



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

No.11041/218/2007-Admn

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POLICY MATTERS-Technical (195/2016)

(Decision taken on File No. NHA/CMC/Misc(Maint)/2015)

Sub: Rationalised compensation to concessionaires in case of delay not attributable to Concessionaires for languishing highway projects on BOT mode.

As communicated vide MORTH letter No. NH-37012/06/2015-H Dated 26.11.2015, Cabinet Committee on Economic affairs (CCEA) has approved the proposal of rationalised compensation to Concessionaires in case of delays not attributable to the Concessionaires for languishing National Highway project on BOT (Toll)/Annuity Mode. As per the approval of CCEA, extension of concession period shall be allowed for all current projects on BOT mode, except for projects where tolling is permitted on the Appointed Date, which are languishing during construction period due to the reasons not attributable to the Concessionaire.

2. For all current projects in BOT (Toll) mode that are languishing during the construction period due to reasons not attributable to the Concessionaire, NHA has been authorised to allow extension of concession period subject to the following conditions:

- a. Tenure of the Operations Period as envisaged originally in the concession agreement remaining unchanged. This will result in a corresponding increase in concession period.
- b. The decision regarding eligibility of projects for the extension of concession period, and the extent of time extension required will be taken by NHA on a case to case basis on the recommendation of the concerned Independent Engineer (IE). The concerned IE, both individual and the firm, shall be accountable for the assessment of the extension recommended in the concession period.
- c. Authority shall follow the guidelines given hereunder in para 4 & 5 while determining the period of delay **NOT** attributable to the concessionaire.
- d. The projects using the above special dispensation shall have to achieve physical completion in the next 3 years.

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3. For all current projects in BOT (Annuity) mode that are languishing during the construction period due to reasons not attributable to the Concessionaire, NHAI has been authorised to restore missed Annuities to the Concessionaire corresponding to the actual period of such delay without any ceiling on number of days of delay upon successful completion of the project i.e. on achieving COD subject to the following conditions:

- a. While the construction period will get enhanced, the tenure of the concession will remain unchanged.
- b. The total number of annuities payable, including the compensatory annuities, will be capped by the number of annuities envisaged in the said Concession Agreement.
- c. Compensatory Annuity (ies) payable by the Authority to the concessionaire for such delayed period would be the product of Average Daily Annuity and the actual period of such delay in number of days as recommended by the Independent Engineer (IE) of the concerned project, and approved by the Authority as per guidelines.
- d. The decision regarding eligibility of projects for accessing such dispensation for delays **NOT** attributable to concessionaires and the duration of such delays will be considered by NHAI on a case to case basis based on the recommendation of the concerned Independent Engineer (IE). The concerned IE, both individual and the firm, shall be accountable for the above assessment.
- e. Authority shall follow the guidelines given hereunder in para 4 & 5 while determining the period of delay **NOT** attributable to the concessionaire.
- f. The projects using the above special dispensation shall have to achieve physical completion in the next 3 years.

4. The procedure to be followed for seeking relief under above policy is as detailed below:

- (i) This policy is applicable for all current BOT (Toll)/Annuity projects where PCC /COD has been delayed due to reasons NOT attributable to the Concessionaire. This policy will not be applicable for projects where PCC has been granted for entire length, however, completion certificate is pending for want of completion of some minor items/punch lists.
- (ii) This policy is applicable for such cases also where NHAI and the Concessionaire agreed to mutually waive certain Conditions Precedent (CP) for Appointed Date and also for cases where waiver of extension of concession period was given for extension of milestone/project completion date etc. However, the Concessionaire seeking relief of extension of concession period under this policy shall waive his claims for compensation, if any, under clauses 10.3.4 and 35.2 of extant MCA.



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- (iii) The Concessionaire seeking such relief shall approach IE/NHAI with an application with complete details of delay with evidences in line with the objective guidelines formulated for the purpose.
 - (iv) The IE shall determine the delay duration as per objective guidelines and Excel sheet and submit its recommendation to NHAI. The concerned IE, both individual and the firm, shall be accountable for the assessment of the extension recommended in the concession period.
 - (v) The assessment of IE shall be vetted by Competent Authority through the mechanism of 3 CGM Committee and thereafter the proposal shall be placed before Authority (NHAI Board) for decision on case to case basis.
5. A copy of the objective guidelines approved by CCEA determining the period of delay **NOT** attributable to the concessionaire, is enclosed at **Annexure-I**. In order to understand the procedure, an illustration with an example in excel sheet is also enclosed for reference [**Annexure-II**].
6. This issues with the approval of Competent Authority.

Encl.: As above



(S.P. Sharma)
GM (Coord.)

To:

All Officers & Employees of HQ/ROs/ PIUs/ CMUs/ Site Offices

TENTATIVE PROCEDURE FOR DETERMINING DELAY DURATION

1. If the Authority has not granted to the Concessionaire at least 80% encumbrance free land¹ i.e. vacant access and Right of Way of the site on the Appointed Date, then in that case the delay duration may be determined in the following manner:

- (i) First of all, the Scheduled Project Completion Date (SPCD) based on the Appointed Date and Construction Period may be calculated. Further, status of encumbrance free land handed over to the Concessionaire as on Appointed Date shall also be assessed.
- (ii) The status of encumbrance free land handed over to the Concessionaire may be assessed by the Independent Engineer/Authority periodically, say in every 3 months, starting from the Appointed Date till the date of 100% handing over of encumbrance free land made available to the Concessionaire. The said assessment is to be carried out to assess the dates on which **80% and 100%** of encumbrance free land has been handed over to the Concessionaire by the Authority respectively (**80% in first phase and 100% in final phase**)².
- (iii) Based on the aforesaid dates, **Completion Period of Construction**³ of that stretch for which land has been handed over to the Concessionaire is to be realistically and judiciously assessed by IE taking into consideration of the quantum and nature of balance work affected by non-handing over of land and original and impacted work programme of the Concessionaire and delay by the Concessionaire due to his inadequate mobilisation and financial constraints, if relevant. For avoidance of doubt, this determination of delay should confine to the corresponding work activities affected due to delayed handing over of land
- (iv) It is presumed that the Concessionaire will be in a position to complete the works at least 75% length of Project Highway and achieve the Provisional COD as per Concession Agreement on handing over of 80% encumbrance free land to the Concessionaire.
- (v) The delay (in no. of days) due to non-handing over of encumbrance free land to Concessionaire on Appointed Date shall be the summation of the following:
 - (a) Delay period for not handing over of encumbrance free land (vacant access and Right of Way) for 80% length of Project Highway on Appointed Date: Difference in number of days between the expected date of completion of construction of stretch calculated, as per para (iii) above, reckoned from the date on which at least 80% encumbrance free land handed over and the Scheduled Project Completion Date (SPCD)

OR

Difference in no. of days between actual provisional COD/ COD⁴ and Scheduled Project Completion Date (SPCD); whichever is less;

and

- (b) Delay period for delay in handing over of encumbrance free land (vacant access and Right of Way) of 100% length of Project Highway (period between 80% to 100% land availability): 25% of [Difference in no. of days between expected Date of Construction of stretch calculated, as per para (iii) above, from the date on which the 100% encumbrance free land made available to the Concessionaire and the Scheduled Project Completion Date (SPCD);

OR

Difference in no. of days between actual COD⁴ and Scheduled Project Completion Date (SPCD); whichever is less]

Key assumptions:

1. Encumbrance free land: The encumbrance free land (vacant access and Right of Way of the site) availability should be defined in linear km. available free of all encumbrances for construction of Project Highway (2-lane with paved shoulder/4-lane/6-lane as the case may be) as a percentage of total project length. The land should be declared as fully acquired only after completion of formalities as per provisions of 3 (H) of NH Act 1956. However in case the Concessionaire is able to construct the Project Highway in any stretch through his own liaison/efforts, even though formalities as per provision of Section-3 (H) of NH Act 1956 are not yet completed, this length shall be treated as encumbrance free land available for the purpose of calculation for determination of delay
2. The procedure is based on the assumption that with 80% availability of unencumbered land (linear frontage length), the Concessionaire will be in a position to complete at least 75% length of project highway to achieve the Provisional COD. This assumption may be modified as per project specific requirement to be determined by IE with justification.
3. Completion Period of Construction: If the corresponding balance work activities due to delayed handing over of land at any stage (80% or 100%) involves major structures (flyover/ VUP/Major Bridges/ROBs etc.), it may be assumed that it will take 01 year time to complete these project works, else 6 months' time may be considered as a reasonable period for construction of balance activities including minor structures like PUPs. The aforesaid period may be increased by another 3 months in case of a rainy season falls in the extended delay period. However, these assumptions may be modified as per project specific requirement and conditions, to be determined realistically and judiciously by IE. This determination of delay should confine to the corresponding work activities on delayed handing over of land and while making this assessment, the IE may also keep in view the Concessionaire's construction programme and any delay by the Concessionaire due to his inadequate mobilisation and financial constraints, if relevant.

- 4 The delay duration should be restricted to actual PCOD/COD, as the case may be, in case the same is achieved before the extendable period.

Example: If the Appointed Date of Project (having total Project Length is 120 kms) is 01-04-2009 and Construction Period is 2.5 Years, then the Scheduled Project Completion Date (SPCD) would be 30-09-2011. Encumbrance free land handed over to the Concessionaire by the Authority as on Appointed Date is 60 kms i.e. 50% of the total encumbrance free land required for the Project.

Determination of Delay Duration - An illustrative example

Input sheet

Appointed Date	4/1/2009	Address Cell is required to be filled by Admin.
Construction Period (in no. of days)	913 Days	
Scheduled Completion Date (COD)	9/30/2011	
Encumbrance Free Land Required for the Project	120 Koms	
Encumbrance Free Land Handed over to the Concessionaire as on Appointed Date	61 Koms	50.00%
Assumption w.r.t Reasonable Period for Construction *1		
If the corresponding balance work activities due to delayed handing over of land involves major structures	345 Days	
If the corresponding balance work activities due to delayed handing over of land do not involve major structures	180 Days	
Assumption w.r.t. availability of Encumbrance Free Land	80.00%	100.00%
Actual COD on Date	7/31/2013	11/30/2014



Input of land handed over

Date	#4 Encumbered Free Land Handed Over to the Concessionaire		#2 Whether Land handed over is more than equal to 80%?	Schedule Completion Date (If Stretch does not have major Structures)	Schedule Completion Date (If Stretch having major Structures)	Availability of Encumbrance Free Land	
	In kms	In %				80.00%	100.00%
4/1/2009	60 Kms	50.00%	No				
6/30/2009	62 Kms	51.67%	No				
9/30/2009	65 Kms	54.17%	No				
12/31/2009	68 Kms	56.67%	No				
3/31/2010	71 Kms	58.33%	No				
6/30/2010	75 Kms	62.50%	No				
9/30/2010	80 Kms	66.67%	No				
12/31/2010	82 Kms	68.33%	No				
3/31/2011	84 Kms	70.00%	No				
6/30/2011	87 Kms	70.00%	No				
9/30/2011	88 Kms	70.83%	No				
12/31/2011	89 Kms	70.83%	No				
3/31/2012	90 Kms	75.00%	No				
6/30/2012	92 Kms	76.67%	No				
9/30/2012	95 Kms	76.67%	No				
12/31/2012	96 Kms	81.67%	Yes	6/28/2013	12/30/2013		
3/31/2013	110 Kms	91.67%	Yes	9/26/2013	3/30/2014	6/28/2013	12/30/2013
6/30/2013	125 Kms	100.00%	Yes	12/26/2013	6/29/2014	6/28/2013	12/30/2013

Output

#3 Extension in the Concession Period	Schedule Completion Date (If Stretch does not have Major Structures)	Schedule Completion Date (If Stretch having Major Structures)
Extension in the Concession Period (for not handing over land of 80% on time)	637 days	822 days
Extension in the Concession Period (for not handing over land of 100% on time)	205 days	251 days
Extension in the Concession Period (for not handing over land of 80% on time)	548 days	548 days
Extension in the Concession Period (for not handing over land of 100% on time)	205 days	251 days
Total Extendable Concession Period (in no. of days)	753 days	799 days

Days from Schedule Completion date till actual PCOD/COD

548 days	548 days	Which ever is earlier.
289 days	289 days	Which ever is earlier.

Assumption/Note:

*¹ If the corresponding balance work activities due to delayed handing over of land at any stage (80% or 100%) involves major structures (flyover/ VUP/Major Bridges/ROBs etc.), it may be assumed that it will take 01 year time to complete these project works, else 6 months' time may be considered as a reasonable period for construction of balance activities including minor structures like PUPs. The aforesaid period may be increased by another 3 months in case of a rainy season falls in the extended delay period. However, these assumptions may be modified as per project specific requirement and conditions, to be determined realistically and judiciously by IE. This determination of delay should confine to the corresponding work activities on delayed handing over of land and while making this assessment, the IE may also keep in view the Concessionaire's construction programme, if relevant.

*² The procedure is based on the assumption that with 80% availability of unencumbered land (linear frontage length), the Concessionaire will be in a position to complete at least 75% length of project highway to achieve the Provisional COD. This assumption may be modified as per project specific requirement to be determined by IE with justification.

*³ The delay duration should be restricted to actual PCOD/COD, as the case may be, in case the same is achieved before the extendable period.

*⁴ The land shall be deemed to be encumbrance free land if it satisfies the following:

(i) The encumbrance free land (vacant access and Right of Way of the site) availability should be defined in linear km. available free of all encumbrances for construction of Project Highway (2-lane with paved shoulder/4-lane/6-lane as the case may be) as a percentage of total project length. The land should be declared as fully acquired only after completion of formalities as per provisions of 3 (H) of NH Act 1956. However in case the Concessionaire is able to construct the Project Highway in any stretch through his own liaison/efforts, even though formalities as per provision of Section-3 (H) of NH Act 1956 are not yet completed, this length shall be treated as encumbrance free land available for the purpose of calculation for determination of delay

(ii) Environment clearance for the stretch in place;

(iii) First Stage Forest Clearance obtained from MoEF and consequently permission for tree cutting and commencement of work received from Forest Authorities as per prevailing policy of MoEF.

(iv) GAD of ROB/RUB obtained by the Authority from Railways;

estimates for utilities shifting (electrical, water/gas pipelines and other utilities hindering the construction of Project Highway) have been sanctioned by the Authority and supervision charges are deposited with the departments/organisations owning the utilities.