**THROUGH REGD. AD POST/ COURIER**

**Dated: \_\_\_\_\_\_**

To,

**Markos & Co.**

1st Floor, #284, 1st Main,

Defence Colony, Indiranagar

Bangalore 560038

Ref: **Your Legal Notice dated 27.03.2013 issued on behalf of your client M/s. IBM India Pvt. Ltd. having its registered office at Subramanya Arcade, No.12, Bannerghatta Main Road, Bangalore-560029.**

Sub: **REPLY TO YOUR LEGAL NOTICE DATED 27.03.2013.**

**Dear Sir,**

We have been handed over your legal notice dated 27th of March 2013, which was issued from your good office to our client namely M/s. ERA INFRA ENGINEERING LIMITED (through its Managing Director and Deputy manager, H&A) having its registered office at 370-371/2, Sahi Hospital Road, Jungpura, Bhogal, New Delhi-110014.

You are hereby referred to the contents of Legal notice dated 23.02.2013 issued by our client to your client as well as to the group/channel Company of your client namely M/s. Zen Focus Software Pvt. Ltd. having its office at 506B, BPTP Park Centra, Sector-30, Silokhera, Gurgaon-122002. It is worth to mention that the above notice was issued for recovery of amount paid to M/s. Zen Focus Software Pvt. Ltd. in pursuance of Purchase Order: EIEL/HO/EMD/10-11/1709 and Work Order: EIEL/HO/EMD/10-11/1710 both dated 25.11.2010 as well as for not presenting and returning the security cheques by your client.

**PRELIMINARY SUBMISSIONS/OBJECTIONS:**

1. At the outset, we have instructions to state that your client has not apprised you the correct facts and has also concealed the above stated notice dated 23.02.2013 by our client, which resulted into issuance of this frivolous notice. It appears that your client has misrepresented the true facts deliberately and has concealed its misdeeds and wrongs done against our client. It is further stated that averments made against our client in the subject notice are wrong, frivolous and misconceived, hence they are denied.
2. That the true facts pertaining to the present matter may be noted. Your client along with its group/channel Company M/s. Zen Focus Software Pvt. Ltd. approached our client and represented that ZenFocus and IBM afford the companies the ability to quickly respond to technology initiatives by strategically acquiring skills and cost-effectively managing available resources.
3. That after several round of discussions, representations with the representatives of ZenFocus, IBM and our client, our client was persuaded to issue Purchase Order for supply of Maximo® Asset management Software and Work Order for implementation of Maximo® Asset management Software both dated 25.09.2010. Your client along with its group Company ZenFocus induced our client to issue the said Purchase Order and the work order in the format and performa provided by your client.
4. That our client was further induced by your client and its group Company ZenFocus to sign an agreement for providing loan facility from your client for supply of software, as aforesaid. Your client has provided the format and performa and induced our client to sign the Master Financing Agreement dated 15.03.2011.
5. That your client has also sent an email dated 24.11.2010 to our client, wherein your client has mentioned that our client would place Purchase Order by 25.11.2010. Vide the said mail, your client confirmed following against purchase order to be placed by our client for Maximo® Asset management Software
6. 2-3 days complete training on the product for 3 Executives shall be provided in interval of six months;
7. Best practice documents for Maximo Deployment Implementation shall be provided by IBM;
8. Health check of the implemented system shall be carried out by IBM to help ensure the successful implementation:
9. After successful implementation and GO Life certificate, IBM will publish case study as a reference.
10. That from the very beginning, our client started realizing that you along with your group company were unable to provide the services as assured and represented prior to issuance of the Purchase Order, Work Order and Master Financing Agreement dated 15.03.2011. Professionals sent by your client and ZenFocus had neither proper understanding nor expertise in the implementation of the software. Our client has been continuously pointing out the difficulties and the problems which our client had been facing in the implementation of the software and also sent the status of implementation to you from time to time having details of incomplete work.
11. That our client has spent huge sum of money on the basis of representations made by the professionals of your client. Your client had categorically assured our client that all the requirements of our client would be accomplished from the aforesaid software. The license of the software was effective from September 2010 (24 licenses). The customization in the software started in the month of February 2011; however, till today the software is not running.
12. That our client has paid 90% of the work order; however hardly 10% of work has been completed and 90% of the job is still pending due to unprofessional and callous attitude on part of your client and its channel partner ZenFocus. The software is not working at all and there is total dead lock as your client along with its channel partner is not cooperating with our client, which is contrary to the terms and conditions. Our client has been constrained to suffer huge monetary losses due to misrepresentation and misdeeds of your client along with its channel Company ZenFocus.
13. That from the malafide and arbitrary acts on part of your client along with its channel partner compelled to our client to repudiate the work order and the purchase order. Our client vide legal notice dated 23.02.2013 has already repudiated the work order and purchase order and has also claimed the refund of the amount already paid by our client to your channel partner namely M/s. ZenFocus as well as damages for the breaches and losses suffered.
14. Vide the above notice, it was also stated that our client is not liable to make any payment to your client and your client has been clearly advised to settle the accounts with its channel Company i.e. M/s. ZenFocus Software Pvt. Ltd. against the Master Financing Agreement. Your client was further clearly advised to not to present the cheques and return the same to our client immediately which our client has handed over to them as security cheques; besides there is no liability accrues in favour of our client to make such payments. Accordingly, your client had no right to present the cheques in question for encashment without having any liability and authority.
15. That your client in collusion and in connivance with its Channel Company M/s. ZenFocus has intentionally and deliberately produced the cheques of our client knowing fully well that your client is not entitled for producing the same for encashment in absence of any liability and even not entitled to retain those cheques when our client specifically demanded to not present them for encashment and return the same.
16. Thus it is obvious that the cheques in question have been presented with malafide intention and with an oblique motive to harass and blackmail to extort a huge sum of money from our client.

At the outset, it is pertinent to mention here that your client has concealed the material facts from you thus, has misused your good office for getting this false and frivolous notice issued against our client. Moreover, our client also, at the outset, denies each and every averment made by your client in the notice under reply save and except what has been specifically admitted herein below.

**PARAWISE REPLY:**

1. That the contents of Para No.1 of the notice under reply are admitted to an extent that our client is a fully integrated development Company. However, it is ardently denied that second and third addressees are in-charge of the affairs of first addressee or responsible for conducting its activities, as alleged.
2. In reply to para 2 of the notice, it is stated that Master Financing Agreement bearing no. ERA/UP/MFA/200561 was entered into between your client and our client under inducement and under circumstances as stated in aforementioned paras. The contents of preliminary submissions and objections may also be read as part of reply to this para also.
3. That the contents pertaining to execution of MFA and its supplement No.1 and 2 as well as its contents are matter of record and do not call for any reply. However the execution of these documents and payment term of installments has been done in the format and performa provided by your client. The contents of preliminary submissions and objections may also be read as part of reply to this para also.
4. That the contents of para 4 of the subject notice are wrong and incorrect, therefore, are emphatically denied. It is vehemently denied that our client issued cheque nos. 020077 and 049872 favoring your client towards installments due under Supplement No.1 or 2, as alleged. It is reiterated that these cheques were meant for security purposes only and not against any liability towards our client.
5. That the contents of para 5 of the subject notice are wrong and incorrect, therefore, are emphatically denied. The presentation of these cheques by your client for encashment is denied for want of knowledge. However, your client was clearly asked by our client to not present and return those cheques before presentation for encashment. It is reiterated that these cheques were presented without any liability or without any authority. The contents of preliminary submissions and objections may also be read as part of reply to this para also.
   1. That the contents as stated in corresponding paras of the subject notice are wrong and incorrect, therefore, are denied. It is ardently denied that the aforesaid cheques were issued or delivered by our client towards part payment towards installments, as alleged. It is further denied that our client has intentionally issued these cheques with knowledge that the same will not honored upon presentation. The allegations alleged herein are frivolous. Your client was clearly asked before the alleged presentation of these cheques to not present the same and return the same to our client; however, your client with malafide intention opted to present the same knowing fully well that it has neither any authority nor our client has any liability to pay to your client qua cheque amount. It is further denied that second and third addressees of the present notice are fully aware of entire transaction or these persons are in-charge or responsible for the business of addressee no.1 or issued the cheque o behalf of addressee no. 1 or in any way liable or responsible under law. Your client is suggested to get strict proof in support of her contentions. It is also denied that there is any outstanding due much less dues amounting Rs.4,78,442/- (Rupees Four Lacs Seventy Eight Thousand Four Hundred and Forty Two only) being the cheque amount or any other amount to your client, as alleged.

In reply to unnumbered para of the notice, it is stated that our client has no liability to pay any amount and the subject notice and claim made therein against our client is fictitious and frivolous. It is further stated that any legal or other action initiated against our client by your client shall entirely at your client’s risk, cost and consequences and our client reserves every right to initiate legal action for damages or other remedies from your client before appropriate Forum/s, which kindly note.

Therefore, you are requested to call upon your client to withdraw the above legal notice against our client henceforth, falling which our client will be constrained to initiate the appropriate legal proceeding and also defend if need arises at the cost and consequences of your client.

Copy of this reply has been retained in our office for future action and references.

for **Singh & Associates**

Advocate

