

सदस्य(पी पी पी) सचिवालय, भारत प्रा
Member (PPP) Sectt., NHAI
1085
8/11/13

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(3.5)

N-14032/03/2011-Infra
Government of India
Planning Commission
(PPP & Infrastructure Division)

सदस्य(पी पी पी) सचिवालय, भारत प्रा
Member (PPP) Sectt., NHAI
डाक/एफ टी एस नं. 1085
Dy/FTS No. 8/11
दिनांक
Date

(3.4)

Yojana Bhawan, New Delhi
Dated: November 5, 2013

OFFICE MEMORANDUM

Subject: Restructuring/ Refinancing of the debt in the highway projects regarding.

The undersigned is directed to refer to D.O. letter No.NHAI/UP/11017/1/2009/NHDP-IVA/KK86 dated October 1, 2013 on the above subject and to communicate the comments of the Planning Commission as under:

(a) The Planning Commission is of the view that refinancing/rescheduling of the debt should be undertaken in accordance with the provisions of the Concession Agreement.

(b) The Concession Agreement defines the "Financing Agreements" as under:

"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 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 5.2.2".

Chairman
see at

Further, Clause 5.2.3 of the Concession Agreement provides for as under:

"5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire."

Chairman

The definition of "Financing Agreements" includes refinancing. Further, Clause 5.2.3 of the Concession Agreement provides for approval of the Authority for restructuring/rescheduling of the debt of the Concessionaire. Thus, the Concession Agreement permits refinancing/ rescheduling of the debt which may include extension of the tenure of the loan.

It is noteworthy that the Concession Agreement provides for termination payment based on debt due. As such, the liability of the Authority is restricted to the amount included in the definition of "debt due". However, there is no restriction on the tenure of the debt. As such, a concessionaire can initially borrow for a long period, say, 25 years and the liability

arising therefrom in the event of termination remains with the Authority. In such a situation, there should be no objection if a person initially borrows for ten years and then obtains refinancing for another ten years. It should be recognized that the entire concept of debt due relates to the amount and not to the tenure of borrowing. The Concession Agreement gives completed freedom to the concessionaire in respect of the tenure of the loans but gives no freedom the amount of debt due.

Further, it is common in infrastructure financing for a Concessionaire to borrow for a shorter period initially and then reschedule or refinance the debt resulting into a longer repayment period. It may be noted that refinancing of debt is a normal practice in PPP projects, especially in countries such as U.K., Australia, etc. Hence, extension of tenure of debt on account of refinancing, but limited to the original amount of project debt should not be objected to.

(c) Moreover, the Government has recently approved the setting up of the Infrastructure Debt Funds (IDF) which would raise low cost long-term resources for refinancing infrastructure projects that have completed the construction phase. Clause 2.3 of the Model Tripartite Agreement of IDF, as approved by the Government, also provides for extension of the repayment schedule with the proviso that the entire debt shall be repaid no later than two years prior to the expiry of the Concession Period. This clearly endorses the understanding that refinancing is permissible.

This issues with the approval of Deputy Chairman, Planning Commission.


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