



# भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(सड़क परिवहन और राजमार्ग मंत्रालय)

## National Highways Authority of India

(Ministry of Road Transport and Highways)

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### NHAI/Policy Guidelines/BOT (Toll) Projects/2021

### Policy Circular No.8.3.40/2021 dated 2<sup>nd</sup> July, 2021

(Decision taken File No:NHAI/RO/CHD/11115/HOU/ - Computer No: 79876)

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**Sub: Policy Circular on forceful stoppage of toll collection at toll plazas on NH due to Farmer's Agitation. - Relief to be provided to BOT (Toll) concessionaires.**

#### 1. Background

Toll collection in certain part of country has been forcefully stopped by agitating farmers. It has been decided that loss on account of above agitation is to be addressed as per provisions of Concession Agreement.

#### 2. Applicability

This circular is applicable to all BOT (Toll) Projects of NHAI which are based on the Model Concession Agreement issued post 2009. For projects where clauses related to Force Majeure differ from the Model Concession Agreement, respective clauses of project specific Concession Agreements shall prevail.

#### 3. Force Majeure Event

The impact of farmer's agitation has been considered as Indirect Political Force Majeure Event. As per clause 34 (c) of the Model Concession Agreement, Indirect Political Event includes;

“(c) any civil commotion, boycott or political agitation which prevents collection of Fee by the concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting year.”

#### 4. Impact on Concession Period

The impact on Concession Period shall be dealt with as per clause 34.6 and 34.7 of the MCA and in case the provisions in the signed Concession Agreement differ from the MCA, the same shall be dealt as per provisions of signed Concession Agreement.

Clause 34.6 and 34.7 of the MCA includes inter-alia the following:

- i. Extension of Concession period after COD will be dealt as per provision of clause 34.6.2(b) which states that :
  - a. In case the Concessionaire was unable to collect Fee despite making best efforts or it was directed by the Authority to suspend the collection thereof during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of Fee.

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- b. In the event of partial collection of Fee where the daily collection is less than 90% (ninety per cent) of the Average Daily Fee, the Authority shall extend the Concession Period in proportion to the loss of Fee on a daily basis.

For the avoidance of doubt, loss of 25% (twenty five per cent) in collection of Fee as compared to the Average Daily Fee for four days shall entitle the Concessionaire to extension of one day in the Concession Period.

#### 5. Cost of Force Majeure

As per Clause 34.7.2 of the Concession Agreement, upon occurrence of Force Majeure Indirect political event after the Appointed Date, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and **to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire.**

Further, for reimbursement of all other costs directly attributable to Force Majeure Event which may include interest payment on debt, O&M expenses etc. the following guidelines may be followed for calculation the force majeure costs ;

i. **Interest payment on debt:**

- a. The Concessionaire through his Statutory Auditor will submit a certificate certifying the interest payment of debt as per the original financial package submitted at the time of Finance Close. In case NHAI has approved refinancing/restructuring, the interest payment may be certified accordingly by the Statutory Auditors.
- b. A certificate from the lead banker certifying the interest to be paid for the Force majeure duration.
- c. For avoidance of doubt, if there is a difference between the amount certified by the statutory Auditors and the amount certified by the lead banker, the lower of two will be considered.

ii. **O&M Expenses:**

- a. The concessionaire will submit the details of O&M expenses for the Force Majeure period. The Authority shall consider O&M expenses which are duly certified by statutory Auditor based on Independent Engineer certification.
- b. For any other payment under the Concession Agreement (Clause 34.7.2(b)), Concessionaire may be requested to give detailed justification thereof and decision in such cases shall be taken by the Authority on case to case basis. The above expenditure shall be duly certified by the statutory auditor and the Independent Engineer.

6. Care should be taken that NPV of all reimbursement of Force Majeure Cost along with extension of Concession Period is capped to maximum of toll revenue loss incurred during the Force Majeure period.
7. 75% of total claim amount so arrived may be paid immediately so as to keep reconciliation margin.
8. This issues with the approval of Competent Authority.

*HK Jha*  
02.07.2023  
(Sheo Shankar Jha)  
CGM (Coord.)

To:

All officers of NHAI HQ/ROs/PIUs/CMUs/Site Offices.

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