



# भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

## National Highways Authority of India

(सड़क परिवहन और राजमार्ग मंत्रालय)

(Ministry of Road Transport and Highways)

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### NHAI/Policy Guidelines/Calculation for Periodic Maintenance & Damages/2018 No. 8.3.32, Dated the 5<sup>th</sup> February 2018

(Decision taken by EC in the meeting dated 21.12.2017 on the Agenda no.327.04 & File No.  
NHAI/Tech/NS-2/BOT/AP-6/2007)

**Sub: Establishment of Rational-cum-Pragmatic Settlement Approach for calculating the amount of damages to be imposed on the Concessionaire of BOT (Toll/Annuity) projects on account of delay in periodic maintenance work.**

**1. Objective:**

The NHAI has entered into various concession agreements during the period 2006 & 2007 with the Concessionaires for implementing the Highway Projects on BOT (Toll)/ BOT (Annuity). As per various clauses of these concession agreements, Concessionaries have to carry out the regular periodic maintenance by doing renewal of the wearing surface of the road pavement. In this context, it has been observed that there has been slippage on the part of Concessionaires in carrying out the regular periodic maintenance works as per the specified timelines.

**2. Provisions in Concession Agreement w.r.t. Periodic Maintenance & Damages:**

**2.1** Clause 2.6.1 of Schedule L: This is applicable for entire Operations Period for the Project Highway during the entire Concession Period. Various important activities to be carried out during this stage are:

a) Regular periodic maintenance activities :

- i) Renewal of the wearing surface of the road pavement once every 5 years;
- ii) Strengthening course to be provided on 'as required' basis.

**2.2** Clause 4.3.1 of Schedule L: The riding quality of the pavement shall be ensured by satisfying the minimum requirements given hereunder:-

- i) Surface roughness of the Project Highway on completion of construction shall be 2000 mm/km as measured by vehicle mounted Bump Integrator.
- ii) Surface roughness shall not exceed 3000 mm/km during the service life of pavement at any time. A renewal coat of bituminous concrete shall be laid every 5 years after initial construction or where the roughness value reaches 3000 mm/km whichever is earlier to bring it to the initial value of 2000 mm/km.

**2.3** Clause 18.12: In the event the Concessionaire does not maintain and /or repair the Project Highway or a part thereof upto and in accordance with the Specifications and Standards and/or in accordance with the maintenance programme or the maintenance Manual, and shall have failed to commence remedial works within 30 days of receipt of notice in this behalf from NHAI or the Independent Consultant, or the O&M Inspection Report, as the case may be, NHAI shall, without prejudice to its rights under this Agreement, including Termination thereof, be entitled to undertake the repair and maintenance of the Project Highway at the risk and cost of the Concessionaire and to recover the same from the Concessionaire. In addition to recovery of the aforesaid cost of repair and maintenance by NHAI, a sum equal to 25% of such cost shall also be recovered by NHAI from the Concessionaire as Damages. NHAI shall have the right and the Concessionaire hereby expressly grants to NHAI the right to recover the same directly from the Escrow Account and for that purpose the Concessionaire hereby expressly authorises NHAI and

hereby gives irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of NHAI under this clause.

- 2.4 Clause 18.13: In the event NHAI does not exercise its option to undertake the required repair and maintenance after expiry of the 30 (thirty) days period stipulated in Clause 18.12 it shall recover damages from the Concessionaire for default in operating and maintaining the Project Highway in conformity with this agreement. Such Damages shall be payable after the aforesaid period of 30 (thirty) days and until the default is cured. The amount of Damages shall be calculated for each day of default at the higher of the following, namely (a) Rs.10,000 (Rupees Ten Thousand) and (b) 0.1% (Zero point one percent) of the cost of such repair as estimated by the Independent Consultant. Recovery of such damages shall be without prejudice to the rights of NHAI under this Agreement, including Termination thereof.
- 2.5 Clause 18.14: If the Concessionaire commences any works for curing any defects or deficiencies in the Project Highway, it shall complete such works expeditiously in accordance with Good Industry Practice. If such works are carried out in a manner that results in a delay of more than 30 (thirty) days as compared to the time required in accordance with Good Industry Practice, NHAI shall recover Damages from the Concessionaire as if a default had occurred under Clause 18.13.

### 3. Background:

- 3.1 It is the obligation of the Concessionaire to complete the periodic maintenance within the specified time frame as mentioned in various contract clauses of Concession Agreement.
- 3.2 Considering number of similar cases in NHAI wherein Concessionaires have not taken up the periodic maintenance work in time bound manner, Executive Committee of NHAI in its 327<sup>th</sup> meeting held on 07.12.2017 decided to issue Standing Operating Procedure in the subject matter.

### 4. The Standing Operating Procedure (SoP):

- 4.1 Concessionaire shall start the periodic maintenance work i.e. renewal of BC whenever the roughness value anywhere on the Project Highway reaches 3000 mm/Km to bring it to the initial value of 2000 mm/Km. However, in case roughness value does not reach 3000 mm/Km anywhere even at completion of every 5 years after initial construction (Commercial Operation Date), Concessionaire shall complete renewal work before completion of every 5 years after initial construction.
- 4.2 Further, at the time of termination of the Concession Agreement, Concessionaire shall comply with the Concession Agreement's clauses related to Divestment of Rights and Interests.
- 4.3 The amount of damages shall be calculated for each day of default at the higher of the following:
- (a) Rs.10,000 (Rs. Ten Thousand),
  - (b) 0.1% (zero point one percent) of the cost of such repair work as estimated by the Independent Consultant. For avoidance of doubt, it is clarified that if the renewal work is started and completed in 4 months' time after the due date, then the damages shall be calculated for period of 2 months as the damages is applicable on cost of repair work which is getting reduced on day to day basis when renewal work is being done at site. 30 days cure period shall also be taken into consideration.
- 4.4 For avoidance of any doubt, the following illustrations may be referred in support of which diagrammatic representations are enclosed at Annexure-I:

**Illustrations:**

- I. Concessionaire achieves COD on 01.01.2009. Therefore, periodic maintenance is to be completed by the Concessionaire by 31.12.2013. Concessionaire commences the renewal work on 01.01.2014 and completes it on 30.07.2014. The total cost of renewal work is Rs.100.00 crore. Total duration/delay in renewal work is 210 days.

Damages to be recovered is higher of the following:

- Damages =  $10000 \times (210-30) = \text{Rs. } 18,00,000/-$
- Damages =  $0.1\% \times 0.5 \times [1000000000 \times (180/210)] \times (210-30)$   
= Rs.7,71,42,857/-

- II. Concessionaire achieves COD on 01.01.2009. Therefore, periodic maintenance is to be completed by the Concessionaire by 31.12.2013. Concessionaire commences the renewal work on 02.03.2014 and completes it on 30.07.2014. The total cost of renewal work is Rs.100.00 crore. Total delay in renewal work is 210 days. However, the duration of renewal work is 150 days.

Damages to be recovered is higher of the following:

- Damages =  $10000 \times (210-30) = \text{Rs. } 18,00,000/-$
- Damages =  $[0.1\% \times (60 - 30) \times 1000000000] + [0.1\% \times 0.5 \times 1000000000 \times 150]$   
= Rs. 3,00,00,000/- + Rs.7,50,00,000/-  
= Rs. 10,50,00,000/-

- III. Concessionaire achieves COD on 01.01.2009. Therefore, periodic maintenance is to be completed by the Concessionaire by 31.12.2013. Concessionaire commences the renewal work on 31.11.2013 and completes it on 30.07.2014. The total cost of renewal work is Rs.100.00 crore. Total duration of renewal work is 242 days. Total delay in renewal work is 210 days.


Damages to be recovered is higher of the following:

- Damages =  $10000 \times (210-30) = \text{Rs. } 18,00,000/-$
- Damages =  $0.1\% \times 0.5 \times [1000000000 \times (180/242)] \times (210-30)$   
= Rs.6,69,42,148/-

- IV. Concessionaire achieves COD on 01.01.2009. Therefore, periodic maintenance is to be completed by the Concessionaire by 31.12.2013. Concessionaire commences the renewal work on 30.08.2013 and completes it on 30.01.2014. The total cost of renewal work is Rs.100.00 crore. Cost of balance renewal work pending on 01.01.2014 is Rs.15.00 crore. Total delay in renewal work is 30 days.

No damages to be recovered.

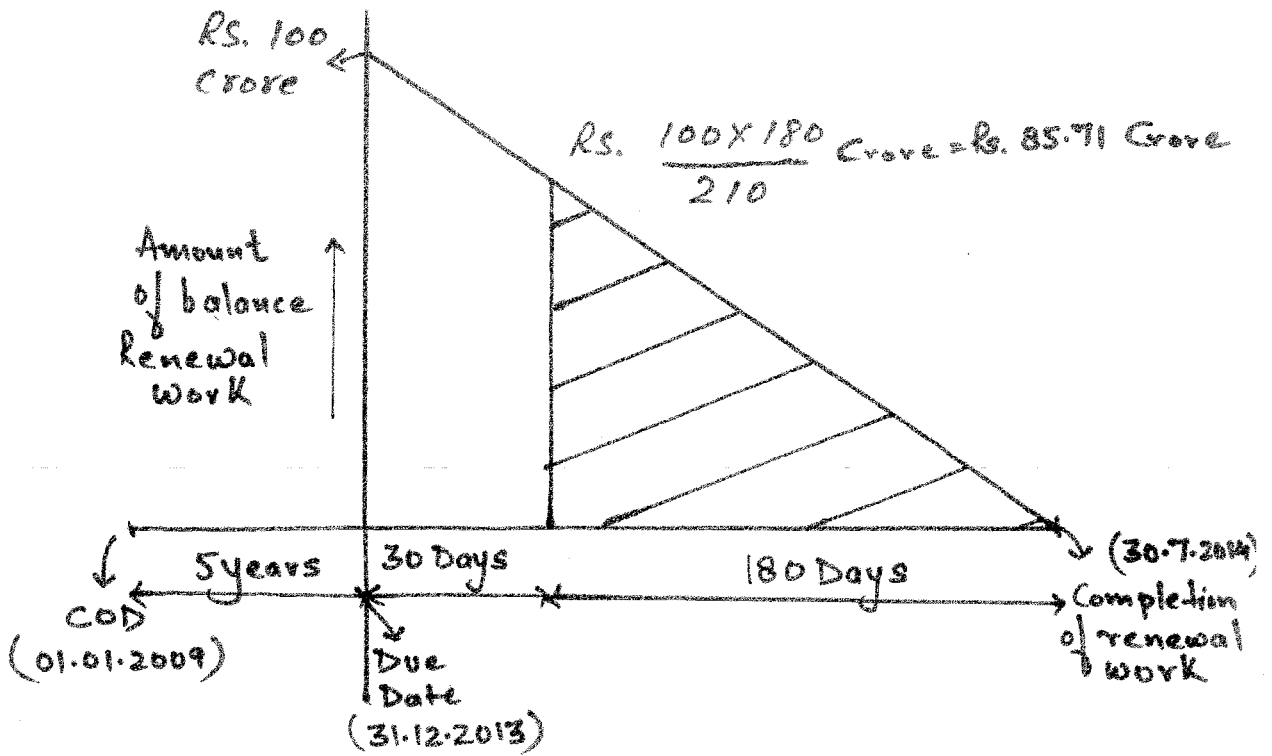
Encl.: Annexure-I.

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

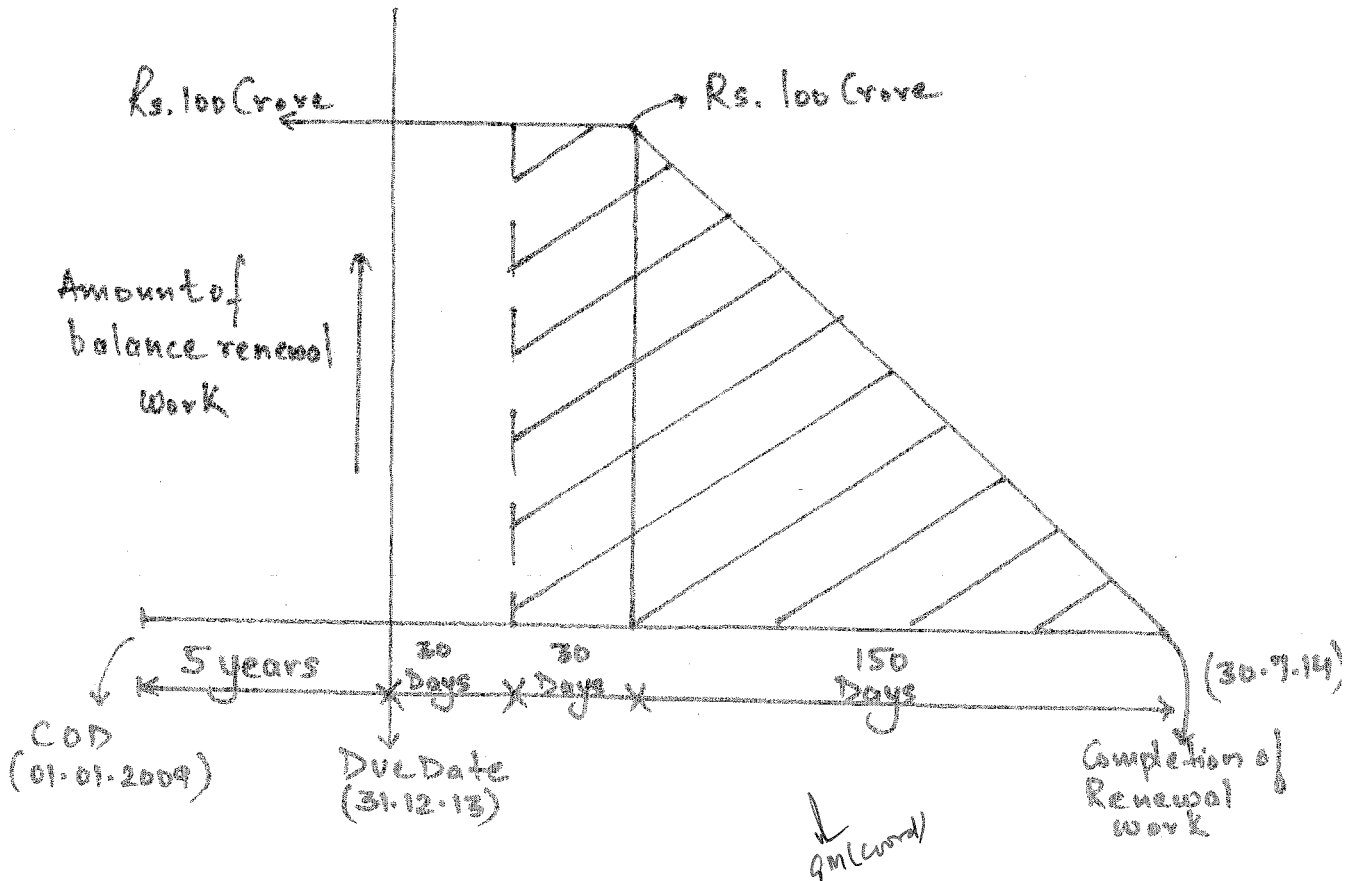
To

All Officers at NHAI HQ/ROs/PIUs/CMUs/Site Offices.  
Hindi Officer for translation in Hindi

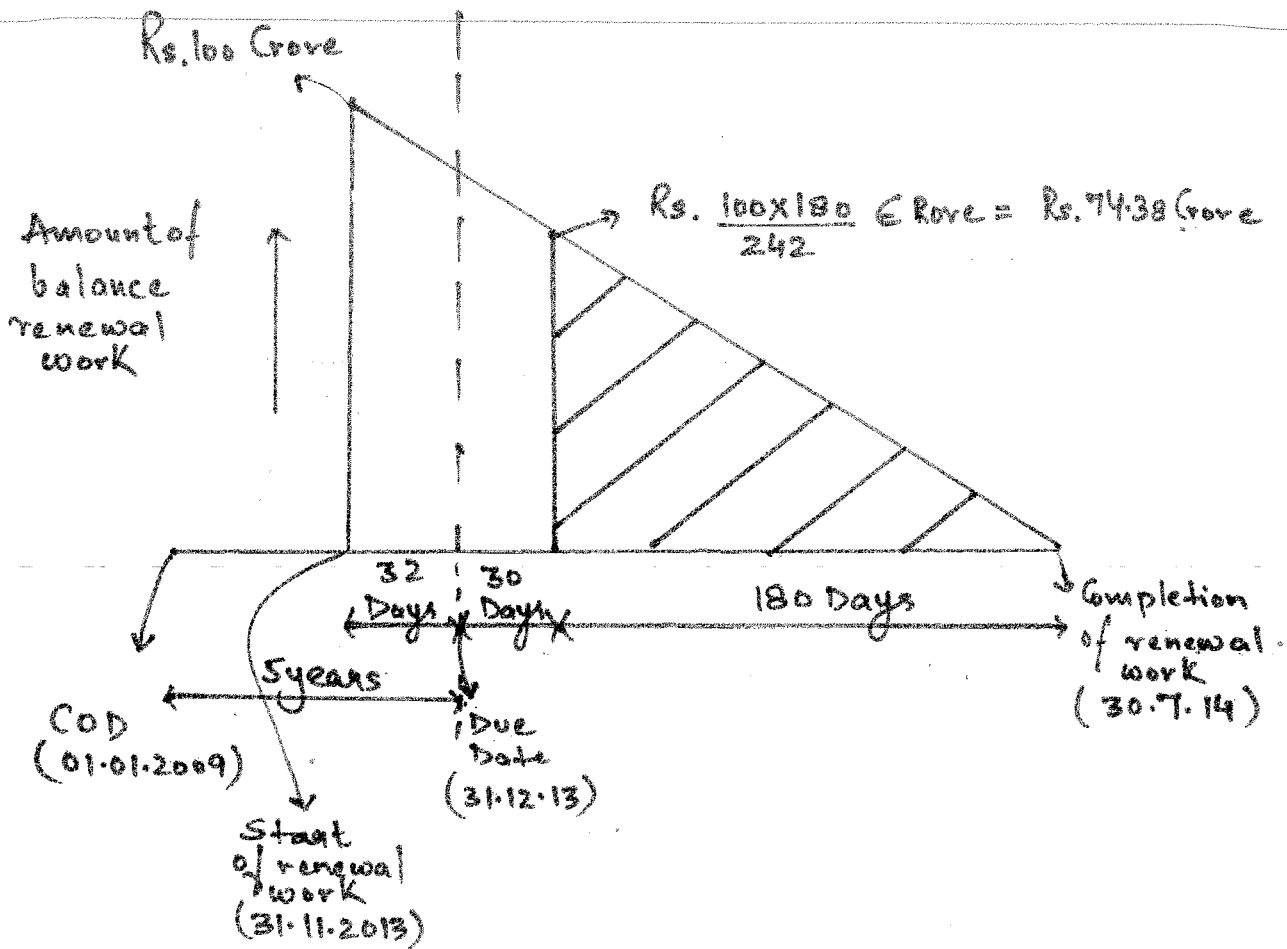
Example - 1



Example - II



### Example - III



### Example - IV

