

INTERNAL MEMORANDUM - STERLING ENTERPRISE SOLUTIONS

TO: Board of Directors, Sterling Enterprise Solutions

FROM: Priya Desai, Chief Operating Officer

DATE: 1 September 2024

SUBJECT: SVC-2024-00847 Dispute with TechVision Solutions - Strategic Decision Required

SITUATION OVERVIEW

TechVision Solutions is currently 20 days behind schedule on Phase 1 delivery (originally due 15 September 2024, now 5 October 2024). The service provider has disputed our delay penalty claim citing force majeure and raised objections regarding GST compliance.

Financial Stakes: ■45,00,000 total contract value + ■1,00,000 delay penalty claim

Strategic Stakes: Our market launch depends on CRM platform implementation by December 2024

KEY ISSUES

1. Delay Penalty Claim (■1,00,000)

- **Our Position:** Clear contractual language in Clause 4 supports full penalty recovery
- **Their Counter:** Third-party API provider issues constitute force majeure
- **Legal Assessment:** External counsel opinion (Sharma & Associates) estimates 40% probability of full enforcement in arbitration, 40% partial reduction, 20% complete waiver

2. GST Compliance Problem

- **Our Position:** Finance team confirmed GST compliance
- **Their Challenge:** Advance payment without GST invoice creates documentation gaps
- **Legal Assessment:** Counsel identifies HIGH RISK - GST authorities could deny input credits and impose penalties on both parties

3. Project Continuation Risk

- We are threatening termination under Clause 6
- If we terminate, we lose ■13,50,000 remaining investment in Phase 1
- TechVision can claim completion of 87% of Phase 1 work (■13,50,000 milestone payment due)
- We may be locked into prolonged arbitration with uncertain outcome

FINANCIAL ANALYSIS

Scenario 1: AGGRESSIVE APPROACH (Proceed with penalty claim + termination threat)

- **Costs:** Arbitration fees (■5,00,000-■10,00,000), Management time (■2,00,000 estimated)
- **Timeline:** 4-6 months of dispute resolution
- **Best Case Outcome:** Recover ■1,00,000 penalty + ■2,00,000 delay damages = ■3,00,000
- **Worst Case Outcome:** Lose arbitration, TechVision claims ■13,50,000 Phase 1 payment, we also lose GST compliance battle and face ■1,00,000+ in tax penalties
- **Net Risk:** Potentially negative (cost of arbitration + tax penalties > recovery)

Scenario 2: SETTLEMENT APPROACH (Negotiate compromise)

- **Proposed Settlement Terms:**
- Waive ■1,00,000 delay penalty
- TechVision delivers Phase 1 by 5 October 2024 (confirmed)
- TechVision agrees to accelerated Phase 2 (complete by 30 November 2024, vs. 15 December 2024)
- Both parties hire GST consultant to remediate documentation issues (■30,000 shared cost)
- Formalize dispute settlement agreement to preclude future claims
- **Costs:** Settlement mediation (■50,000), GST remediation (■30,000) = ■80,000
- **Timeline:** 2-3 weeks to resolution
- **Benefits:**
- Project remains on track for December 2024 market launch
- Avoid ■5,00,000+ arbitration costs
- Mitigate GST compliance risks
- Maintain working relationship for Phase 2
- Recover 15 days of schedule through Phase 2 acceleration
- **Risk:** Lose ■1,00,000 penalty claim (opportunity cost)

Scenario 3: TERMINATION + ALTERNATIVE VENDOR

- **Estimated Costs:**
- Terminate TechVision (legal costs ■1,00,000)
- Identify alternative vendor (2-3 weeks, ■0)
- New vendor likely quotes 20-30% premium (■5,40,000-■8,10,000 additional spend)
- Rework Phase 1 from scratch (3-4 months, vs. 1 month remaining)
- Total Additional Spend: ■6,40,000-■9,10,000
- **Timeline:** 6-7 months (misses December 2024 launch)
- **Recommendation:** NOT RECOMMENDED - Excessive cost and timeline impact

LEGAL RISK ASSESSMENT

GST Compliance Issue (HIGH RISK):

- Current documentation gap could trigger GST audit
- Potential penalties: 10% of tax amount + interest (could be ₹5,00,000+)
- Both parties are liable; we cannot shift this liability
- **URGENT ACTION REQUIRED:** Consult GST specialist immediately, regardless of settlement outcome

Delay Penalty Enforceability (MEDIUM RISK):

- Contractually valid but arbitration outcome uncertain
- Expected litigation cost (₹5-10 lakhs) exceeds likely recovery (₹1 lakh)
- Not economically rational to pursue aggressively

Project Continuity (STRATEGIC RISK):

- December 2024 market launch is critical business objective
- Any escalation threatens this timeline
- Settlement approach protects this strategic objective

RECOMMENDATION

Pursue Scenario 2: Settlement Approach

Proposed Negotiation Framework

Phase 1: Immediate Actions (by 5 September)

1. Withdraw termination threat (send written confirmation to TechVision)
2. Waive ₹1,00,000 delay penalty claim
3. Formalize Phase 1 delivery commitment for 5 October 2024

Phase 2: Contractual Amendments (by 10 September)

1. Accelerated Phase 2 timeline:
 - Phase 2 Completion: 30 November 2024 (vs. original 15 December)
 - This recovers 15 days of project delay
2. Revised Phase 2 Payment:
 - Instead of 25% payment on 15 December, move to 15 November upon Phase 2 completion

- This incentivizes early delivery

3. GST Remediation:

- Both parties engage GST consultant (shared cost █30,000)
- Prepare corrected GST documentation
- File any required compliance amendments

****Phase 3: Formal Amendment (by 15 September)****

- Execute written amendment to SVC-2024-00847
- Include dispute settlement clause: Both parties waive all claims related to Phase 1 delay

Estimated Outcomes

- **Cost to Sterling:** █80,000 (settlement + GST remediation) + █0 (penalty waived)
- **Benefit to Sterling:** █1,00,000 delay penalty recovery (forgone) + █5,00,000+ arbitration cost avoidance + Secured December 2024 launch = **Net Benefit █4,00,000+**
- **Timeline:** Project recovers 15 days, stays on track for market launch
- **Risk Mitigation:** GST compliance remediated, working relationship restored

BOARD DECISION REQUIRED

This memorandum requests Board approval to:

- █ **APPROVE** Settlement approach - Authorize me to propose settlement terms to TechVision
- █ **APPROVE** GST remediation - Allocate █15,000 budget for Sterling's share of GST consultant
- █ **REJECT** and pursue aggressive penalty claim - Authorize arbitration initiation
- █ **REJECT** and pursue termination + alternative vendor - Authorize contract termination

****Recommendation:** APPROVE Scenario 2 (Settlement Approach)**

****Prepared by:**** Priya Desai, COO

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