



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-110075

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

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No.11041/217/2007-Admn.

01.4.2013

POLICY MATTERS – ADMINISTRATION / FINANCE (109/2013)

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

Subject: Entering into Supplementary Agreement on schedule of fee and other expenses of Arbitrators.

In order to streamline the payment of fee and other expenses payment to Arbitrators, Policy Circular no. 86/2004 dated 31.05.2004, 125/2006 dated 02.08.2006, 21/2008 dated 07.01.2008 and 62/2010 dated 13.01.2010 were issued by NHAI.

2 In the above said circulars a specific mention has been made about the desirability of entering into a supplementary agreement by incorporating the fee structure to be agreed by both the parties i.e NHAI and the Contractor/Supervision Consultant so that there is uniform payment of fee and other expenses to Arbitrators. Draft supplementary agreement incorporating the intention of the party with regard to adherence to fee structure was also enclosed as annexure and it was requested in these circulars that the concerned Member/CGM may ensure for getting the supplementary agreement with regard to payment of Arbitration fee and other expenses to Arbitrators so that the fee schedule approved by the Competent Authority in respect of Arbitrators is made applicable on both the parties. It was also advised that in future contracts the fee structure payable to Arbitrators and other expenses may be included so that the acceptance of the fee schedule approved by the Competent Authority becomes a pre-condition for signing the agreement subsequently.

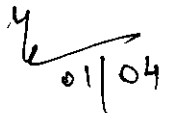
3 In some of the concession agreements on BOT Basis an amendment of Arbitration procedure under relevant clause was made and NHAI and the Concessionaire had also entered into supplementary agreement with regard to payment of Arbitration fee and other expenses of Arbitrators and also a modification of clause including the Arbitration to be held in accordance with the rules of ICA. In this regard, a note dated 02.12.2009 was issued requesting all concerned that supplementary agreement should be insisted upon to be entered into by the Concessionaire with NHAI for regulating the fee and other expenses payable to Arbitrator. A copy of sample supplementary agreement was also circulated under the above said circular.

4 It is however noted that the supplementary agreement has not been signed in many cases of PPP projects. All CGM (Tech), ROs /PDs are once again advised to execute supplementary agreement with the Contractors/Consultants/Concessionaire within a period of two months from the date of issue of circular, so that any tendency for charging undue fees by the Arbitrators is curbed and such

charges get regulated as per approved fee schedule contained in above said circular. Such request must be sent to all Contractors/Consultants/Concessionaire within 15 days of issue of this circular.

5. In future contracts in all categories (BOT/EPC), the fee structure and amended clause of arbitration may be included as part of the bid documents where RFP is yet to be received. In case where the bids have been received and agreements have not been signed, this condition shall be included as pre-condition in the form of supplementary agreement at the time of signing of the agreement. In all future projects of PPP and EPC, this amendment will be included as part of the bid documents.

6. This issues with the approval of Competent Authority.



(V.K.Sharma)
Chief General Manager (Coord./LA)

To,

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

Sub.: Improvement, operation and maintenance including strengthening and widening of two lane road to four lane dual carriageway (BOT Contracts).

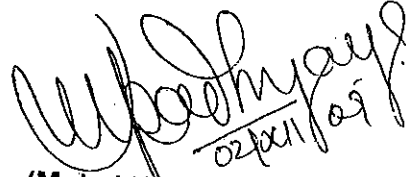
-Proposal for amendment of Arbitration procedure under clause 39.2 of the agreement.

With the approval of Competant Authority an amendment of Arbitration procedure under clause 39.2 of the agreement was made and NHA & the Concessionaire has entered in to a Supplimentary Agreement for the following three contract packages:-

- (1) From km. 15.00 to km. 63.00 on NH-11 (Agra-Bharatpur Section) in the State of U.P. and Rajasthan on BOT Basis.
- (2) From km. 12.60 to km. 84.70 on NH-3 (Indore-Khalghat Section) in the State of Madhya Pradesh on BOT Basis.
- (3) From km. 50.00 to km. 100.00 on NH-6 (Kondhali-Talegaon Section) in the State of Maharashtra on BOT Basis.

Since the decision to amerfd the Arbitration procedure for above mentioned three packages has already been taken, to keep uniform procedure in similar type of contract, it has been decided that for other packages where such a clause (Arbitration to be conducted in accordance with the rules of Arbitration of ICA) exists (copy annexed), the Concessionaire may be requested to enter into a similar Supplementary Agreement as was entered in above mentioned packages. Copy of sample supplementary agreement is annexed for reference please. The Supplementary Agreement should be signed by authorised representative (who has signed the original contract agreement) of the Concessnaire and concerned GM (Tech.) at HQ will sign on behalf of NHA.

This is issued with the approval of Chairman.


(Mukul Upadhyaya)
Manager (DR & A Cell)
Dt. 02.12.2009

Copy to :

- (1) All PIUs, ROs
- (2) All CGMs, GMs, DGMs & Managers at Head Quarters

SUPPLEMENTARY AGREEMENT

This supplementary Agreement is made on this ____ day of ____ 20 ____ between the National Highways Authority of India, G-5&6, Sectio-10, Dwarka, New Delhi-110075 (hereinafter referred to as "NHAI") and _____

Whereas NHAI has entered into an agreement dated ____ with the Contractor _____ on EPC basis.

Whereas the Contract Agreement provides for Arbitration under Clause 26.3

Whereas the Contractor and NHAI are desirous of amending the provisions of Clause 26.3 of Contract Agreement.

NOW THEREFORE, the parties have mutually agreed as follow:

1. That the Clause 26.3 of the Contract Agreement is hereby amended to read as below:

"Any Dispute, which is not resolved amicably as provided in Clause 26.1 & 26.2 shall be finally settled by arbitration as set forth below:

- (i) The Dispute shall be finally settled by arbitration in accordance with the Arbitration & Conciliation Act, 1996, or any statutory amendment thereof. The Arbitral tribunal shall consist of 3 Arbitrators, one each to be appointed by NHAI and the Concessionaire. The third Arbitrator shall be chosen by the two Arbitrators so appointed by the Parties and shall act as Presiding Arbitrator. In case of failure of the two Arbitrators, appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the Arbitrator appointed subsequently, the Presiding Arbitrator shall be appointed by the Chairman of the Executive Committee of the Indian Roads Congress.
- (ii) Neither party shall be limited in the proceedings before such Tribunal to the evidence or arguments before the other party / Independent consultant.
- (iii) Arbitration may be commenced during or after the Contract Period, provided that the obligations of NHAI and the Contractor shall not be altered by reason of the arbitration being conducted during the Contract Period.
- (iv) If one of the parties fail to appoint its Arbitrator in pursuance of Sub-Clause (i) above, within 30 days after receipt of the notice of the appointment of its Arbitrator by the other party, then the Chairman of the Executive Committee of the Indian Roads Congress, shall appoint the Arbitrator. A certified copy of the order of the Chairman of the Executive Committee of the Indian Roads Congress making such an appointment shall be furnished to each of the parties.
- (v) Arbitration proceedings shall be held at Delhi, India, and the language of the Arbitration Proceedings and that of all documents and communications between the parties shall be English.

- (vi) The decision of the majority of Arbitrators shall be final and binding upon both parties. The expenses incurred by each party in connection with the preparation, presentation, etc., of its proceedings shall be borne by each party itself.
- (vii) The fees and expenses payable to the Arbitrators shall be as per the schedule of remuneration and expenses for Arbitrators notified by NHA vide letter no. 11041/217/2007-Admin. Dt. 13th January 2010 reproduced herein below, or any amendment thereof:

S.No.	Particulars	Schedule Amount payable per Arbitrator/per case
1	Arbitrator fee	Rs. 15,000/- per day subject to a maximum of Rs. 4 lacs per case Or Rs. 2.5 lacs (lump sum) subject to publishing the Award within 12 months. 12 months will be reckoned from the date of first hearing.
2	Reading Charges	Rs.15,000/-
3	Secretarial Assistance and incidental charges (telephone, fax, postage etc.)	Rs. 20,000/-
4	Charges for publishing / declaration of the Award	Maximum of Rs. 20,000/-
5	Other expenses (actuals against bills subject to the prescribed ceiling) – applicable for the days of hearing only.	
	Travelling Expenses and Lodging and Boarding	Economy class by air, first class AC by train, AC car by road (i) Upto Rs. 15,000/- per day (metro cities) (ii) Upto Rs. 7,000/- per day (other cities) (iii) Rs. 3,000/- per day (own arrangement)
6	Local Travel	Rs. 1,500/- per day
7	Extra charges for days other than hearing/ meeting days (maximum for 2 days)	Rs. 3,500/- per day
Note	1. Lodging, boarding and traveling expenses shall be allowed only for those members who are residing 100 kms away from place of meeting. 2. Delhi, Mumbai, Chennai, Kolkata, Bangalore and Hyderabad shall be considered as Metro cities.	

2. That the clause 26.3 is deleted.

3. That the remaining Clause of Article 26 of the Concession Agreement shall remain unchanged.

IN WITNESS WHEREOF the parties have signed this Supplementary Agreement on the date above mentioned in the presence of the witnesses.

For and on behalf of NHAI


For and on behalf of the Concessionaire

Signature

Signature

Witnesses:

Witnesses:



SUPPLEMENTARY AGREEMENT

This supplementary Agreement is made on this ____ day of ____ 20 ____ between the National Highways Authority of India, G-5&6, Sectio-10, Dwarka, New Delhi-110075 (hereinafter referred to as "NHAI") and _____

Whereas NHAI has entered into the **Concession Agreement** dated ____ with the Concessionaire _____ on BOT basis.

Whereas the Concession Agreement provides for Arbitration under Clause 44.3

Whereas the Concessionaire and NHAI are desirous of amending the provisions of Clause ____ and ____ of Concession Agreement.

NOW THEREFORE, the parties have mutually agreed as follow:

1. That the Clause 44.3 of the Concession Agreement is hereby amended to read as below:

"Any Dispute, which is not resolved amicably as provided in Clause 44.2 shall be finally settled by arbitration as set forth below:

- (i) The Dispute shall be finally settled by arbitration in accordance with the Arbitration & Conciliation Act, 1996, or any statutory amendment thereof. The Arbitral tribunal shall consist of 3 Arbitrators, one each to be appointed by NHAI and the Concessionaire. The third Arbitrator shall be chosen by the two Arbitrators so appointed by the Parties and shall act as Presiding Arbitrator. In case of failure of the two Arbitrators, appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the Arbitrator appointed subsequently, the Presiding Arbitrator shall be appointed by the Chairman of the Executive Committee of the Indian Roads Congress.
- (ii) Neither party shall be limited in the proceedings before such Tribunal to the evidence or arguments before the other party / Independent consultant.
- (iii) Arbitration may be commenced during or after the Concession Period, provided that the obligations of NHAI and the Concessionaire shall not be altered by reason of the arbitration being conducted during the Concession Period.
- (iv) If one of the parties fail to appoint its Arbitrator in pursuance of Sub-Clause (i) above, within 30 days after receipt of the notice of the appointment of its Arbitrator by the other party, then the Chairman of the Executive Committee of the Indian Roads Congress, shall appoint the Arbitrator. A certified copy of the order of the Chairman of the Executive Committee of the Indian Roads Congress making such an appointment shall be furnished to each of the parties.
- (v) Arbitration proceedings shall be held at Delhi, India, and the language of the Arbitration Proceedings and that of all documents and communications between the parties shall be English.

- (vi) The decision of the majority of Arbitrators shall be final and binding upon both parties. The expenses incurred by each party in connection with the preparation, presentation, etc., of its proceedings shall be borne by each party itself.
- (vii) The fees and expenses payable to the Arbitrators shall be as per the schedule of remuneration and expenses for Arbitrators notified by NHA vide letter no. 11041/217/2007-Admin. Dt. 13th January 2010 reproduced herein below, or any amendment thereof:

S.No	Particulars	Schedule Amount payable per Arbitrator/per case
1	Arbitrator fee	Rs. 15,000/- per day subject to a maximum of Rs. 4 lacs per case Or Rs. 2.5 lacs (lump sum) subject to publishing the Award within 12 months. 12 months will be reckoned from the date of first hearing.
2	Reading Charges	Rs.15,000/-
3	Secretarial Assistance and incidental charges (telephone, fax, postage etc.)	Rs. 20,000/-
4	Charges for publishing declaration of the Award	Maximum of Rs. 20,000/-
5	Other expenses (actuals against bills subject to the prescribed ceiling) – applicable for the days of hearing only.	
	Travelling Expenses and Lodging Boarding	Economy class by air, first class AC by train, AC car by road (iv) Upto Rs. 15,000/- per day (metro cities) (v) Upto Rs. 7,000/- per day (other cities) (vi) Rs. 3,000/- per day (own arrangement)
6	Local Travel	Rs. 1,500/- per day
7	Extra charges for days other than hearing/ meeting days (maximum for 2 days)	Rs. 3,500/- per day
Note	<p>3. Lodging, boarding and traveling expenses shall be allowed only for those members who are residing 100 kms away from place of meeting.</p> <p>4. Delhi, Mumbai, Chennai, Kolkata, Bangalore and Hyderabad shall be considered as Metro cities.</p>	

(viii) That the clause 44.3 is deleted.

(ix) That the remaining Clause of Article 44 of the Concession Agreement shall remain unchanged.

IN WITNESS WHEREOF the parties have signed this Supplementary Agreement on the date above mentioned in the presence of the witnesses.

For and on behalf of NHAI

For and on behalf of the Concessionaire

Signature

Signature

Witnesses:

Witnesses:

