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भारतीय राष्ट्रीय राजमार्ग प्राधिकरण
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NHAI/CMC/Settlement Negotiation-2012

December 3, 2012

OFFICE ORDER

Sub: **Constitution of Settlement Negotiation Committee- reg.**

In the 91st meeting of the Authority held on 09th November, 2012, NHAI Board has approved formation of High Level Expert Settlement Advisory Committee for one time settlements of pending claims in item rate contracts of NHAI.


2. The pending claims, cases/issues shall be referred to the Settlement Negotiation Committee after approval of the Competent Authority.
3. The settlement process for these pending claims shall have three steps as follows:
 - (i) The initial negotiation shall be carried out by a Committee of 3 CGMs to be nominated by the Chairman. Different CGMs Committees can be put on different cases to expedite the settlement process. After the initial negotiation by 3 CGMs Committee, the matter will be placed before an Independent Settlement Advisory Committee consisting of a Retired High Court Judge and two other Members having sufficient experience in administration/finance.
 - (ii) The Independent Settlement Advisory Committee can agree with the 3 CGMs Committee or if need be can call the Contractor/Concessionaire for clarifications/negotiations.
 - (iii) The recommendations of the Independent Settlement Advisory Committee shall be placed before the Board of the NHAI for approval. If no negotiable settlement is arrived, the matter shall continue to be pursued legally as per the contract.
4. The Settlement and Negotiation Committee of CGMs in consultation with Independent Advisory and Negotiation Committee may frame the broad principles and guidelines for one time settlement. Based on the experience, the principle and guidelines shall be reviewed from time to time.

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5. Pursuant to Board approval, Competent Authority in NHAI has approved a 3 CGMs Committee comprising of:-

- (1) Sh.M.P.Sharma, CGM(T)
- (2) Sh.B.S.Singla, CGM(T)
- (3) Sh.N.R.Dash, CGM(F/PAC)

This issues with the approval of Competent Authority.


(R.B.Sinha)
General Manager(CMC)

Encl: As above

To,

- (1) Sh.M.P.Sharma, CGM(T)
- (2) Sh.B.S.Singla, CGM(T)
- (3) Sh.N.R.Dash, CGM(F/PAC)
- (4) PS to Chairman/Members/CVO
- (5) All PIUs/All CMUs/All ROs/All officers at HQ.

]Copy of Agenda approved by NHAI Board
]are enclosed for necessary action.
]

AGENDA ITEM

SETTING UP OF A SETTLEMENT NEGOTIATION COMMITTEE

Background Note:

NHAI is faced with large number of pending claims, arbitration and Court proceeding for disputes in their old item rate contracts for many years. The present dispute settlement mechanisms of DRE, DRB and arbitration awards with contradictory decisions and varying approaches have not been able to effectively resolve the disputes with a result that a large number of them have finally reached the Courts. It is felt that delay in decisions and settlements may eventually result into large liabilities on NHAI including substantial interest component in awards.

2. The issue of large pendency of such claims have been frequently raised in various fora and it has been desired to settle the pending claims with the firms. The Independent expert group has become an advisory body mainly giving opinion on decisions in dispute DRE, arbitrations and has not been found as a negotiation cum settlement body to settle claims.

3. Various settlement procedures have been examined across the PSUs, Authorities, financial institutions, nationalized banks etc and it is felt desirable to adopt a settlement approach on similar lines with the one time settlement (OTS) system in vogue in Nationalized Banks framed on the basis of RBI guidelines (copies enclosed).

4. The approach towards settlement is proposed to be based on strategies to minimize the risks in the long run across all contracts within the contractual and legal frameworks. The claims shall be resolved as one time settlement and strategy would vary based on commonality of issues across contracts or could be based on optimum settlement with firms or groups with significant stakes collectively through appraisal of merits, risks and settlements through stages of negotiations.

5. The settlement shall have three step process as follows:


- (i) The initial negotiation shall be carried out by a committee of 3 CGMs to be nominated by the Chairman. Different CGMs committees can be put on different cases to expedite the settlement process. After the initial negotiation by 3 CGMs Committee, the matter will be placed before an Independent Settlement Advisory Committee consisting of a Retired High Court Judge and two other Members having sufficient experience in administration/finance.

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- (ii) The Independent Settlement Advisory Committee can agree with the 3 CGMs Committee or if need be can call the Contractor/ Concessionaire for clarifications / negotiations.
- (iii) The recommendations of the Independent Settlement Advisory Committee shall be placed before the Board of the NHAI for approval. If no negotiable settlement is arrived, the matter shall continue to be pursued legally as per the contract.

6. The Settlement and Negotiation Committee of CGMs in consultation with Independent Advisory and Negotiation Committee may frame the broad principles and guidelines for one time settlement. Based on the experience, the principle and guidelines shall be reviewed from time to time.

7. Approval of the NHAI Board is solicited to consider the proposal on Formation of High Level Experts Settlement Advisory Committee and procedure for settlements.


(J.N. Singh)
Member (Fin.)