



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

दूरभाष / Phone : 91-11-25074100/25074200

फैक्स / Fax : 91-11-25093507 / 25093514

NHAI/Policy Guidelines/Relief to Concessionaries/2020

No. 8.3.38/2020, Dated the 16th September, 2020

[Decision Taken on File No.NHAI/CO/13013/20-21/42, E-File No.-18695]

Sub: Relief to the OMT Concessionaires relating to force majeure in the concession agreement due to COVID-19.

Pursuant to the instructions issued by the Ministry of Road Transport & Highways vide its letter no. NH- 25016/01/2018-Toll dated 25.03.2020, the prevailing condition may be treated as Force Majeure of the Concession/ Contract Agreement as per Ministry of Finance letter no. F-18/4/2020-PPD dated 19th Feb, 2020. Due to COVID-19 epidemic outbreak in the country, as per directions of MORTH, the collection of user fee was temporarily suspended at all fee plazas on National Highways across the country w.e.f. 26th March, 2020 (9 AM) to 19th April, 2020.

2. The Article 26 (Force Majeure) of the OMT Concession Agreement defines "epidemic" as a Non-Political event. Since COVID-19 has been declared as an epidemic, therefore, Force Majeure Clause shall be applicable.

3. With regard above, the policy guidelines for Force Majeure claims for OMT Concession Agreement shall be as follows:-

3.1 **1st Force Majeure period during suspension of tolling during complete lockdown from 26.03.2020 (9:00 hrs) to 19.04.2020 (24 hrs) i.e. for period of 24.625 days:**

3.1.1 The Concessionaire shall be exempted from payment of Concession Fee for this period. However, the existence of Concession during the period will continue uninterrupted keeping in view that Concession Fee is an annual obligation, though it is payable monthly. This is also in accordance with Clause 5.1 and 26.11 of the OMT Concession Agreement.

3.1.2 Since the Concession Agreement provides for extension of Concession Period in such a scenario, the Concessionaire shall be required to pay the Concession Fee during the extended period as applicable at that time. The Concession Fee during the extended period shall be calculated based on the provisions of Clause 21.1 of the Concession Agreement.

3.2 **2nd Force Majeure period post resumption of tolling with effect from 20.04.2020 (00:00 hrs) till daily collection is less than 90% of the Average Daily Fee as per Concession Agreement provisions**

In case the Concessionaire is able to collect some user fee, then the extension of the Concession Period would take into account the portion of user fee collected and therefore, the Concessionaires shall be required to pay proportionate Additional Concession Fee/premium with respect to the Fee Collected by it. Further, it shall pay Additional Concession Fee/Premium during the extended period, which shall be calculated based on the provisions of Clause 21.1 of the Concession Agreement.

Contd. to Pg-2

4. PD is competent to convey the relief to OMT Concessionaire on 1st Force Majeure period. As regards 2nd Force Majeure period, RO will take a decision on user fee collected by OMT Concessionaire and extension to be granted based on the traffic data during this period.
5. PDs & ROs shall maintain all records relating to above relief given to OMT Concessionaires. PDs/ ROs shall examine and provide relief immediately under intimation to CO Division at NHAI HQ.
6. In accordance with Clause 26.7 of OMT Concession Agreement, upon occurrence of a Non-Political event (Force Majeure), the Parties shall bear their respective Force Majeure Costs and neither party shall be required to pay to the other party any costs thereof.
7. It may be further noted that invocation of Force Majeure clause would be held only in a situation where the parties in the contract were not in default of the contractual obligations as on 19th February, 2020. Further, the Concessionaire should comply with the conditions/provisions of the concession agreement for claiming Force Majeure event.

This issues with the approval of Competent Authority.


(Amarendra Kumar)
CGM (Coord)

All officers at NHAI HQROs/PIUs/CMUs/Site Offices

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