

No. NH- 35014/10/2016-H
Government of India
Ministry of Road Transport & Highways
(Highways Section)

1, Sansad Marg, Parivahan Bhavan,
New Delhi, dated 5 September, 2016

OFFICE ORDER

Subject: Measures to revive the construction sector-reg.

The undersigned is directed to refer to NITI Aayog's O.M No. 14070/14/2016-PPPAU dated September 05, 2016 on the subject above – enclosed with this Order. NITI Aayog had proposed certain measures to revive the construction sector which were approved by the Cabinet Committee of Economic Affairs (CCEA) in its meeting held on August 31, 2016. Based on the CCEA approval, NITI Aayog has issued instructions for compliance and necessary action by all concerned Government Departments/Ministries.

2. With reference to the above, all projects that involve award of public contracts and construction activities, implemented by the National Highways Authority of India (NHAI), National Highways & Infrastructure Development Corporation Ltd (NHIDCL) and the Ministry of Road Transport & Highways (MoRTH) through its implementation agencies shall comply with the following:

- i. In case of contracts/concessions where the process of arbitration was initiated under the pre-amended Arbitration Act, the implementation agencies may seek the consent of the contractors/concessionaires to transfer the pending cases under the amended Arbitration Act, wherever possible. The shift to amended Arbitration Act is expected to make the arbitration process more cost effective and help in settlement of the disputes in a timely manner.
- ii. In case of claims where the implementation agency has challenged the Arbitral Award already announced, 75% of the award may be paid by the implementation agency to the contractor/concessionaire against Bank Guarantee without prejudice to the final order of the Court in the matter under challenge. The payment may be made into a designated Escrow Account with the stipulation that the amount so released will be used, first, for payment of lenders' dues, second, for completion of the project and then for completion of other projects of the same implementation agency, as mutually agreed/decided. Any balance remaining in the escrow account subsequent to settlement of lenders' dues and completion of projects of the implementation agency may be allowed to be used by the contractor/concessionaire with the prior approval of the lead banker and the implementation agency.

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- iii. In case the subsequent court order requires refund of the money paid by an implementation agency against a Bank Guarantee, the amount shall be refunded by the contractor/concessionaire along with appropriate interest. The rate of interest on such refund amount may be decided by the implementation agency keeping in view the cost of capital to the implementation agency or the rate of interest provided for in the Contract Agreement or the rate of interest awarded under the Arbitral Award under challenge.

Notes:

- a) For Departments, cost of capital shall be taken as Weighted Average Coupon rate of outstanding stock of Central Government securities for the period ending in the preceding quarter, or Weighted Average Coupon rate of Central Government securities issued during the preceding quarter (whichever is higher);
 - b) NHAI and PSUs shall either calculate their own cost of capital or take State Bank of India's One Year Marginal Cost of fund-based Lending Rate plus 2%.
 - c) The appropriate interest rate on such refund shall be decided at the time of releasing funds to the Escrow Account;
 - d) if otherwise eligible and subject to contractual provisions, retention money and other amounts withheld may also be released against bank guarantee as per the laid down criteria.
3. The above issues with approval of the Competent Authority in the Ministry.

De 16/9/16
(Debjani Bhakrabarti)
Director (Highways)
Telephone No.: 2371 8575

Encl: as above

To

1. Chairman, NHAI
2. Managing Director, NHIDCL
3. Director General (Roads) & Special Secretary-Roads, MoRTH - with a request to communicate the above to all implementation agencies for MoRTH projects

Copy for kind information to PPS to Secretary -RTH, Shri A Muthuvezhappan,
Director PPPAU -NITI Aayog

No. N-14070/14/2016-PPPAU
Government of India
National Institution for Transforming India (NITI Aayog)

NITI Bhawan, New Delhi
September 05, 2016

Office Memorandum

Subject: Measures to revive the Construction Sector - reg.

The construction sector has been facing a number of problems, mainly arising from the liquidity constraints caused on account of their payments not being released by the Government Departments/ Public Sector Undertakings (PSUs) pursuant to the arbitral awards. To discuss the problems of the construction sector, detailed deliberations/ consultations were held with the representatives of the construction industry, banks, major government PSUs and concerned Ministries/ Departments. Based on the above deliberations/ consultations, the NITI Aayog placed a proposal before the Cabinet Committee on Economic Affairs (CCEA) for its consideration suggesting various short- term and long-term measures required for addressing the issues ailing the construction sector. The CCEA, chaired by the Hon'ble Prime Minister, has considered the proposals of NITI Aayog in its meeting held on 31st August 2016 and approved the same for the revival of construction sector.

2. Accordingly, following instructions are hereby issued for compliance and necessary action by all concerned i.e. the Government Departments/ Ministries/ Public Sector Undertakings awarding the public contracts/ implementing various projects involving construction activities:

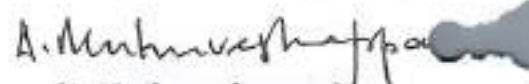
- 2.1 In case of contracts/ concessions where the process of arbitration was initiated under the pre-amended Arbitration Act, the PSUs/ Departments may seek the consent of the contractors/ concessionaires to transfer the pending cases under the amended Arbitration Act, wherever possible. The shift to amended Arbitration Act is expected to make the arbitration process more cost effective and help in settlement of the disputes in a timely manner;
- 2.2 In case of claims where the PSU/ Department has challenged the Arbitral Award already announced, 75% of the award may be paid by the PSU/ Department to the contractor/ concessionaire against Bank Guarantee without prejudice to the final order of the Court in the matter under challenge. The payment may be made into a designated Escrow Account with the stipulation that the amount so released will be used, first, for payment of lenders' dues, second, for completion of the project and then for completion of other projects of the same PSU/ Department, as mutually agreed/ decided. Any balance remaining in the escrow account subsequent to settlement of lenders' dues and completion of projects of the PSU/ Department may be allowed to be used by the contractor/ concessionaire with the prior approval of

the lead banker and the Department/PSU.

- 2.3 In case the subsequent court order requires refund of the money paid by a PSU/ Department against a Bank Guarantee, the amount shall be refunded by the contractor/ concessionaire along with appropriate interest. The rate of interest on such refund amount may be decided by the PSU/ Department keeping in view the cost of capital to the PSU/ Department or the rate of interest provided for in the Contract Agreement or the rate of interest awarded under the Arbitral Award under challenge.

Notes:

- (i) For Departments, cost of capital shall be taken as Weighted Average Coupon rate of outstanding stock of Central Government securities for the period ending in the preceding quarter, or Weighted Average Coupon rate of Central Government securities issued during the preceding quarter (whichever is higher);
 - (ii) PSUs shall either calculate their own cost of capital or take State Bank of India's One Year Marginal Cost of fund-based Lending Rate plus 2%;
 - (iii) The appropriate interest rate on such refund shall be decided at the time of releasing funds to the Escrow Account;
 - (iv) If otherwise eligible and subject to contractual provisions, retention money and other amounts withheld may also be released against bank guarantee as per the laid down criteria.
3. All the concerned Ministries/ Departments shall also issue instructions to their respective PSUs for taking necessary action accordingly.


(A. Muthuvezhappan)
Director (PPPAU)

To

- 1. Secretaries of all the Ministries/Departments of Government of India.
- 2. Chairpersons/ CMDs/ MDs of all the Central Government PSUs.
- 3. Chairpersons/ CMDs/MDs/CEOs of all the Scheduled Commercial Banks.
- 4. Chief Executive, Indian Banks Association, Mumbai.
- 5. Shri Alok Tandon, Additional Secretary, Cabinet Secretariat, Rashtrapati Bhavan, New Delhi - 110001.
- 6. Dr. T. V. Somanathan, Joint Secretary, PMO, South Block, New Delhi - 110001.

Copy for information to:

- 1. PS to Vice Chairman/ PS to MoS/ PS to all Members
- 2. Sr. PPS to CEO/ PPS to Special Secretary