it may create precedence and public institutions (which deal in public money) may stand to lose directly and the society - indirectly. Therefore, once and for all, we request the Royal Court of Justice to kindly ensure that fair and just decision is delivered so that such unjustified claims do not become part of our esteemed contractor's agenda in the years to come.

For the kind information of the Hon'ble Court, we would like to submit here that KCE has declared in the Contractors Declaration Form - quote "The agreement clauses and terms and conditions have been gone through by me and I undertake to abide by all the necessary provisions covered therein". unquote. And in the Acceptance of Tender - quote "The agreement clauses and terms and conditions have been examined by me and I undertake to abide by all the necessary provisions covered therein". unquote. They have also further qualified as follows in the Contractors Declaration Form - quote "I hereby offer to do the works for Royal Insurance Corporation of Bhutan on the rates quoted by me against each item in the Bill of Quantities" unquote.

We request the Royal Court of Justice to kindly honour the contract document executed between the Corporation and the Contractor, as the contractor now tries to find ways and means to make extra financial gain through premeditated actions. We beg to submit to the Wisdom of the Royal Court of Justice.

4.14. **Defendant Kuenleg Construction Enterprise submission on 5.9.2007 to the High Court in English:**

This is in response to the letter of Mr. Lamkey Tshering dated August 31st, 2007 addressed to Your Honour.

It is my impassioned request that Your Honour may kindly refer to Point 2 of my submission dated August 31st, 2007; wherein we have stated that RICBL should produce documentary evidence to validate this statement to the Hon'ble Court. We have nothing more to add.

4.15. **Deposition of appellant RICBL on 5.9.2007 to the High Court in Dzongkha:**

ད་རེས་ གྲིམས་གྱི་བཀའ་རྒྱ་དང་བཀའ་ལན་ཚུ་གར་ཆེ་མཐོའི་ཞབས་སར་ལུ་ཕུལ་ཚར་ཡོད་པ་ལས་
བརྟེན་ བཀའ་ལན་གྱི་ལོགས་སུ་གཞི་ཡང་ལུ་ནི་མེད་པ་ངེས་བདེན་ཡིན་ལུ།

4.16. **Deposition of defendant Kuenleg Construction Enterprise on 5.9.2007 to the High Court in Dzongkha:**

ད་ཚུན་གྲིམས་འདུ་ཕུལ་བའི་ བཤེར་ཡིག་དང་ བཤེར་ལན་ སྐབས་བྱེད་ལས་ལྷག་གང་ཡང་ལུ་ནི་
མེད།

4.17. **Deposition of defendant Kuenleg Construction Enterprise on 11.9.2007 to the High Court in English:**

I did not ask for liquidity damage while filing the claim ask from RICBL to the Dzongkhag Thrimkhag which is the decision taken by the court, whereas I claimed for cost escalation after the construction period of thirty months as per contract document, for a period of sixteen months.

4.18. Deposition of appellant RICBL on 11.9.2007 to the High Court in English:

We would like to submit that based on the request of KCE to release mobilisation advance (10%) of the tendered amount, we have released Nu. 1,370,101.00 directly to STCB as desired by him towards purchase of 2 tipper trucks. These trucks were required by KCE for collection of stones and sand for the project, as per his letter dated 13.05.98.

4.19. Appellant RICBL submission on 19.9.2007 to the High Court in English:

LIST OF ITEMS OVERLAPPING IN THE TIMBER COST ESCALATION CLAIMED BY MS/ KCE AS WELL AS COST ESCALATION RECOMMENDED BY JVC ON BSR 2001.

Description	Unit	Qty.	BSR 2001 RATE AT P/LING	COST INDEX (30.45 %)	Total Rate	Rate passed	QTY.	Unit	Rate	Amount
<i>Timber:</i>										
P/F wooden skirting 6 " high in MC	sq.m	23.17			881.67	403	0.609	cu.m	3091.83	1,882.92
P/F blue pine bead for fixing of wooden panel	RM	1,100.12	33.95	10.34	44.29	29.86	1.8702	cu.m	3091.83	5,782.34
P/F blue pine bead for fixing of wooden panel	RM	210.46	33.95	10.34	44.29	21.15	0.232	cu.m	3091.83	717.30
P/F glazed window shutters in MC	sq.m	67.56	680.92	207.34	888.26	831.56	2.297	cu.m	3091.83	7,101.93
Total timber consumption overlapped										15,484.50

LIST OF ITEMS OVERLAPPING IN THE CEMENT COST ESCALATION CLAIMED BY MS/ KCE AS WELL AS COST ESCALATION RECOMMENDED BY JVC ON BSR 2001.

<i>Cement:</i>										
Providing and fixing coloured glazed tiles in skirtings and dado on 12.5mm thick cement plaster 1:3 (1 cement : 3 sand) jointed and finished with flush pointing in white cement	sq.m	602.27			901.66	769.20	6.1399	M T	600.00	3,683.94
P/L RCC bracket in CC 1:2:4 for daishu	each	26.00			561.81	356.97	0.3744	M	600.00	224.64

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								T		
P/M RCC daishu in CC 1:2:4	each	60.00			1,166.96	849.49	1.3514	M T	600.00	810.84
Extra for cement mortar used in column cladding	MT	5.44	1,929.67	587.58	2,517.25	2282.39	2.0672	M T	600.00	1,240.32
Name of work: Site Development work for RICB Office Building at Thimphu										
Extra for CRM in pillars	m3	20.88	169.76	51.69	221.45	135.42	1.5660	M T	600.00	939.60
P/L sunk pointing to wall	m2	67.29	37.81	11.51	49.32	34.59	0.0673	M T	600.00	40.38
Total cement consumption overlapped										6,939.72
Total overlapped cost of cement									Nu.	6939.72

4.20. Appellant RICBL submission on 20.9.2007 to the High Court in English:

Advances (MOBILISATION AND SECURED) granted to M/s K.C.E
(compiled as per available records and Audit Report)

<i>S/no</i>	<i>Date of Payment</i>	<i>Mobilisation Advance</i>	<i>Secured Advance</i>	<i>Remarks</i>
1	14.05.1998		1,370,101.00	KCE letter dt. 13.05.98 to release the amount to STCBL towards the cost of 2 Tata Trucks and RICBL letter dt. 14.05.98 (converted to secured advance)
2	12.06.1998	200.00		to Sanjoy Art
3	01.09.1998	2,000,000.00		KCE letter dt. 22.08.98
4	22.10.1998	312,000.00		KCE letter dt. 22.10.98 to release the amount to M/s Lhaki Cement
5	31.12.1999		187,800.00	KCE letter dt. 28.12.98 for 75% secured advance on timber worth Nu. 250,399.61
6	21.01.1999	300,000.00		KCE letter dt. 20.01.99
7	28.01.1999	1,300,000.00		
8	28.01.1999	800,000.00		

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9	10.03.1999		1,050,000.00	KCE letter dt. 22.02.99 for 75% secured advance on timber and steel worth Nu. 2,800,994.07
10	10.03.1999		630,000.00	
11	12.04.1999		1,500,000.00	KCE letter dt. 03.04.99 for 75% secured advance on materials at site worth Nu. 4,137,229.90
12	12.04.1999		200,000.00	
13	13.04.1999		1,400,000.00	
14	27.05.1999		1,097,550.00	KCE letter dt. 18.05.99 for 75% secured advance on materials at site worth Nu. 1,463,402.33
15	27.05.1999		1,012,000.00	KCE letter dt. 10.04.99 for 75% secured advance on materials at site worth Nu. 1,350,021.42 (credited to mobilisation advance)
18	14.09.1999		735,000.00	

Total

4,712,200.00 9,182,451.00

4.21. Deposition of appellant RICBL on 20.9.2007 to the High Court in Dzongkha:

“.....ཚུན་ཉེ་གསལ་རྒྱུ་རྒྱུ་ལྟར་ རང་སེའི་ངོ་ཚབ་/རྒྱུ་མི་ལུ་ བྱ་བའི་གནད་སྲིད་ཀྱི་ཁྲིམས་དེ་བ་
 དོན་ཚན་༩༢ པ་ལྟར་ ཚུན་གཞི་དང་སྐྱབ་བྱེད་ བཤེར་བཅུད་བསྐྱུ་ཞིའི་གོ་སྐབས་གནང་མ་བཞིན་ཏུ་
 ཚུན་ཉེ་གསལ་བཀའ་ལན་དང་ སྐྱབ་བྱེད་ལུ་ཞི་ ཞིབ་དཔྱད་དང་དཔང་པོ་འདུན་འདར་མཛད་
 དགོས་པ་ གདོང་བཤེར་ལ་སོགས་པ་ བྱ་བའི་གནད་སྲིད་ཀྱི་ཁྲིམས་དེ་བ་ལྟར་ སྐྱབ་གསལ་རིམ་པའི་
 སྐབས་ རང་སེའི་སློབ་འདོད་ལྟར་ ཁྲིམས་འདུན་ལས་གོ་སྐབས་མི་ལ་པོར་གནང་ཡོད་པ་ལས་ ཕྱིན་
 ཚད་ དེ་ལས་འགལ་བའི་གནད་དོན་གང་ཡང་ ལུ་ཞི་མེད་པ་མཁྱེན་མཁྱེན་མཁྱེན།.....”

4.22. Deposition of defendant Kuenleg Construction Enterprise on 20.9.2007 to the High Court in Dzongkha:

“.....ཚུན་ཉོག་སྐོར་ ལུ་ཕན་ལུ་ རང་སེའི་རྩོམ་བུ་སྐྱུ་མི་ལུ་ བྱ་བའི་གནད་སྲོད་ཀྱི་ཁྲིམས་དེབ་
དོན་ཚན་༩༢ པ་ལྟར་ ཚུན་གཞི་དང་སྐྱབ་བྱེད་ བཤེར་བཅུད་བསྐྱུ་ནིའི་གོ་སྐབས་གནང་མ་བཞིན་དུ་
ཚུན་ཉོག་གི་བཀའ་ལན་དང་ སྐྱབ་བྱེད་སྐྱུ་ལུ་ ཞིབ་དབྱེད་དང་དཔང་པོ་འདུན་འདར་མཛད་
དགོས་པ་ གདོང་བཤེར་ལ་སོགས་པ་ བྱ་བའི་གནད་སྲོད་ཀྱི་ཁྲིམས་དེབ་ལྟར་ ལྷན་གསལ་ནི་མ་པའི་
སྐབས་ རང་སེའི་སློབ་འདོད་ལྟར་ ཁྲིམས་འདུན་ལས་གོ་སྐབས་ཉིལ་པོར་གནང་ཡོད་པ་ལས་ ཕྱིན་
ཚད་ དེ་ལས་འགལ་བའི་གནད་དོན་གང་ཡང་ ལུ་ནི་མེད་པ་མཁྱེན་མཁྱེན་མཁྱེན།.....”

4.23. **Summary of the Court findings:**
I. Project starting date.

Ms Kuenley Construction Enterprise contested in the Court that the delays of works were attributable to the RICBL for not handing over the complete drawings and designs. There was an initial delay of five months excluding one month of mobilization period. Thus, the total contract period should be 46 months including 11 months extended by the employer. The contractor submitted to the Court that the start of project to be reckoned from 1.6.98, as the RICBL had issued work order on 1.5.98.

The RICBL accepted the initial delay caused by the City Corporation due to non-approval of drawings and designs on time. However, on the request of the contractor, additional works were awarded to compensate the initial delays and argued that the delay is not attributable to RICBL alone. The RICBL submitted that the starting date of works to be reckoned from 22.8.98 on which the contractor had submitted acceptance letter and signed the agreement which is a legally binding document for both the parties.

While reviewing the tender invitation notice and other relevant documents, it has been found out that, the pre-qualified contractors were asked to submit their bids by 9.3.98 and the project period specified was 30 months. Sealed tenders were invited from class ‘A’ contractors pre-qualified for construction of RICB Head Office, Thimphu. The RICBL’s estimated cost was Nu. 52,488,424 based on BSR 96/97 for a contract period of 30 months.

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The following four Contractors submitted the bids and the comparative statements are as under:

Sl. No.	Name of bidders	Amount Quoted (Nu.)	Rating	% variation
1.	M/s Kuenleg Construction	61,928,918.77	I	+17.985%
2.	M/s Bhutan Builders	61,960,023.18	II	+18.045%
3.	M/s Nima Construction	64,333,915.30	III	+22.567%
4.	M/s East West Construction	68,810,730.99	IV	+31.096%

The evaluated tender cost difference was Nu. 31,104.41 in between the 1st and the 2nd lowest bidders. The total claim submitted by Ms KCE on completion of project was Nu.66.135 million and the contract amount was Nu. 61.013 million. Thus, over all increase of the project cost works out to Nu. 5.122 million. However, the RICBL had paid a sum of Nu. 57.234 million as on 29.07.2003.

The RICBL, management vide letter No. RICB/RE/98/209 dated 1st May 1998 had awarded the works to the lowest evaluated bidder, Ms KCE for Nu. 61.013 million and had instructed the contractor, to execute the agreement within 31st May 1998, whereas the acceptance letter was signed only on 22.8.98 and it has been established that the contract agreement was officially signed on the same day. The RICBL management vide letter No. RICB/RE/98/391 dated 13.8.98 had asked the contractor to report to the office before 20.8.98 to execute the contract agreement. The RICBL, vide their letter No. RICB/RE/98/391 dated 13.8.1998 had informed the contractor that the commencement date of the project to be reckoned from the day the drawings and site is handed over. As per the evidence submitted to the court, the site was handed over to the contractor on 9th Nov. 1998 and the contract agreement was signed on 22.8.1998. Hence, the initial delay was approximately three months from 1.6.1998 excluding one month mobilization period. However, mobilizations advance of Nu. 13,70101.00 was paid on 13.5.98 directly to the STCB for purchase of two Trippers for the contractor. It is made difficult and complicated to establish the date of starting the Project as the work was awarded on 1st May 1998 but the City

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Corporation approved the designs on 28.10.98, mobilization advance paid on 13.5.98, acceptance letter signed on 22.8.98 and the main contract agreement, was signed by both the parties on 22.8.98. It has been established that the procurement rules were not strictly followed.

The Managing Director, RICBL vide letter No. RICB/RE/16816 dated 12.6.01 based on the request and the revised work schedule of the contractor, dated 17.1.2001 had granted six months time extension from June 2001- Dec. 2001 based on the mutual understanding and also hindrance records were not maintained at site. Although, the work was awarded on 1.5.98, actual contract agreement was signed only on 22.8.98. It has been established that additional works were executed based on the mutual agreement between the RICBL and KCE prior to starting of the main project. In view of the above, it has been established that the tender was floated without obtaining approval of drawings and designs from the competent authority. It was the moral responsibility of the RICBL to follow tender norms of the RGOB to make a package ready by obtaining administrative and technical sanction before the tender was advertised. The initial delay is caused due to non-approval of drawings by the City Corporation. It has been observed that there have been serious administrative, technical, and managerial lapses by the concerned officials of the RICBL who are liable for moral responsibility for the delay of the project and increase of the project costs. The RICBL deliberately issued work order to the responsive bidder, KCE on 1.5.98, although the drawings and designs were not approved until 28.10.98, mobilization advance and secured advances were paid to the contractor before signing the contract agreement. These advances were used initially for the illegal additional works awarded without calling quotation to Ms KCE. This was basically done to facilitate and to retain the same contractor without strictly enforcing the contract terms beyond 90 days i.e. either to re-tender/re-negotiate the rates/amend the contract agreement/rescind the contract or to obtain a fresh Administrative and financial approval to sign the contract after lapse of almost 4 months. Therefore, the RICBL is liable for going out of their way to assist the contractor and not following the procurement norms, financial rules and contract clauses strictly.

II. Liquidated damages.

The contract agreement clause III states that “ if the contractor fails to complete 1/8th of the work in 1/4th of the time, 3/8th of the work in half the time, 3/4th of the work in 3/4th of the time and full work in the stipulated period, the Corporation may levy charges for compensation for liquidated damages at the rate of 1% of the agreement amount per month or a lesser amount limited to a maximum of 10% of the agreement amount as he may decide, and the contractor shall not have any claim for refund of that amount. If the contractor does not precede with` the work diligently does not complete the work within the stipulated time, the Corporation may, at its discretion, rescind the contract and carry out the same at the risk and the cost of the contractor after giving 30 days advance written notice to the contractor”. In Contravention to the contract agreement, the trial Court had awarded the judgment imposing liquidated damages to RICBL amounting to Nu. 91,52056.96 applying the law of equity. In absence of Contract Act, commercial law and the contractor’s statement dated 11.9.2007, stating that he did not claim the liquidated damages, still the trial Court had granted it. The award of liquidated damages results in an unjust enrichment of the firm KCE. Therefore, liquidated damages granted to Ms. KCE needs to be dismissed, based on the doctrine of concurrent delay, under the premise that where both parties to the contract caused delays to the overall project, neither can recover damages for that period of time when both parties were at fault. Besides, the liquidated damages – an amount recoverable in the event of a specified breach awarded by the Trial Court contradicts the terms of the contract agreement, a legal document which binds both the parties.

III. Cost escalation.

No cost escalation is permissible under contract agreement clause No. XVI which states “the contractor shall not ask for any escalation in rates over the agreed rates/amount during the construction period and after completion of the work for any materials due to rise in market price because of Government policies, tariffs, etc. including labour as required to complete the work under this contract. The quoted rate of the Contractor shall be considered valid for the entire work till completion of the project”. The contractor while submitting the tender document on 6.3.1998 had explicitly indicated that his rates are inclusive of expected cost escalation for the stipulated construction period of 30 months. However, based on the request of the contractor the tender committee considered revision for cement Nu.

30 per bag on the basis of the actual consumption. Approval for revised rate for cement was accorded vide letter No. RICB/RE/98/391 dated 13.8.1998. Therefore, decision of the lower court dismissing the escalation claim needs to be upheld except for cement @ Nu. 30 per bag on the strength of the Tender Committee's decision. The contract terms and condition were not amended to consider the cost escalation of timber for the extended contract period beyond 30 months.

IV. Joint Verification Committee.

As per the contract clause No. XXIV, Ms. KCE had requested the Construction Association of Bhutan on 13.2.2004 for intervention to settle the disputed amount of 8.900 million. The final claim was Nu. 66.135 million and the payment passed by RICB was Nu. 57.234 million leaving a balance amount of Nu. 8.900 million.

The CAB after carrying out a desktop scrutiny had requested the Chairman of the RICBL, Board on 8.3.2004 to accord approval to constitute a Joint Verification Committee. For the period from 14.4.2004 to 14.7.2004, letters and information were exchanged in between the CAB, RICBL and Ministry of Finance and ultimately approval to form a JVC was accorded by the Chairman, RICBL Board vide letter No. MoF/PES/20/2004/6418 dated 9.9.2004. Finally, ten members of JVC were appointed by the Chairman, RICBL Board on 27.10.2004.

The JVC after 8 rounds of meeting had concluded on 13.7.2005 and had resolved in consensus of the both parties to recommend Nu. 33,25,313.78 out of the detailed itemized claim of Nu. 6444957.57.

The cost escalation for cement and timber amounting to Nu. 22,81,466.79 was recommend by the JVC for re-submission by KCE to the RICBL, Board separately but the Board disapproved the payment.

As stated above, it has been observed that both the parties had concurred and agreed to the JVC's recommended amount. However, the contention that RICBL offered to make the payment and the retraction on the part of KCE to accept the amount recommended by JVC could not be established to the satisfaction of the Court. It is observed that there has been total

negligence on the part of employer and employee for not resolving the pending dispute based on JVC's recommendation.

V. Compensation for initial delay.

The RICBL so called through their "utmost good faith, understanding and fiduciary relationship" had awarded the following additional works to Ms KCE, without tender and waived off fines and interests to compensate the initial delay.

1. The Board considered the transportation charges of Nu. 325,000.00 to M/s KCE, which was later, recovered on audit observation.
2. The Board approved to waive off a sum of Nu. 98,475.83 being the 10% interest on the initial Mobilisation Advance.
3. The Board also approved the payment of a sum of Nu. 61,000.00 to the contractor being 2% interest payment on the performance guarantee bond from the date of issuance for a period of six months.
4. Conversion of Mobilisation Advance of Nu. 13,70,101.00 to Secured Advance to evade 10% interest.
5. Construction of 1 no. Class III and 1 no. Class IV building at Phuentsholing vide work order no. RICBL/PLG/RE/98/390 dated 13.08.1998 at the contract value of Nu. 3,942,028.00 on the request of M/s KCE.
6. Construction of water tank at Thimphu vide work order no. RICBL/PLG/RE/98/415 dated 21.08.1998 at the contract value of Nu. 847,893.76.
7. Constructions of Retaining Wall at Phuentsholing vide work order no. RICBL/RE/98/606 dated 19.12.1998 at the contract value of Nu. 839,932.94.
8. Total additional works executed by KCE without tender works out to Nu. 5629854.60 within 15 months. Initial contract period was for 8 months and extended by 7 months.

The RICBL, as employer is liable for misuse of authority, deviation from contract norms and awarding additional works illegally and making a huge amount of advance payments to the contractor even before the contract agreement was signed.

VI. Adjustment and exemption

The employer, RICBL is liable for award of additional works worth 56,29854.60 without floating tender and the work was executed through a work order issued by the RICBL, based on the mutual understanding, in contravention to the existing procurement and financial rules of the RGOB. The Board of RICBL also waived off 10% of interest on the initial mobilization advance of Nu. 98,475.83 and Nu. 61,000 being 2% interest payment on the performance guarantee bond. The Board also considered the transportation charges of Nu. 325,000 which were later recovered. The RICBL's contention for consideration for award of additional works and waiving off interest amounting to Nu. 159,475.83 as a compensation for the initial delay can not be entertained as all the works stated above are against the rules. In principle, as per the contract clause, waiving off interest is not admissible, however, it was granted with the Board's approval.

Mobilization and Secured advance amounting to Nu.33,70,101 and 91,82,541 respectively totalling to Nu. 12,452,642 was paid to the contractor for the period from 14.5.1998 to 14.9.1999. Out of the total amount of mobilization advance of Nu. 33,70,101.00, Nu. 13,70,101.00 was converted to Secured advance to evade the interest of 10% payment by the contractor. Also deduction of 5% Security Deposit from every running bill was not done from the contractor. As circumstantial evidences submitted to the court abundantly indicates that the project was managed so leniently and purely on mutual understanding basis.

5. DECISION:

In accordance with, contract agreement clause No. III and the statement submitted to the Court by the contractor on 11.9.2007, liquidated damages amounting to Nu. 91,52,056.96 granted by the Lower Court by applying principle of equity is here-by fully reversed in accordance with §111(Kha) CCPC. The award of liquidated damages by the Trial Court is deemed to be in-contravention of the relevant terms of the contract agreement.

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The contractor had explicitly indicated during the submission of tender documents on 6.3.1998 and subsequent signing of contract agreement on 22.8.98 that no cost escalation shall be asked for any materials due to rise in the market price for the contract period of 30 months. The terms and condition were clearly specified in the contract agreement clause XVI. Agreement signed on 22.8.98 was not amended and escalation claims for the extended period of construction can not be considered. In accordance with §111(Ka) CCPC and contract clause XVI, the decision of the Lower Court is upheld dismissing the claims for escalation of costs for materials and interests for the payments held back by the RICBL beyond 90 days.

The dispute between the employer, RICBL and employee, Ms KCE had been resolved by constituting a Joint Verification Committee upon the approval of the Chairman, Board of RICBL as per contract clause XXIV. The JVC had recommended Nu. 33,25,313.78 after eight rounds of meeting and both the parties had mutually agreed, concurred with the award and signed accordingly. Hence, the RICBL is ordered to pay the said amount to Ms KCE as both the parties were amenable to the award of JVC.

Imposition of interest of Nu. 1,24,557 on the JVC recommended amount of Nu.33,25,313.78 for 3 months @ 15% is dismissed since KCE was unable to satisfy the Court through production of relevant evidence. The Review Bench, High Court affirms the judgment of the Trial Court on the imposition of interest of Nu.76,265 for retaining Nu.5,00,000 (+) 22989.87 = Nu.5,22,989.87 by RICBL for one year in 2003.

It has been established that 26,359.29 bags of cement were used for the entire construction and the RICBL is ordered to pay to the contractor at the revised rate of Nu.7,90,778.70 @ of Nu. 30 per bag based on their commitment.

As per the Court finding under operative judgment point No.V, the RICBL is liable to a punishment of 1 year imprisonment as per § 294 and 295 Penal Code, however, being an institution it is permitted to pay fine of Nu. 36,000/- in lieu of imprisonment as per § 28 of the Penal Code. Officials concerned of the RICBL are held morally responsible for the gross mismanagement of the project and misuse of official authority and position. Therefore, the Court decrees that appropriate administrative action be taken against the officials concerned as per the rules of the corporation and action taken there-of should be reported to the Court within six months.

The RICBL is ordered to pay the total judgment amount of Nu.41,92,357.48 (forty-one lakhs ninety two thousand three hundred fifty seven and forty eight chetrum) only within ten (10) days from the date of the award of judgment.

བཀའ་ཁྲུ།

ཁྲིམས་ཀྱི་འཕྲུན་ས་ལས་ བྱ་བའི་གནད་སྲིད་ཀྱི་ཁྲིམས་དེབ་དོན་ཚན་༢༤ པའི་ནང་གསལ་ལྟར་ བཀའ་ཁྲོམ་རིམ་
པར་མཛད་དེ་ འཕྲུན་ཚོད་གནང་གྲུབ་པ་ལས་ ཕྱིན་ཚད་ ལོང་གསལ་འཕྲུན་ཚོད་ལས་འགལ་བའི་ ཉོགས་བཤད་ཀྱི་
རིམ་པ་ ཚུ་ཕན་སུ་ཞིག་གི་ཁོངས་ལས་ འཕྲོན་རུང་ ཁྲིམས་འཆལ་གྱི་འབའ་དང་ཉེས་ཁྲིམས་ཕྱག་ཕྱིད་ལྷོ་ཚོགས་
བཅས་ གནམ་ལོ་མེ་མོ་ཕག་ལོ་ལྷ་དགུ་པའི་ཚེས་བརྒྱད་ལུ་འཇམ་སྤྱི་ཚེས་ ༡༩.༡༠.༢༠༠༧ ལུ་ དཔལ་ལྷན་འབྲུག་པའི་
ཁྲིམས་ཀྱི་བཀའ་ཁྲུ།

(འཇིགས་མེད་བཟང་པོ་)

ཨང་དཔོན།