

F.No.H-25011/02/2014-P&P (Pt. III)

भारत सरकार

Government of India

सड़क परिवहन और राजमार्ग मंत्रालय

Parivahan Bhawan, 1 Sansad Marg,
New Delhi, dated the 8th September, 2015

ORDER

The competent authority has approved the following amendments in the provisions of Model Concession Agreement (MCA):-

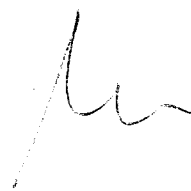
Clause 4.1.2

The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 9, at any time after [90 (ninety)] days from the date of this Agreement or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 90 (ninety) days of the notice, or such longer period not exceeding 120 (one hundred and twenty) days as may be specified therein, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have :

- (a) Procured for the Concessionaire the Right of Way to the Site in accordance with the provisions of Clause 10.3.1;
- (b) Issued the fee notification;
- [(c) Procured for the Concessionaire the Right of Way to ****;]¹
- [(d) procured approval of the Railway authorities in the form of a general arrangement drawing that would enable the Concessionaire to construct road overbridges/underbridges at level crossing on the Project Highway in accordance with the Specifications and Standards and subject of the terms and conditions specified in such approval; and]
- [(e) procured all Applicable Permits relating to environmental protection and conservation of the site:]²

[provided that the Authority may from time to time by notice extend, for up to an aggregate of 6 (six) months, the period for procuring the approval set forth in Sub-clause (d) and/or Sub-clause (e) above and in that event the land to be covered by overbridges or the affected sections of the Project Highway, as the case may be, shall be included in the Appendix referred to in Clause 10.3 and dealt with in accordance with the provisions thereof; and provided further that upon procurement of such approval, the Concessionaire shall be entitled to a period of 12 (twelve) months therefrom for completion of the overbridges. For the avoidance of doubt, the approval specified in Sub-clauses (d) and (e) above

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shall cease to be a Condition Precedent upon the extension of time under this Proviso.]

Article No.4.1.3(f) Conditions precedent will now be read as under:-

"Delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model, which is workable, formulae linked and interactive, in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders."

Article No.4.3 Damages for Delay by the Concessionaire will now be read as under:-

"In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period of 180 (one hundred and eighty) days from the date of this Agreement, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security, provided further that such Damages for delay by the Concessionaire for non-fulfilment of Conditions Precedent shall be payable within 15 days of achievement of fulfilment of Conditions Precedent.

Article No.4.5 Deemed Termination upon Delay will be added as a new clause as under:-

"Without prejudice to the provisions of Clause 4.2 and 4.3, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before the 1st anniversary of the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the performance security of the Concessionaire shall be encashed and appropriated by the Authority to the extent of an amount calculated as 1% (one per cent) of the Total Project Cost."

Clause 5.2.2

The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 30(thirty)

days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that no review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.

Clause 10.3.4

The Authority shall make best efforts to procure and grant, no later than 120 (one hundred and twenty) days from the Appointed Date, the Right of Way to the Concessionaire in respect of all land included in the Appendix, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, it shall pay to the Concessionaire Damages in a sum calculated at the rate of Rs.50/- (rupees fifty) per day for every 1,000 (one thousand) square metres or part thereof, commencing from the 91st (ninety first) day of the Appointed Date and until such Right of Way is procured.

Article No.10.3.7 Procurement of Site will now be read as under:-

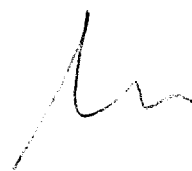
“The Concessionaire may procure at its cost and expense and on its own the land that may be required by it for Additional Facilities and the Authority shall have no obligation or liability in respect thereof. For the avoidance of doubt, the Concessionaire shall seek prior consent of the Authority to connect any Additional Facility to the Project Highway and such consent shall not be unreasonably withheld. Provided that cost of procuring such land for construction of additional facilities shall not be the part of Financial Package and the Financial Model.”

Article No.13.1 Monthly progress report will now be read as under:-

“During the Construction Period, the Concessionaire shall, no later than 7 days after the close of each month, furnish to the Authority and the Independent Engineer a monthly report on physical and financial progress of the Construction Works and shall promptly give such other relevant information as may be required by the Independent Engineer.”

Clause 14.5.1

If the Independent Engineer determines that the Project Highway or any part thereof does not conform to the provisions of the Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Concessionaire within 15 (fifteen) days of conducting such tests. Upon receipt of such a report from the Independent Engineer and after conducting its own inspection, if the Authority is of the opinion



that the Project Highway is not fit and safe for commercial service, it shall, within 30 (thirty) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Project Highway and direct the Independent Engineer to withhold issuance of the Provisional Certificate. Upon receipt of such notice, the concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

Clause 16.1.2

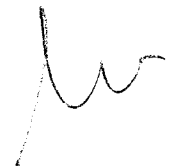
If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved services to the Users, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 60 (sixty) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.

Clause 16.3.1

Within 30 (thirty) days of issuing a Change of Scope Order, the Authority shall make an advance payment to the Concessionaire in a sum equal to 20% (twenty percent) of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, 20% (twenty percent) of the cost assessed by the Independent Engineer. The Concessionaire shall, after commencement of work, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts as are certified by the Independent Engineer as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

Article No. 17.8.1 Damages for Breach of Maintenance Obligations will be added to existing para as under:-

"Notwithstanding anything contained in this agreement, should the actual traffic exceed the design capacity, during any year or part thereof and the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled, from such date, to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 5% (five per cent) of Average Daily Fee, and (b) 1% (one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer, for the balance period of the concession."



Article No. 17.9.2 Authority's rights to take remedial Measures will now be read as under:-

"The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right, to recover the costs and Damages specified in Clause 17.9.1 directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under this Clause 17.9.2 and debit the same to O&M Expenses under para 4.1.1 (h) and 4.2(d) of the Escrow Agreement".

Article No. 23.2.3 Duties and Functions of IE will be read as new clause:-

"**23.2.2** a true copy of all communications sent by the Authority to the Independent Engineer and by the Independent Engineer to the Authority shall be sent forthwith by the Independent Engineer to the Concessionaire.

23.2.3 a true copy of all communications sent by the Independent Engineer to the Concessionaire and by the Concessionaire to the Independent Engineer shall be sent forthwith by the Independent Engineer to the Authority."

Article 23.2.4 IE shall periodically submit data on the progress/status of construction works, financial progress and other requisite details at such interval, as mentioned in the TOR, which shall enable the Authority for updating the project specific website, substantially in the format prescribed at Appendix-IV (New Appendix to be incorporated)."

[Note existing Art. 23.2.2 shall be accordingly renumbered as 23.2.4]

Article No. 25.2.2 Equity Support-will now be read as under:-

"The Equity Support shall not exceed the sum specified in the Bid and as accepted by the Authority, but shall in no case be greater than twice the Equity, and shall be further restricted to a sum not exceeding 40% (forty percent) of the Total Project Cost. For the avoidance of doubt, the Total Project Cost to be reckoned for the purposes of this Clause 25.2.2 shall include Equity Support."

Article No. 25.2.3 Equity Support will now be read as under:-

Equity Support shall be due and payable to the Concessionaire after it has expended the Equity, and shall be disbursed proportionately along with the loan funds to be disbursed by the Senior Lenders under the Financing Agreements. The Authority shall disburse each tranche of the Equity Support as and when due, but not later than 15 (fifteen) days of receiving a request from the Concessionaire along with necessary particulars. Provided further, within 30 days of the Lenders

Representative certifying the final drawdown of the last installment of the debt, all the balance Equity Support shall be disbursed by the Authority.

25.3.1 and 25.3.2 to be Deleted

Article No. 27.11.3 Display of Fee Rates will now be read as under:-

"The Concessionaire shall not revise, display or collect any amounts in excess of the rates of Fee payable under Fee Notification. In the event any excess amounts are collected by or on behalf of the Concessionaire, or collect Fee during periods when it is not entitled to do so, it shall, upon receiving a notice to this effect from the Authority, deposit with the Authority such excess amounts to the Authority along with Damages equal to 200 % thereof."

Article No. 27.12 Fee collection through electronic devices will now be added as a new clause:-

"The Concessionaire agrees and undertakes to migrate, as its own cost and expense, to electronic toll collection by means of such methods and devices as the Authority may determine from time to time"

Article No. 27.13 Real time data for toll collection will now be added as a new clause:-

"The Concessionaire shall install appropriate mechanism to ensure that a real time data of traffic count and corresponding revenue collection shall be shared with the Authority at all times during the Operations period."

Clause 28.1.3

The Authority shall disburse the Revenue Shortfall Loan or the provisional Revenue Shortfall Loan, as the case may be within 60 (sixty) days of receiving a valid request from the Concessionaire along with the particulars thereof including a detailed account of the Indirect Political Event, Political Event or the Authority Default, as the case may be, and its impact on the collection of fee.

Clause 33.1.1

The Concessionaire shall maintain books of accounts recording all its receipt (including all Realisable Fees and other revenues derived/collected by it from or on account of the Project Highway and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 180 (one hundred and eighty) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either

Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification on basis of payments and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

Article No. 31.3.1 (g) will now be read as under:-

"All payments and Damages certified by the Authority as due and payable to it by the Concessionaire, including repayment of Revenue Shortfall Loan; Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under Clause 17.9.2 and debit the same to O&M Expenses."

Article No. 31.4.1 (d) will now be read as under:-

"All payments and Damages certified by the Authority as due and payable to it by the Concessionaire, including repayment of Revenue Shortfall Loan; Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under Clause 17.9.2 and debit the same to O&M Expenses;"

Article No. 33.2.3 Appointment of auditors will now be read as under:-

"Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm (the "Additional Auditors") as may be decided by the Authority to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement."

Article No. 33.2.4 will now be read as under:-

"The Authority shall have the right, but not the obligation, to appoint at its cost, for the duration of the Construction Period, another firm (the "Concurrent Auditors") as may be decided by the Authority to undertake concurrent audit of the Concessionaire's accounts."

Clause 37.1.3

The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 37.1.2 to inform the Lenders' Representative and grant 30 (thirty) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred

and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire:

Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

Clause 37.2.2

Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of an Authority Default, the Concessionaire shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 30 (thirty) days to the Authority to make a representation, and may after the expiry of such 30 (thirty) days, whether or not it is in receipt of such representation, issue the Termination Notice.

Article No. 37.3.2 will now be read as under:-

"Upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to :

- (a) Debt Due; and
- (b) 150% of the Adjusted Equity.

Provided that the Termination Payment shall not be less than an amount equal to the product of 24 6 (six) and the average monthly Fee actually realized 12 months prior to the Transfer Date."

Clause 37.3.3

Termination payment shall become due and payable to the Concessionaire within 30 (thirty) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed

90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

Clause 42.3

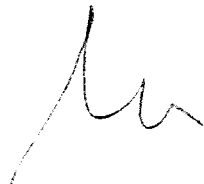
In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 42 (the "Indemnified Party") it shall notify the other Party (the "Indemnifying Party") within 30 (thirty) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

Clause 44.2

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the Chairman of the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 30 (thirty) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within 30 (thirty) day period or the Dispute is not amicably settled within 30 (thirty) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 60 (sixty) days of the notice in writing referred to in Clause 44.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of the Clause 44.3.

Schedule Q, Clause 4 Development Period

4.1 During the Development Period, the Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments/observations to the Authority and the Concessionaire within 30 (thirty) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the scope of the Project and Specifications and Standards.



4.2 The Independent Engineer shall review any modified Drawings or supporting documents sent to it by the Concessionaire to furnish its comments within 15 (fifteen) days of receiving of such Drawings or Documents.

4.3 The Independent Engineer shall review the Drawings sent to it by the Safety Consultant in accordance with Schedule L and furnish its comments thereon to the Authority and the Concessionaire within 15 (fifteen) days of receiving of such Drawings. The Independent Engineer shall also review the Safety Report and furnish its comments thereon to the Authority within 30 (thirty) days of receiving such report.

4.4 The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 30 (thirty) days of receipt thereof.

4.5 Upon reference by the Authority, the Independent Engineer shall review and comment on the EPC contract or any other contract for construction, operation and maintenance of the Project Highway, and furnish its comments within 15 (fifteen) days from receipt of such reference from the Authority.

Article No. 44.3.1 will now be added as a new clause:-

"44.3.1 Any Dispute, which is not resolved amicably by conciliation, as provided in Clause 44.2, shall be finally settled by arbitration as set forth below:

- (i) The Dispute shall be finally referred to Society for Affordable Resolution of Disputes (hereinafter called as SAROD), a Society registered under Society's Act, 1860 vide Registration no. S/RS/SW1049/2013 duly represented by Authority and National Highways Builders Federation (NHBF). The dispute shall be dealt with in terms of Rules of SAROD. The detailed procedure for conducting Arbitration shall be governed by the Rules of SAROD and provisions of Arbitration & Conciliation Act, 1996, as amended from time to time. The Dispute shall be governed by the Substantive Law of India.
 - (ii) The appointment of Tribunal, Code of conduct for Arbitrators and fees and expenses of SAROD and Arbitral Tribunal shall also be governed by the Rules of SAROD as amended from time to time. The rules of SAROD are placed at **Appendix-III**.
 - (iii) Arbitration may be commenced during or after the Concession Period, provided that the obligations of Authority and the Concessionaire shall not be altered by reason of the Arbitration being conducted during the Concession Period.
 - (iv) The seat of Arbitration shall be New Delhi or a place selected by governing body of SAROD and the language for all documents and communications between the parties shall be English.
 - (v) The expenses incurred by each party in connection with the preparation, presentation, etc., of arbitral proceedings shall be shared by each party itself.
- [Note: Article 44.3.3 to 44.3.5 are to be renumbered as 44.3.2 to 44.3.4 accordingly]

Article No. 48.1 Definition of "Bank" will now be read as under:-

"Bank" means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore).

Schedule-G: Project Completion Schedule

2. Project Milestone-I

2.1 Project Milestone-I shall occur on the date falling on the [180th (one hundred and eightieth)] day from the Appointed Date (the "Project Milestone-I")

2.2 Prior to the occurrence of Project Milestone-I, the Concessionaire shall have commenced construction of the Project Highway and expended not less than 10% (ten per cent) of the total capital cost set forth in the Financial Package and conveyed to the Independent Engineer, the nature and extent of physical progress comprising such expenditure so as to enable the Independent Engineer to determine that the physical progress is reasonably commensurate with the expenditure incurred. Provided, however, that at least one-half of the expenditure referred to hereinabove shall have been incurred on physical works which shall not include advances of any kind to any person or expenditure of any kind on plant and machinery.

3. Project Milestone-II

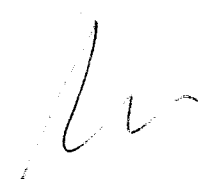
3.1 Project Milestone-II shall occur on the date falling on the [365th (three hundred and sixty fifth)] day from the Appointed Date (the "Project Milestone-II").

3.2 Prior to the occurrence of Project Milestone-II, the Concessionaire shall have commenced [construction of all bridges and expended not less than 35% (thirty five per cent)] of the total capital cost set forth in the Financial Package and conveyed to the Independent Engineer, the nature and extent of physical progress comprising such expenditure so as to enable the Independent Engineer to determine that the physical progress is reasonable commensurate with the expenditure incurred. Provided, however, that at least 25% (twenty five per cent)] of the total capital cost set forth in the Financial Package shall have been incurred on physical works which shall not include advances of any kind to any person or expenditure of any kind on plant and machinery.

4. Project Milestone-III

4.1 Project Milestone-III shall occur on the date falling on the [365th (three hundred and sixty fifth)] day from the Appointed Date (the "Project Milestone-III").

4.2 Prior to the occurrence of Project Milestone-III, the Concessionaire shall have commenced [construction of all Project Facilities and expended not less than 70% (seventy per cent)] of the total capital cost set forth in the Financial Package and conveyed to the Independent Engineer, the nature and extent of physical progress comprising such expenditure so as to enable the Independent Engineer to determine



that the physical progress is reasonably commensurate with the expenditure incurred. Provided, however, that that at least 60% (sixty per cent)] of the total capital cost set forth in the Financial Package shall have been incurred on physical works which shall not include advances of any kind to any person or expenditure of any kind on plant and machinery.

Article No. 2.6 of Schedule-I: Tests- will now be read as under:-

"Structural Test for structures: All major and minor bridges and all structures with a span of 15 (fifteen) meters or more constructed by the Concessionaire shall be subjected to the all requisite tests, as recommended by Independent Engineer in accordance with the procedures described in Special Report No. 17: 1996 of the IRC Highway Research Board on Nondestructive Testing Techniques, at two spots in every span, to be chosen at random by the Independent Engineer. All Structures with a span of 15 (fifteen) meters or more shall also be subjected to load testing".

Article No. 3.1 (viii) &(ix) and 12.1 of Schedule Q: TOR for IE will now be added as a new clause:-

"Paragraph 3.1 (viii) & (ix) to be inserted in the Schedule Q as below:-

3.1 (viii). Assist Authority in review and inspection of the books of accounts submitted by the Concessionaire to the Authority and the records maintained by Concessionaire as set forth in Paragraph 12

3.1 (ix). Provide all requisite data on monthly basis within a period of 7 days from the close of month, as required by Authority, for updating the project specific website substantially in the format prescribed at **Appendix-IV**

Paragraph 12 to be inserted in the Schedule Q as below

12. Assistance to Authority in review of book of accounts

12.1 Upon receipt of copy of books of accounts from Authority, the Independent Engineer shall review the Escrow account statements with respect to the provisions of the Escrow agreement, book of accounts for information pertaining (a) the traffic count (b) Fee determination thereof, and (c) Project costs, and (d) such other information relating or resulting from other duties and functions of Independent Engineer in accordance with the Agreement, as the Authority may reasonably require and submit its report with 10 days.

Article No. 6.4 - Obligations relating to refinancing will now be added as a new clause:-

"Upon request made by the Concessionaire to this effect, the Authority shall, in conformity with any regulations or guidelines that may be notified by the Government or the Reserve Bank of India, as the case may be, permit and enable the Concessionaire to secure refinancing, in whole or in part, of the Debt Due on such

terms as may be agreed upon between the Concessionaire and the entity providing such refinancing; provided, however, that the refinancing hereunder shall be utilized for the project purpose only and shall always be subject to the prior approval of the Authority, which shall not be unreasonably withheld. For the avoidance of doubt, the tenure of debt refinanced hereunder may be determined mutually between the Senior Lenders and the Authority, but the repayment thereof shall be completed no later than 1 (one) year prior to expiry of the Concession Period."

Back-ending of premium payment will now be added as a new clause:-

"For projects with quoted premium, it was proposed to commence the premium payments from the fourth year of COD, escalating it by 3% per year up to the 10th year of COD and 8% per year thereafter till end of concession period."

Article No.28.1.1 - Additional eligibility for extending Revenue Shortfall Loan and mechanism for recovery of such loan will now be read as under:-

"Provision of a facility in the MCA for extending Revenue Shortfall Loan by Authority to the Concessionaire in case its cash flows are adversely affected by judicial pronouncements not related to default of the Concessionaire. The entire surplus cash after meeting subsistence expenditure (debt servicing plus O&M cost) should be used for repayment of the revenue shortfall loan."

Allowing charge on receivables for lenders will now be read as under:-

"Lenders are allowed to create a charge on the receivables of the concessionaire also."

Amendment of eligibility for Provisional Completion Certificate will now be read as under:-

"Modification of MCA to ensure that the concessionaire completes construction of the entire length of the ROW handed over to it within stipulated time before commencement of tolling."


(Manish Kumar Singh)

Under Secretary to the Government of India

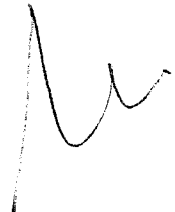
Tel.No. 23714001

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 Bhawan, New Delhi.

Also copy to PPS to Secretary (RTH)/Jt. Secy. (H)/DS (H)/NIC *for uploading the order on website.*

A handwritten signature or set of initials in black ink, located in the bottom right corner of the page. The signature is stylized and appears to consist of a vertical line followed by a series of loops and curves.

¹ If completion of construction on any part of the Site is considered critical for issue of provisional/completion certificate, such part shall be specified in this Sub-clause so that it does not form part of the Appendix referred to in Clause 10.3.1, on or after the Appointed Date.

² In projects where environmental clearance is restricted to small portions of the Site or to the felling of trees, this Condition Precedent may be deleted and such portions may be included, as necessary, in the Appendix specified in Clause 10.3.1. The guiding principle should be that the obligations of the Concessionaire are predictable and not beyond its control

A handwritten signature in black ink, consisting of a series of connected, fluid strokes. It starts with a long diagonal line from the bottom left, curves upwards and to the right, then has a smaller loop and ends with a horizontal line.