F.No.H-25011/02/2014-P&P (Pt.III) Government of India Ministry of Road Transport and Highways

Parivahan Bhawan, 1, Sansad Marg, New Delhi dated the 9th November, 2015.

ORDER

In continuation of this Ministry's Order of even number dated 8th September, 2015 it is further clarified that the following clauses approved earlier for change is applicable in BOT (Toll) 4 laning and BOT (Toll) 6 laning in the provisions of Model Concession Agreement (MCA):-

Clause Reference	BOT (Toll) MCA- 4	BOT (Toll) MCA- 6	BOT (Annuity) MCA
	lane	lane	4 lane
4.1.2	Applicable	Applicable	Applicable
(Performance Security to	1.		r r
the Authority in			
accordance with Article 9)			
4.1.3 (f)	Applicable	Applicable	Applicable
(Financial Package and	1 1	- "F F	
Financial Model)			
4.3	Applicable	Applicable	Applicable
(Damages for delay by	· ·pp···ouoio		, xppeasie
the Concessionaire)			
4.4*	Applicable	Applicable	Applicable
(Commencement of	rippiidable	пррпсавіс	Applicable
Concession Period)			
5.2.2	Annliaghla	Appliachla	A mm1: 1-1-
	Applicable	Applicable	Applicable
(Submission of all drafts of Project Agreements,			İ
, , ,			
amendments by the Concessionaire to the			
1			
Authority) 10.3.4	Amplicable	A1:1-1-	A1'11
	Applicable	Applicable	Applicable
(Grant of Right of Way to			
the Concessionaire, no			
later than 120 days from the date of Appointment)			
10.3.7	Applicable	Amplicable	A1:1-1-
	Applicable	Applicable	Applicable
(Procurement of site)	A1' 1.1.	A1: -1-1	A 1: 11
13.1	Applicable	Applicable	Applicable
(Monthly progress report)			ļ
14.5.1	Applicable	Applicable	Applicable
(Report of Independent			
Engineer if found that the			
Project Highway does not	į		
conform to the provisions	·		
of the Agreement)			
16.1.2	Applicable	Applicable	Applicable
(Change of scope for			•
improved services to the			
user)		A 1' 1 1	4 1
16.3.1	Applicable	Applicable	Applicable
(Authority shall make an			
advance payment to the			
Concessionaire within 30			
days of issuing a change		•	
of scope)	A 11 1 1	<u> </u>	
17.8.1	Applicable	Applicable	No change in the
(Damages for Breach of			current provision
maintenance Obligations)			

(Authority's rights to take remedial measures) 23.2.3 (Duties and functions of IE) 25.2.2 (Equity support) Applicable Applicable Change related to clauses 25.3.1 and 25.3.2 not applicable The same pertains to disbursement of O&M support which is not applicable of disbursement of O&M support which is not applicable of Communication (Communication) 27.11.3 (Display of Fee Rates) 27.12 (Real time data for totl collection) 28.1.3 (Disbursement of Revenue Shortfall Loan by the Authority) 33.1.1 (Maintenance of records by the Concessionaire) 31.3.1 (g) (Applicable Applicable Not Applicable Not Applicable Not Applicable Not Applicable Not Applicable Applicable Applicable Not Applicable Not Applicable Not Applicable Applicable Not Applicable Not Applicable Not Applicable Not Applicable Appli	17.9.2	Applicable	Applicable	Applicable
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44.2 Applicable Applicable Applicable				
		Applicable	Applicable	Applicable
(Livelit of Dispute	(Event of Dispute			

between the parties)			
Schedule Q, Clause 4	Applicable	Applicable	Applicable
Development Period	1		}
44.3.1	Applicable	Applicable	Applicable
(Disputes to be settled by	1 1	· · · · · · · · · · · · · · · · · · ·	
Arbitration)			
48.1 Definition of	Applicable	Applicable	Applicable
Bank	• •		
Schedule G:	Applicable	Applicable	Applicable
Project Completion	• • • • • • • • • • • • • • • • • • • •		
Schedule Project			
Milestone – I Project			
Milestone – II Project			
Milestone - III			
Schedule –I	Applicable	Applicable	Applicable
2.6			
(Structural Test for			
structures)			
Schedule Q	Existing Clauses 3.2	Existing Clauses 3.2	Existing Clauses 3.2
3.1 (viii) and (ix)	(viii) and (ix) to be	(viii) and (ix) to be	(viii) and (ix) to be
	replaced and	replaced and	replaced and
	renumbered as 3.2 (x)	renumbered as 3.2 (x)	renumbered as 3.2 (x)
	and 3.2 (xi) respectively	and 3.2 (xi) respectively	and 3.2 (xi) respectively
Schedule Q Paragraph	Applicable	Applicable	Not Applicable
12		11	• •
(Assistance to Authority			
in review of book of			
accounts)			
6.4	Applicable	Applicable	Applicable
(Obligations relating to			
refinancing)			
Back-ending of	Applicable. **	Applicable. **	Not Applicable
Premium 26.2	Amended C1 26.2 is	Amended C1 26.2 is	
	provided below	provided below	
Additional	Applicable.	Applicable.	Not Applicable
Eligibility of extending	***Amended C1	***Amended C1	
Revenue	28.1.2 is provided	28.1.2 is provided	
Shortfall Loan- 28.1.2	below	below	
Allowing charge	Applicable.	Applicable.	Applicable.
on Receivables	****Amended C1 40.2	****Amended C1 40.2	****Amended C1 40.2
- 40.2 (b)	(b) is provided below	(b) is provided below	(b) is provided below

(Base document for 4 lane BOT Toll is for year 2011, Base document for 6 lane BOT Toll is for year 2012. Base document for 4 lane BOT Annuity is for October 2010).

26.2.1 Without prejudice to the provisions of Clause 26.1, the Concessionaire agrees to pay to the Authority immediately after the third (3rd) anniversary year of COD, a Premium in the form of an additional Concession Fee equal to Rs. (in words) as due to the authority during that year, due and payable for the period remaining in that year; and for each subsequent year till the 9th anniversary of COD, the Premium shall be determined by increasing the amount of Premium in the respective year by an additional 3% (three percent) as compared to the immediately preceding year and for each subsequent year of the Concession Period, the Premium shall be determined by increasing the amount of Premium in the respective year by an additional 8% (eight percent) as compared to the immediately preceding year.

^{*} In place of CI 4.5 as mentioned in the Order dated 8th September, 2015.

^{**} Clause 26.2.1 Back ending of Premium:

For avoidance of doubt it is clarified that the term 'Premium' as referred in para above shall be as applicable for one financial year. In accordance with and in compliance with the terms of this agreement, if payment of such 'Premium' is due and payable only for part of such financial year, then only pro-rata payments @ 1/12th of such Premium shall be payable for each month of such part financial year for which such Premium payments is due as payable. For the purpose of assessing the amount due for payment on such payment of Premium, part of a month shall be deemed to be a full month. In such circumstances the subsequent year as referred to in para above, for the purpose of 5% annual escalation, shall fall to commence on 1st of April of the immediately succeeding financial year.

- *** 28.1.2 Additional Eligibility of extending Revenue shortfall loan
- 28.1.2 If the half-yearly results of the Concessionaire indicate that the shortfall referred to in Clause 28.1.1 and contemplated for an Accounting Year has arisen in respect of the first 6 (six) months hereof, the Concessionaire shall be entitled to a provisional Revenue Shortfall Loan; provided that, no later than 60 (sixty) days after the close of such Accounting Year, the Concessionaire shall either repay the provisional loan with interest or adjust it against the Revenue Shortfall Loan, if any, as may be due to it under this Clause 28.1.

Provided further if the Realisable Fee in any Accounting Year shall fall short of the Subsistence Revenue as a result of a judicial pronouncement not related to the default of the concessionaire the Authority shall, upon request of the Concessionaire, provide "Revenue Shortfall Loan" at an interest rate equal to 2% (two per cent) above the Bank Rate. The entire surplus cash, after meeting the subsistence expenditure shall be used for repayment of the of such Revenue Shortfall Loan.

****40.2 (b) Allowing charge on Receivables

mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, a charge on the Escrow account arising or created in the ordinary course of business of the Project Highway and a charge on Receivables of the Concessionaires as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project Highway;

(Manish Kumar Singh) Under Secretary to the Govt. of India Tele.No.23714001

To

- 1. CEO, NITI Aayog
- 2. Secretary, Department of Economic Affairs
- 3. Secretary, Department of Expenditure
- 4. Secretary, Department of Financial Services
- 5. Secretary, Department of Legal Affairs
- 6. Chairman, NHAI

Copy to Shri Sheo Nath Singh, Under Secretary, Cabinet Secretariat, Rashtrapati Bhavan, New Delhi.

Copy also to PPS to Secretary(RT&H)/Jt. Secy(H)/DS(H)/ NIC for uploading the order on website.

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