



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(सड़क परिवहन और राजमार्ग मंत्रालय)

National Highways Authority of India

(Ministry of Road Transport and Highways)

जी-5 एवं 6, सेक्टर-10, द्वारका, नई दिल्ली - 110 075

G-5 & 6, Sector-10, Dwarka, New Delhi-110075

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No.11041/218/2007-Admn.

25.07.2013

POLICY MATTERS – TECHNICAL (140/2013)

(Decision taken on File No. NHA/DR&A Cell/ARB(OR-I)/2005)

Sub.: Procedure for referring the matter for Arbitration/ filing petition or appeal in Court of Law.

In continuation to Policy Circular no. Tech./133/2013 dated 08.05.2013 (copy enclosed) issued on the captioned subject, it is reiterated that as soon as the decision of DRB or the Arbitral Tribunal or the Courts is received, the same should be placed before the concerned Member. The concerned Member will immediately form a Committee of 3 GMs who would process the matter and place their recommendations before the concerned Member. After examining the matter, the decision can be taken by the concerned Member or Executive Committee as the case may be. The concerned Member has also been made responsible to ensure that sufficient time is available for EC to take a decision on merit i.e. at least 30 days in cases where Arbitral Award is to be challenged before Single Judge of High Court and 15 days in case where further appeal is to be filed before Division Bench challenging the order of Single Judge.

2. Recently it was observed in one of the Arbitration cases that the petition filed by NHA before Single Judge of Delhi High Court challenging the Arbitral Award was dismissed by the Court and action on the decision of Single Judge was neither taken by the concerned PIU nor by the technical division at HQ for almost a period of 11 months ! The matter came to light when the directions of High Court were issued to NHA for depositing of decretal amount on Execution Petition filed by the Contractor.

3. The systematic failure/negligence as mentioned above, has been viewed seriously by the Competent Authority and it is reiterated that the instructions issued vide said Policy Circular dated 08.05.2013 shall be adhered to meticulously and the technical divisions at HQ shall also continuously track the status of proceedings at different fora to ensure timely implementation of the directions/decisions. Any lapse will attract strict action.

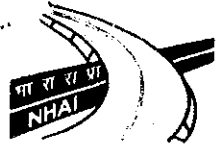
4. This issues with the approval of Chairman.


(V.K.Sharma)

Chief General Manager (Coord. / LA)

To,

All officers and employees of HQ/ROs/PIUs/CMUs/Site Offices



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08.05.2013

POLICY MATTERS – TECHNICAL (133/2013)

(Decision taken on File No. NHA/DR&A/ARB(Misc)/2011)

Sub: Procedure for referring the matter for Arbitration/filing an appeal.

As per the decision taken in the Board Meeting held on 26.03.2013, the following procedure will be adopted for referring the matter from DRB to Arbitral Tribunal or/and for filing appeal against the award of AT:

- a) The case will be dealt from DRB stage onwards in the Head Office only. As soon as the decision of the DRB or the Arbitral Tribunal or the Courts is received, the same should be placed before the concerned Member.
- b) The concerned Member will immediately form a Committee of 3 GMs including GM of concerned Division. Out of the other 2 GMs, at least one will be from outside the jurisdiction of the concerned Member.
- c) The 3 GMs Committee would process the matter immediately and place their recommendations before the concerned Member, who would examine the matter and if need be consult the Legal & Arbitration Cell. All correspondence of the Committee with PD/RO shall be through e-mail to avoid delay. Member concerned may also notify a State-wise standing committee to avoid delay in constitution of 3 GMs Committee.
- d) If the financial implication of the dispute is below Rs. 1 crore (without interest component), the Member concerned can take a decision whether to go for arbitration or to appeal against arbitral award/court order or not. If the financial implication of the dispute is above Rs. one crore and below Rs. five crores (without interest component), the decision can be taken by the Member concerned in consultation with the Member (Finance). Wherever financial implications are more than Rs. five crores (without interest component), the matter may be referred to the EC for taking the final decision.

2. It would be responsibility of the concerned Member to ensure that sufficient time is available for EC to take a decision on merit, i.e., at least 30 days in cases where arbitral award is to be challenged before the Single Judge of High Court. However, in case of filing further appeal to Division Bench challenging the order of Single Judge, then, matter must be placed before EC, 15 days' prior to the expiry of limitation period of 30 days.

3. There may be many cases where the Contractor/Concessionaire is willing for a negotiated settlement after the decision of the DRB. In normal course such a settlement is not contemplated in a very short period of 28/56 days as fixed in respective contracts and does not leave any scope for negotiated settlement. However, possibility to arrive at settlement can be explored if Contractor/Concessionaire gives an undertaking on non judicial stamp paper that in case the settlement process fails, the parties will be free to approach the next forum of arbitration and the opposite party shall not object to the delay caused in the process of settlement. A format of the undertaking to be obtained from the Contractor/ Concessionaire is annexed and marked as **Annexure-A**. If the Contractor/Concessionaire desires settlement, then matter is required to be referred to the settlement committee as per mechanism approved for settlement. In case the settlement succeeds, there may not be any need for invoking arbitration. In case the negotiation for settlement fails, both the parties would have the right to refer the matter to arbitration.

4. The cases where settlement/negotiation has been desired by the Contractor/ Concessionaire, after the publication of the Arbitral Award, the negotiation/settlement has to be completed within the limitation period of 03 months + 30 days further period where the Court may entertain as prescribed under Section 34 of Arbitration and Conciliation Act 1996. The Arbitral Award, if not challenged by the parties within the prescribed stipulated time of 3 months 30 days, shall become enforceable as if it were a decree of a Court in accordance with Section 36 of Arbitration and Conciliation Act 1996. Therefore, it must be borne in mind that the negotiation leading to settlement, if any, has to be completed within this limitation period.

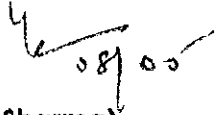
5. If an attempt to arrive at negotiated settlement is resorted to after the judgment/order passed by the Single Judge, same has to be done on priority as the limitation period is 30 days only. The appeal can be filed under Section 37 of the Arbitration and Conciliation Act 1996. However undertaking as per format given in **Annexure-A** may be obtained from the Contractor/Concessionaire which may afford an additional ground to seek condonation of delay while challenging the order of Single Judge before Division Bench. However, the Court may not in its discretion, condon the delay in filing of the appeal. Therefore, every vigorous efforts have to be made to complete the process for settlement, if any, of disputes within the prescribed limitation period of 30 days.

6. CGM (Legal) shall send written communication to all existing as well as to future Arbitral Tribunals conveying categorically that a copy of the arbitral award must invariably be sent to the concerned Member. In case there is a change in jurisdiction of the Member, then, same shall be also apprised to the concerned AT by Legal & Arbitration Cell. On receipt of the arbitral award in the Chairman's Secretariat, or by CGM (Legal) or by PD or any Division in HQ or any other person working in NHA, same shall be made available to the concerned Member for further necessary action. Without any delay, the Members of the Arbitral Tribunal and the opposite contesting party may also be informed that the limitation will be reckoned from the date of receipt of award by the Member concerned.

7. As regards Court cases, pertaining to arbitration, it shall be the responsibility of the Nodal Officer designated in Legal & Arbitration Cell for monitoring the cases before Court of law to ensure that any ad-interim order/judgment passed by the Court of law is immediately obtained with the help of the Law Firm/Advocate dealing with the cases and same is placed before the concerned Member forthwith for taking further necessary action.

8. The above instructions may be strictly adhered to and the technical division at head office should continuously track the status of proceedings at different fora to ensure timely implementation of these instructions.

9. This issues with approval of the Chairman.



(V.K. Sharma)

Chief General Manager (Coord.)

To,

All officers and employees of HQ/ROs/PIUs/CMUs/Site Offices

[TO BE EXECUTED ON NONJUDICIAL STAMP PAPER OF
APPROPRIATE VALUE]

UNDERTAKING

THIS DEED OF UNDERTAKING is executed and given by and on behalf of M/s [•] a company incorporated in India under the Companies Act, 1956, having its Registered office at [•] through its [•], duly authorized to give the present undertaking vide Resolution dated [•] (hereinafter referred to as "Contractor"), which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assignees and substitutes

IN FAVOUR OF

National Highways Authority of India, a statutory authority constituted under Section 3 of the National Highways Authority of India Act, 1988 and having its Corporate office at G- 5 & 6, Sector – 10, Dwarka, New Delhi-110075 (hereinafter referred to as "NHAI") which expression shall, unless repugnant to the context or meaning thereof, include its successors and assignees.

WHEREAS the Project of [•] was awarded by the NHAI to the Contractor in respect of National Highway [•] in the State of [•] for a contract amount of [•] and a Contract dated [•] was executed between the Contractor and the NHAI.

WHEREAS during the execution of the aforesaid Contract certain disputes and differences had arisen between the parties, pursuant to which the Dispute Resolution procedure was invoked and the matter is presently at the stage of [•].

WHEREAS the Contractor and NHAI are desirous of settling/negotiating the claims/disputes arising between them, without prejudice to their respective stand and rights.

WHEREAS the Contractor has considered it expedient, and in its interest, has proposed to settle the matter through negotiations without the Parties being required to agitate their claims before any other forum/court.

WHEREAS the Contractor agrees that the negotiations may take some time and in case the discussions do not materialize into a settlement, the time period provided for challenging the [•] may lapse.

In view thereof, the Contractor hereby unequivocally and unambiguously undertakes that in case the efforts for settlement/negotiation fail, both the parties shall have the right to refer the matter to the higher forums/courts. The Contractor further undertakes that it shall not object to the request/ application for condonation of delay, if any, filed by NHAI before the higher forum/court for adjudication of the matter.

The Contractor further undertakes not to disclose, rely on or introduce as evidence, in arbitration or Court proceedings, any information exchanged or discussed during the process of negotiation/settlement of disputes.

This undertaking is being given by the free will and volition of the Contractor and without any undue influence of any kind.

Signed and delivered on behalf of the [•] under the hand of the Authorized Signatory on this [•] day of [•] 2013.

For and on behalf of

[•]
(Authorised Representative)

Witnesses:-

1.

2.