



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(पोत परिवहन, सड़क परिवहन और राजमार्ग मंत्रालय)

National Highways Authority of India

(Ministry of Shipping, Road Transport and Highways)

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CIRCULAR

NHAI/13/LA/Policy/2006

06 Sep 2010

Subject: Guidelines for processing Arbitral Awards.

1. The policy/procedures for processing Arbitral Awards for compensation for land have been reviewed, and, as a measure for streamlining processing of Arbitral Awards in respect of compensation for land, it has been decided that such Awards shall henceforth be processed as mentioned in following paragraphs:-

(a) Upon declaration of an Arbitral Award for compensation for land, concerned PIU shall immediately obtain a copy of the Award and initiate a case for disposal of the same in accordance with relevant Policy/Guidelines, and also otherwise ensure that filing of appeal against the Arbitral Award by NHAI does not get time-barred. (As per Section 34 of the Arbitration and Conciliation Act 1996, appeal against an Arbitral Award can be preferred within 90 days of receipt of the same)

(b) Concerned PIU is to implead NHAI as a party in all Arbitration proceedings (if the Arbitrator has not already issued notice to NHAI).

(c) An Arbitral Award wherein the Arbitrator has enhanced compensation determined by CALA by Rs 01 lac is to be accepted at level of concerned Project Director irrespective of reasons adduced by the Arbitrator for enhancing compensation. However, while conveying acceptance of such Awards it is to be made amply clear to the Arbitrator that his Award is being accepted because amount by which he has enhanced compensation is too meager for protraction of legal proceedings, not because NHAI agrees with reasons adduced by him for enhancing compensation. This will ensure that reasons adduced by the Arbitrator for enhancing compensation in any one particular case are not cited as precedents for enhancing compensation in other similar cases.

(d) Power to challenge Arbitral Awards in Court on basis of recommendations of concerned PIU and the RO's/PIU's legal counsel is delegated to ROs. Appropriate legal counsel may be engaged by RO's/PIU's for this purpose. [Delegation of the authority to ROs to challenge Arbitral Awards in Court would be subject to condition mentioned at para (c) above ie that Arbitral Awards wherein the Arbitrator has enhanced compensation by upto Rs 1.0 lac are to be accepted at level of concerned Project Director irrespective of reasons adduced by Arbitrator].

(e) Decision to accept an Arbitral Award wherein the Arbitrator has enhanced compensation by upto Rs 5.0 Cr is to be taken at level of RO/CGM in charge of the State.

(f) Decision to accept an Arbitral Award wherein the Arbitrator has enhanced compensation by an amount above Rs 5.0 Cr, upto Rs 10.0 Cr is to be taken at level of concerned M(T), with concurrence of M(A).

(g) Chairman would remain Competent Authority for accepting Arbitral Awards beyond Rs 10 Cr.

(h) The amount (in respect of which the authority to accept an Arbitral Award has been delegated) includes Interest on the enhancement awarded by the Arbitrator.

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(j) Compensation determined by CALA is to be deposited with him prior to initiation of Arbitration proceedings only on conditions that (i) possession of land is transferred of to NHAI, and (ii) compensation shall be disbursed only subsequent to due approval by HQ.

(k) CALAs Awards which have been upheld by the Arbitrator are not to be pursued into Court, for the simple reason that successive endorsements of the Award by CALA/Arbitrator point to merit possessed by CALA's Award.

(l) Cases where Award declared by CALA has been challenged by landowners, whereupon the Arbitrator has enhanced compensation and his Arbitral Award has been upheld by a Court, also ought not to be pursued into a higher Court.

(m) For ready availability of necessary information, for processing Arbitral Awards timely, cases pertaining to such Awards are to be submitted as per Format at Annexure to this Circular.

(n) While submitting cases for consideration of RO/HQ, PIUs shall furnish their observations/recommendations in the matter.

(o) As per Explanation (ii) of Section 194LA of the Income Tax Act, 1961: '*For the purposes of this section, "immovable property" means any land (other than agricultural land) or any building or part of a building.*' Consequently; (i) Income Tax is not deductible from the enhancement awarded on compensation for agricultural land. (ii) Since the definition of '*immovable property*' in the Income Tax Act, 1961, includes buildings or parts thereof, Income Tax is deductible on the enhancement awarded on compensation for buildings standing on agricultural land. (iii) Since the definition of '*immovable property*' in the Income Tax Act, 1961 does not include trees/bore-wells/ponds etc; Income Tax shall not be deductible on the enhancement awarded on compensation for such trees/bore-wells/ponds etc.

(p) Income Tax is chargeable on the amount by which an Arbitrator has enhanced compensation, and interest thereon, subject to condition that aggregate amount of such payments; ie (i) compensation awarded by CALA, (ii) enhancement awarded by the Arbitrator and (iii) interest on the enhancement awarded by the Arbitrator, during the financial year, exceeds one hundred thousand rupees.

(q) Section 3H(6) of NH Act stipulates that '*Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 shall apply to every arbitration under this Act*'. Section 3H(5) of NH Act provides for payment of interest @ 09% per annum on the enhanced amount (from date of declaration taking possession under Section 3D to date of deposit of the enhanced amount). Accordingly, since applicability of provisions of the Arbitration and Conciliation Act have been made subject to provisions of the NH Act and since the NH Act contains its own specific provisions pertaining to payment of interest, it follows that the provisions of NH Act pertaining to payment of interest would preponderate/prevail over those of the Arbitration and Conciliation Act; Interest would therefore be payable @ 09% per annum on the enhanced amount from date of taking possession under Section 3D to date of deposit of the enhanced amount, as provided under the NH Act.

2. NHAI Circular No 11041/21/2002/Adm-III dated 13 May 04 and Office Order No NHAI/LA/2009 dated 22 Oct 09 are amended accordingly. Circular of even No dated 03 Sep 2010 is cancelled.

3. This issues with approval of the Competent Authority.

(VK Sharma)
CGM(LA)

To:

1. All ROs
2. All PIUs
3. All CGMs/GMs at HQ

Copy to:

1. PS to Chairman
2. PS to Members

Format for submission of Arbitral Awards for compensation by PIUs to RO/HQ

Name of PIU:

Name of Project:

SI No	Particulars of Arbitral Award	Details (to be furnished by PIU)
1.	Date of declaration of Arbitral Award.	
2.	Date of receipt of Arbitral Award by NHAI.	
3.	Date by which appeal against the Arbitral Award can be filed as per Section 34 of Arbitration and Conciliation Act, 1996.	
5.	Name of village/urban area.	
6.	Area of land involved in Arbitration.	
7.	Date of 3A Notification.	
8.	Date of 3D Notification.	
9.	Date of declaration of 3G Award.	
10.	Date of payment of compensation.	
11.	Circle-rate at time of publication of 3A Notification.	
	Compensation fixed by CALA (Rs per m ²).	
12.	Basis for fixation of rates by CALA	
13.	Sales-statistics. *	(i) Highest transaction rate.
14.		(ii) Lowest transaction rate.
15.	Rate awarded by Arbitrator (Rs per m ²)	
16.	Reasons adduced by Arbitrator for enhancing compensation.	
17.	Financial implication of the Arbitral Award.	(i) Enhancement of compensation.
		(ii) Interest (@9% p.a)
		(iii) Total implication.
18.	Date upto which total financial implication has been calculated.	

* Note:

(i) Column No 13 is required to be filed only if CALA has determined compensation on basis of sales-statistics.