



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/ SoP for Providing Relief to Concessionaries /2018

No. 8.4.17/2018, Dated the 13th March, 2018

(Decision taken on File No. NHAI//CGM/BOT(FIN)/2017-18)

Sub: Standard Operating Procedure (SoP) for providing relief to Concessionaries on account of suspension of collection of user fee due to demonetization of Rs. 500 and Rs. 1000 currency notes -reg.

With the approval of Competent Authority, a Standard Operating Procedure (SoP) for providing relief to Concessionaries on account of suspension of collection from 09.11.2016 to 02.12.2016 of user fee due to demonetization of Rs. 500 and Rs. 1000 currency notes is hereby enclosed for compliance.

(V.K. Sharma)

Chief General Manager (Coord.)

To

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

Standard Operating Procedure for providing relief to Concessionaires on account of suspension of collection of user fee due to demonetization of Rs. 500 and Rs. 1000 currency notes

Background

Pursuant to the guidelines issued by the Ministry of Road Transport & Highways, the loss on account of non-collection of toll from 9th November 2016 onwards till the midnight of 2nd and 3rd December 2016 shall be addressed as per the provisions of the respective concession agreements that define the engagement of the Authority/MoRTH with such entities.

Accordingly, NHAI (the "Authority") vide their Office Orders dated 29 Nov 2016 and 6 Dec 2016 laid down the guidelines for providing immediate relief to Concessionaires. Now reference/issues have been received from Concessionaire, NHBF & field offices regarding various issues including release of balance 10% payment. Accordingly, NHAI is issuing the following paragraphs detailing out the Standard Operating Procedure (SOP) to be followed by the Regional Offices of the Authority for providing relief to such concessionaires.

Applicability

This SOP is applicable to all BOT (Toll) and OMT projects of the Authority, where the Concessionaire and the Authority have entered into a Concession Agreement based on the Model Agreements post 2009, and where the projects have achieved Commercial Operations Date.

Definitions

While the definitions prevalent in the project-specific Concession Agreements will prevail, the following definitions have been referred to in this SOP for general guidance and reference.

"**Financial Close**" means the fulfillment of all conditions precedent to the initial availability of funds under the Financing Agreements which shall be communicated by the Lender's Representative to the Authority in writing. Such communication from Lender's Representative shall be treated as date on which the Financial Close is achieved.

"**Financial Model**" means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein

"**Financial Package**" means the financing package indicating the total capital cost of the Project and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements and Subordinated Debt, if any

"**Financing Agreements**" means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan

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agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the **Total Project Cost**, and includes amendments or modifications made in accordance with Clause 5.2.3.

"O&M Expenses" means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract, Tolling Contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or the project Concession Agreement;

Process for Release of Payment

1. The RO will check whether the clause 34.6.2 (b) of the Concession Agreement in case of BOT (Toll) project, or Clause 26.6.2 of the Concession Agreement in case of OMT project, reads as:

"After COD, whereupon the Concessionaire is unable to collect Fee despite making best efforts or it is 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 on account thereof;"

In case the clause of the Concession Agreement varies from the clause reproduced above, the matter will be dealt on a case to case basis.

2. The RO will check whether the clause 34.7.2 of the Concession Agreement in case of BOT (Toll) project, or Clause 26.7.2 of the Concession Agreement in case of OMT project, reads as:

"Upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political event shall be reimbursed by the Authority to the concessionaire." It is further stated that "For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the force Majeure Event, but shall not include loss of Fee revenues or debt repayment obligations, and for determining such costs information contained in the Financial Package may be relied upon to that extent that such information is relevant."

In case the clause of the Concession Agreement varies from the clause reproduced above, the matter will be dealt on a case to case basis.

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3. Process for release of first 50% of interest amount: ROs have been authorized by NHAI for release of first 50% of interest amount as per the financial/refinancing package to the Concessionaire. The ROs will calculate this interest amount as per the financial/refinancing package and release the same within 7 working days from the issue of this SOP (if not already paid) upon request from the Concessionaire.
4. The Concessionaire shall, within 7 working days of issue of these SOPs, submit the following information duly certified by the Statutory Auditor, to the Independent Engineer for certification (if not already submitted):
 - i. O&M Expenses for 2015-16
 - ii. Monthly O&M Expenses for 2016-17 upto October 2016.
5. The Independent Engineer will within 3 working days certify the claim in line with the definition of O&M Expenses provided in the Concession Agreement and as depicted here above.
6. The Independent Engineer will be required to stamp, sign and date the certificate and issue the same to the Concessionaire.
7. Documents to be submitted by the Concessionaire: The Concessionaire will submit the copies of the following documents to the RO within 7 working days of receipt of the certification of the Independent Engineer:
 - a) Financing Agreements, Original Financial Package and Financial Model
 - b) In case NHAI has approved refinancing of the project, the approved revised Financing Agreements, Financial Package and Financial Model may be submitted.
 - c) Certification of Independent Engineer regarding O&M Expenses as referred in 4, 5, and 6 above.
 - d) Certification of Statutory Auditor regarding interest payment of debt provided by the Senior Lenders under the Financing Agreements for financing the **Total Project Cost**. In case NHAI has approved refinancing of the project, the interest payment may be certified accordingly by the Statutory Auditor.
 - e) A certificate from the lead banker certifying the interest to be paid from 9th Nov., 2016 onwards till the midnight of 2nd /3rd Dec., 2016, for financing the **Total Project Cost**. In case NHAI has approved refinancing of the project, separate interest certificates from lenders may be submitted.
 - f) Detailed of claims for any other cost directly attributable to the Force Majeure (FM) Event with justification and supporting documents duly certified by the Statutory Auditor.
 - g) A self-certified letter detailing the breakup of claims into:
 - i. O&M Expenses
 - ii. Interest payment on debt
 - iii. Other claims
 - h) Copies of Monthly Fee Statements submitted for FY 15-16 and for 2016-17 upto October 2016.

- i) An undertaking that their claims are true and correct and authorization in favour of NHAI to recover from the Escrow Account of the Concessionaire if any amount has been found to be paid excess in comparison to the due amount during subsequent audits etc.
8. The RO will release 90% of the claim amount of the Concessionaire within 5 working days upon submission of the above documents by the Concessionaire itself. NHAI liability is to be restricted to pay interest only to the extent of the interest incurred on the principal amount of debt provided by senior lenders under the financing agreements for financing the **Total Project Cost**. In case the debt incurred by the Concessionaire is in excess of above, it will not be accounted as NHAI liability.

9. Reconciliation of Force Majeure Costs and release of balance payment:

a) Interest payment on debt:

The RO will review the following certifications already submitted by the Concessionaire as detailed in 7 above:

- i. Certification of Statutory Auditor regarding interest incurred on principle amount of debt provided by the Senior Lenders under the Financing Agreements for financing the **Total Project Cost**, and
- ii. Interest certificates submitted by the lenders.

Lower of these two shall be recognized as the liability of NHAI for interest payment on debt under the FM event.

b) O&M Expenses:

The RO will review the original financing documents and certification of Independent Engineer regarding O&M Expenses. Specifically, the RO will compare:

- i. Average of O&M Expenses for FY 2016 till date
- ii. Average monthly O&M Expenses for 2015-16 increased by 5%.
- iii. O&M Expenses projected in original financing documents

Pro-rata of the least of the above 3 will be recognized as the liability of NHAI for O&M Expenses under the FM event.

c) Other costs directly attributable to the Force Majeure event as described in Clause 34.7.2:

Decision on appropriateness of the costs to be taken by RO on case to case basis within 10 working days, provided it does not exceed the cost projected in original financing documents.

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9.1 In this context, it is clarified that pursuant to NHAJ Policy Guidelines ref: *NHAJ/Policy Guideline/Concession Fee during subsistence of Force Majeure/2017* dated 10th August 2017, the Concessionaire is exempt from payment of the Concession Fee including Additional Concession Fee in case of occurrence of FM event. Therefore, Additional Concession Fee paid by the Concessionaire for the period of subsistence of the FM Event will be included in other costs and will be reimbursed by the Authority.

9.2 The sum of a), b), and c) above shall be recognized as the Force Majeure Costs payable by NHAJ to the Concessionaires. Care should be taken that NPV of all reimbursement (i.e. sum of a), b) & c) alongwith extension of concession period) is capped to a maximum of toll revenue that could have been realized. The final reimbursement shall be released to the Concessionaire after adjusting for the amount already released, within 10 working days of submission of the above documents by the Concessionaire.

10. ROs shall ensure that all records are maintained in proper order for any audit purpose.

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