



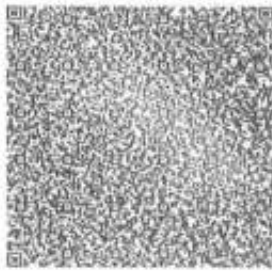
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## INDIA NON JUDICIAL

### Government of National Capital Territory of Delhi

#### e-Stamp

Certificate No.	: IN-DL122090961948890
Certificate Issued Date	: 21-Oct-2016 05:01 PM
Account Reference	: IMPACC (IV)/ dl915103/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL915103244875140664760
Purchased by	: CHAPPRA HAJIPUR EXPRESSWAYS LIMITED
Description of Document	: Article 5 General Agreement
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: CHAPPRA HAJIPUR EXPRESSWAYS LIMITED
Second Party	: Not Applicable
Stamp Duty Paid By	: CHAPPRA HAJIPUR EXPRESSWAYS LIMITED
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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#### TRIPARTITE AGREEMENT



*Signature*



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**TRIPARTITE AGREEMENT**

**AMONG**

**NATIONAL HIGHWAYS AUTHORITY OF INDIA  
(NHAI)**

**AND**

**STATE BANK OF INDIA  
(AS LENDERS' REPRESENTATIVE AND THE ESCROW BANK)**

**AND**

**CHHAPRA-JHAJIPUR EXPRESSWAYS LIMITED  
(AS CONCESSIONAIRE)**

**DATED AT NEW DELHI AS OF THIS 21<sup>st</sup> DAY OF OCTOBER 2016**



## TRIPARTITE AGREEMENT

This Tripartite Agreement (hereinafter referred to as this "Agreement") is made at **New Delhi** on this **21<sup>st</sup>** day of **October, 2016** by and among

- (i) **THE NATIONAL HIGHWAYS AUTHORITY OF INDIA**, established under the National Highways Authority of India Act 1988, acting through Chairman, and having its principal office at G 5 & 6, Sector 10, Dwarka, New Delhi-110075 (hereinafter referred to as the "**Authority**" or "**NHAI**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) **of the First Part;**
- (ii) (a) **STATE BANK OF INDIA**, a bank constituted under the State Bank of India Act, 1955, having its Corporate Centre at State Bank Bhawan, Madam Cama Road, Nariman Point, Mumbai-400 001 acting through its branch at Project Finance & Leasing SBU, Voltas House, 1<sup>st</sup> & 2<sup>nd</sup> Floor, 23 J.N. Heredia Marg, Ballard Estate, Fort, Mumbai 400 001 (hereinafter referred to as the "**Lenders' Representative**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns);
- (b) **STATE BANK OF INDIA**, a bank constituted under the State Bank of India Act, 1955, having its Corporate Centre at State Bank Bhawan, Madam Cama Road, Nariman Point, Mumbai-400 001 acting through its Corporate Accounts Group Branch at "Ozone", 2nd Floor, #6-3-669, Punjagutta Main Road, Hyderabad - 500 082 in the State of Andhra Pradesh, India (hereinafter referred to as the "**Escrow Bank**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns),

**of the Second Part;**

**And**

- (iii) (a) **CHHAPRA-IIAJIPUREXPRESSWAYS LIMITED**, a company registered under the Companies Act, 1956, with its Corporate Identity Number U45209TG2010PLC068742 and having its registered office at Madhucon House, Plot No. 1129/ A, Road No. 36, Jubilee Hills, Hyderabad - 500 033, Telangana, acting through its Director, duly authorised by the resolution passed at the meeting of its Board of Directors held on 22.06.2013, and having its registered office at Madhucon House, Plot No. 1129/A, Road No. 36, Jubilee Hills, Hyderabad 500033 (hereinafter referred to as the "**Concessionaire**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns);



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- (b) **Madhucon Infra Limited**, a company incorporated under the Act with its Corporate Identity Number U45200TG2006PLC049235 and having its registered office at Madhucon House, Plot No.1129/A, Road No.36, Hitech City Road, Jubilee Hills, Hyderabad, Telangana, India 500033, India (hereinafter referred to as "**MIL**", which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns);
- (c) **Madhucon Projects Limited**, a company incorporated under the Act with its Corporate Identity Number L74210TG1990PLC011114 and having its registered office at H.NO.1-7-70, Jublipura Khammam 507003, Telangana, India (hereinafter referred to as "**MPL**", which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns); and
- (d) **Madhucon Toll Highways Limited**, a company registered in India under the provisions of the Companies Act, 1956, having Corporate Identification Number U93000TG2008PLC060479 and having its registered office at Madhucon House, Plot No.1129/A, Road No.36, Hitech City Road, Jubilee Hills, Hyderabad, Telangana, India 500033, India (hereinafter referred to as "**MTHL**", which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns),

of the Third Part.

#### WHEREAS:

- (A) The Authority and the Concessionaire had entered into a Concession Agreement (as defined hereinafter), a true copy of which is annexed hereto and marked as Annex-I, for augmenting the existing road from km 143.200 to km 207.200 on the Chhapra-Hazipur section of NH-19 ("**Project I Highway**") in the State of Bihar by Four Laning on Design, Build, Finance, Operate & Transfer (DBFOT) annuity basis ("**Project**");
- (B) For various reasons, the Concessionaire has not been able to complete the construction of the Project in accordance with the Concession Agreement and the Project is yet to achieve Commercial Operation Date in accordance with the provisions of the Concession Agreement;
- (C) The Concessionaire had raised debt from the Senior Lenders under a common loan agreement dated December 3, 2010 executed *inter alia* amongst the Senior Lenders and the Concessionaire, as amended from time to time (hereinafter referred to as the "**Common Loan Agreement**") for an aggregate principal amount not exceeding Rs. 585,00,00,000.00 (Rupees Five Hundred Eighty Five Crores only) ("**Existing Facility**") with a sub-limit of Rs. 396,25,00,000.00 (Rupees Three Hundred Twenty Five Crores only) ("**Sub-Limit**");



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Six Crores Twenty Five Lacs only) as specified in Schedule II for financing the Project, out of which an approximate amount of Rs. 172,00,00,000.00 (Rupees One Hundred and Seventy Two Crores Only) is as an commitment towards additional Facility by the Lenders

- (D) State Bank of India, acting through its branch PISBU ("Lenders' Representative") was appointed as an agent of the Senior Lenders by the Lenders under the Lenders' Agent Agreement dated December 3, 2010 executed amongst *inter alia* the Senior Lenders, the Lenders' Representatives and the Concessionaire and the Senior Lenders have *inter alia* authorized the Lenders' Representative to execute this Agreement by a Letter of Authority dated 20<sup>th</sup> day of October 2016;
- (E) Due to an escalation in the cost of the Project, the Senior Lenders, by an amendment had agreed to lend and advance to the Concessionaire an additional term loan for an aggregate principal amount not exceeding Rs.171,99,00,000.00 (Rupees One Hundred and Seventy One Crores Ninety Nine Lacs only) (herein referred to as the "**Additional Facility**") as specified in Schedule II;

As on 30<sup>th</sup> September 2016, 54.53 % of the project highway has been developed by the Concessionaire as certified by the Engineer.

- (F) The Concessionaire has accepted, agreed and represented that it requires an amount equivalent to Rs. 386,94,00,000.00 (Rupees Three Hundred Eighty Six Crores and Ninety Four Lakhs only) for completing the balance work of developing the Project Highway;
- (G) In view of liquidity issue and inability of shareholders of the Concessionaire to contribute funds towards Equity in a timely manner, the Concessionaire approached NHAI for availing NHAI's One Time Fund Infusion Scheme ("OTFIS") for completion of the Project, pursuant to which NHAI found the proposal to be eligible for availing funds under OTFIS and conveyed its concurrence for the same vide its letter dated August 08, 2016 bearing reference no. NHAI/BH/Chhap-Hajipur/BOT/NH-19/Imp.152 addressed to the Concessionaire and the Lenders' Representative (hereinafter referred to as the "**NHAI Letter**"), which *inter alia* stipulates one time fund infusion of funds by NHAI upto Rs.175,00,00,000.00 (Rupees One Hundred Seventy Five Crores) to enable the Concessionaire to complete the balance work of developing the Project Highway. Upon declaration of COD after issuance of the provisional Certificate along with the half yearly annuity payable, the Authority shall pay and release to the Concessionaire the agreed missed annuities for 790 (seven hundred ninety) days equal to Rs. 283,23,00,000.00 (Rupees Two Hundred Eighty Three Crores and Twenty Three Lakhs only), on the terms and conditions therein stated;



- (11) The parties hereto have agreed to execute this tripartite agreement to appropriately record the terms and conditions contained in the NHAI Letter.

Now, therefore, the Parties hereby agree and this agreement witnesseth as follows:

## 1. DEFINITIONS AND INTERPRETATION

- 1.1 For the purposes of this Agreement (including the Recitals hereof), the following terms shall have the meaning hereinafter respectively assigned to them:

**"Agreement"** means this Tripartite Agreement, and amendments if any thereto;

**"Authorized Representative"** shall in relation to:

- (i) each of the Concessionaire and the Promoters mean any Person(s) who is authorised to sign on behalf of such either of them by the way of a resolution passed by their respective board of directors, a copy of which duly certified by the company secretary of such Person is delivered to the Authority and the Lenders' Representative; and
- (ii) in relation to the Authority and Lenders mean any person authorized to sign on their behalf pursuant to their respective internal guidelines;

**"Cash Transfer Date"** shall mean the day of payment of each Annuity to the Concessionaire in terms of the Concession Agreement.

**"Concession Agreement"** means the Concession Agreement dated July 28, 2010, entered into between the Authority and the Concessionaire, and shall include all Schedules thereof and any amendments thereto made in accordance with the provisions contained in this behalf therein;

**"Concurrent Auditor"** means an auditor appointed by the Authority to inspect and audit the accounts of the Concessionaire;

**"NHAI OTFIS Facility"** shall mean one time funds of upto Rs.175,00,00,000.00 (Rupees One Hundred Seventy Five Crores) agreed to be provided by the Authority to the Concessionaire by way of debt;

**"Parties"** means the parties to this Agreement collectively and "Party" shall mean any of the parties to this Agreement individually;

**"PCOD"** shall have the same meaning as ascribed to Clause 15.1 in the Concession Agreement.

**"Promoters"** shall mean, collectively, MDL, MPL and MTHL and the term "Promoter" shall mean any one of them individually;



"Reserve Bank of India" shall mean the central bank of India established under the Reserve Bank of India Act, 1934;

"Senior Lenders" as defined in Concession Agreement.

"Sub-Escrow Account (Construction) under O'FIS" shall mean a sub account of the Escrow Account as more particularly defined under Clause 6(a) below.

- 1.2 The words and expressions defined in the Recitals shall be deemed to have been incorporated in Article 1.1 above and the words and expressions beginning with or in capital letters used in this Agreement and not defined herein but defined in the Concession Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Concession Agreement.

### 1.3 Interpretation

1.3.1 In this Agreement, unless the context otherwise requires,

- (a) reference to any legislation or any provision thereof, or any rules, regulations, bylaws or notifications thereunder, shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) reference to "development" includes, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and "develop" shall be construed accordingly;
- (c) "lakh" means a hundred thousand (100,000) and "crore" means ten million (10,000,000);
- (d) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly Authorized Representative of such Party in this behalf and not otherwise;
- (e) to the extent possible, the terms and conditions of this Agreement and those of the Concession Agreement, the Escrow Agreement, the Substitution Agreement, and the Financing Agreements shall be construed harmoniously, however in the event of any conflict between the terms and conditions of this Agreement on one hand and the terms and conditions of the Concession Agreement and/or the Escrow



*Signature*



Agreement and/or the Substitution Agreement and/or the Financing Agreements on the other hand, the terms and conditions of this Agreement shall apply and be deemed to convey the correct understanding of the Parties and the inconsistent terms of the other documents as aforesaid shall not apply;

- (f) the Recitals and Annexes to this Agreement form an integral part of this Agreement and shall be in full force and effect as though they were expressly set out in the body of this Agreement;
- (g) the proportion for making disbursement of the balance of Additional Facility and the NHAI OTFIS Facility shall be determined/calculated on the basis of the undrawn balance amounts of the Facility as on the date of this Agreement and the amount of the NHAI OTFIS Facility. Any interest to be serviced on the Facility during the construction period will be factored in only from the Senior lender's loan and not from NHAI OTFIS Facility; and
- (h) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

1.3.2 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

## 2. PACKAGE UNDER OTFIS

At the request of the Concessionaire and the Senior Lenders represented by Lenders' Representative and subject to the terms and conditions of this Agreement, the Authority hereby agrees to grant the following revival package under the OTFIS for the Project:

- (i) The Authority shall provide funds under the NHAI OTFIS Facility to the Concessionaire which shall be utilized towards the physical completion of balance work of construction of the Project Highway. The NHAI OTFIS Facility will be released by the Authority proportionate to the funds disbursed by the Senior Lenders under the balance of Additional Loan Facility and commensurate to the progress and requirement of the Project determined on the basis of the reports of various monitoring agencies appointed by the Authority;
- (ii) NHAI will ensure that the Independent Engineer issues the Provisional Certificate resulting into declaration of the PCOD /COD in terms of the Concession Agreement and thereupon, NHAI shall:





- (a) release along with the half yearly annuity payable to the Concessionaire in the Escrow Account the Annuities for the past 790 (seven hundred ninety) days equal to Rs. 283,23,00,000.00 (Rupees Two Hundred Eighty Three Crores and Twenty Three Lakhs only) from which the Authority shall recover amounts due in relation to NHAI OTFIS Facility (including any interest due on it); and
  - (b) commence the payment of half yearly Annuity of Rs. 65,43,00,000.00 (Rupees Sixty Five Crore Forty Three lakhs Only) as per Concession Agreement; and
- (iii) After the achievement of PCOD in April 2017 (i.e. after the issuance of the Provisional Certificate), the Authority shall continue to provide remaining Annuities [other than 1.67 missed Annuities (6-4.33)] to the Concessionaire till the expiry of Concession period in terms of the Concession Agreement. It is clarified that the Concession Period shall remain the same and 1.67 missed annuities not payable and 4.33 annuities payable as restored is agreed against 6 lost annuities with achievement of PCOD in April, 2017. In case of delay in PCOD beyond April, 2017.

### 3. TERMS AND CONDITIONS OF OTFIS

3.1 The Parties agree that the revival package stipulated in Clause 2 above is subject to the following conditions:

- (a) The outstanding principal amount of NHAI OTFIS Facility along with the interest which has accrued thereon shall be payable by the Concessionaire to the Authority in terms hereof as per the waterfall for payments defined in clause 6(h);
- (b) The outstanding principal amount of the NHAI OTFIS Facility along with interest which has accrued thereon in terms hereof shall be repaid by the Concessionaire from payment of restored Annuities of Rs. 283,23,00,000.00 (Rupees Two Hundred Eighty Three Crores and Twenty Three Lakhs only) and in this respect NHAI shall recover/deduct the aforesaid outstanding amounts of the NHAI OTFIS Facility from the payment of restored Annuities to be made to the Concessionaire as stated above;
- (c) Till the principal amounts outstanding under the NHAI OTFIS Facility are repaid or recovered, they shall at all times carry an interest rate equal to 2% above the Bank Rate of RBI. As and when the Bank Rate of RBI changes, the interest rate applicable to the principal amounts outstanding under the NHAI OTFIS Facility shall also undergo a corresponding change. Interest will be compounded annually and calculated on the daily outstanding balance of the NHAI OTFIS Facility and interest thereon that shall have become due but remained to have been paid. In the event of any tax being imposed on the



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interest so paid/payable, such amounts shall be recovered separately from the Concessionaire over and above the applicable interest liability to NHAI;

- (d) In the event of Termination, the outstanding amount out of the NHAI OTFIS Facility including interest thereon, shall be recovered on first charge basis by NHAI in full over other recoveries prescribed in Article 31.4 of the Concession Agreement;
- (e) To ensure regular audit/monitoring of the Project, NHAI and the Lenders will have the right to appoint a Concurrent Auditor and/or any other agency and/or consultant of their choice. The procedure for making disbursement under the NHAI OTFIS Facility and the Additional Facility, monitoring and review of the development of the Project Highway shall be as per the agreed procedure stipulated under Clause 3.2 below and the Concessionaire agrees to co-operate with NHAI, Senior Lenders and their respective agents, officers and consultants in such procedure;
- (f) In eventuality that Annuities become payable, any surplus will be first utilized towards the balance work of developing the Project Highway;
- (g) NHAI will have the right to impose any further condition/monitoring mechanism to ensure completion of the balance work of developing the Project Highway and recovery of the amount disbursed by NHAI towards the NHAI OTFIS Facility.

### 3.2 REVIEW AND MONITORING MECHANISM

The Parties agree to have the following review and monitoring mechanism till the due repayment and discharge of all the outstanding amounts under the NHAI OTFIS Facility:

- (a) The Concessionaire agrees and undertakes to submit a detailed construction/work plan (progress with cost extended monthwise) for completion of balance works of the Project to the Authority and the Senior Lenders' Representative within 15 (fifteen) days from the date of this Agreement. The Authority and the Senior Lenders' Representative shall provide the same to the IE and Senior Lenders' Independent Engineer (herein referred to as the "LIE"). The IE and the LIE shall hereafter vet the submitted construction work plan and submit their report to the Authority and the Senior Lenders respectively.
- (b) The Parties agree that the Senior Lenders and the Authority shall form a review committee (herein referred to as the "**Review Committee**") comprising of the CGM, Tech., NHAI (who shall be the convenor), a representative of the Senior Lenders' Representative, R.O., NHAI and the representatives of other Senior Lenders, if invited. The said Review Committee may require the Concessionaire, IE, LIE and NHAI and/or the representatives of other Senior



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Lenders all of whom shall join as invitees. The Review Committee shall discuss and deliberate upon the submitted work plan by Concessionaire and vetted by IE/LIE, disbursement (both under NHAI OTFIS Facility and the Undisbursed Amount), payments to be made out of Sub-Escrow Account (Construction and Operation) under OTFIS and monitoring mechanism including appointment of additional monitoring agency (Project Management Consultant, Concurrent Auditor, etc.). The Review Committee may also take decisions on implementation of any remedial measures or taking of corrective steps in the event it decides that the progress of the Project is not as per what was envisaged. The agenda of each meeting of the Review Committee shall be as per sub-paragraph (h) below over and above any other agenda. The Concessionaire and other invitees shall fully co-operate with the Review Committee and shall provide such information as is sought from them. The Concessionaire shall provide such explanations and clarifications as may be sought by the Review Committee. Any decision taken by the Review Committee shall be binding on the Concessionaire and the Concessionaire undertakes and agrees to abide by it.

- (c) The Review Committee shall meet (with or without invitees) at least once in every calendar month on or before 20<sup>th</sup> of each calendar month during the Construction Period till COD and thereafter at least once in each quarter or such other frequency as is deemed fit by the Review Committee. Each meeting of the Review Committee shall be convened by the CGM, Tech., NHAI who shall be the convenor. The meeting of the Review Committee shall be held at a place convenient to the members of the Review Committee and can also be conducted by video conferencing or such other electronic or other means as is convenient to the members of the Review Committee and as and when it is required, such meeting may be held at the Project Site during Construction Period. The Review Committee may at its discretion increase or decrease the frequency of its meetings.
- (d) The Review Committee shall, together with IE/LIE and monitoring agency, if any appointed, assess the monthly fund requirement for the Project as per the Construction plan and accordingly recommend the disbursements under the NHAI OTFIS Facility and the balance of the Undisbursed Amount, if any.
- (e) Before each meeting of Review Committee, Project Management Consultant, if any, LIE and IE shall submit their report on the progress of the Project and such other details as may be sought by the Review Committee (such report to be submitted latest by end 10<sup>th</sup> of every calendar month).
- (f) On receipt of request for disbursement from the Concessionaire, based on the certification/recommendation of IE, LIE and any other monitoring agency appointed by Senior Lenders and/or NHAI, funds may be disbursed to the Sub Escrow Account (Construction and Operation) under OTFIS if the disbursement and the request for such disbursement is considered appropriate by the Senior Lenders and/or NHAI, as the case may be. The disbursement will be proportionate from NHAI OTFIS Facility and balance amount, if any,



of the Undisbursed Amount and for the purpose as decided by the Review Committee.

- (g) The agenda for each meeting of Review Committee among others would be:
- Review the progress of the Project, variance with planned progress and based on IE, LIE and Project Management Consultant's progress report and corrective actions plans, if any;
  - Discuss the monthly disbursement request by the Concessionaire and vetted/recommended by IE/LIE/monitoring agency and take a decision on the same and make arrangements for disbursements;
  - Discuss on the monthly payments to be made out of the Sub-Escrow Account (Construction and Operation) under OTFIS;
  - Any other agenda related to the Project including review/modification of the construction budget, monitoring system, etc.

#### 4. UNDERTAKINGS OF THE CONCESSIONAIRE

- 4.1 The Concessionaire undertakes to achieve PCOD by April, 2017 and complete the balance work of developing the Project Highway and the Concessionaire undertakes to complete the balance work of developing the entire Project Highway within the Balance Project Cost (as defined above in Recital F).
- 4.2 The Concessionaire agrees and undertakes to arrange for the balance amount of the Balance Project Cost (i.e. amounts over and above the amounts disbursed under the NHAI OTFIS Facility and undisbursed balance available under the Additional Facility of the Senior Lenders) from the Promoters (from their own resources), in a form and manner satisfactory to the Authority and the Senior Lenders, without any recourse to the Project Assets, the Senior Lenders, the Concessionaire and/or the Authority.
- 4.3 The Concessionaire agrees and undertakes that in case of any shortfall of funds with the Concessionaire for completion of the Project Highway (after exhausting the funds available towards the Balance Project Cost) as aforesaid and the other costs associated therewith, the Concessionaire shall arrange from the Promoters (from their own resources), in a form and manner satisfactory to the Authority and the Senior Lenders, additional funds without any recourse to the Project Assets, the Senior Lenders, the Concessionaire and/or the Authority.

#### 5. UNDERTAKINGS OF THE PROMOTERS

- 5.1 In consideration of the Senior Lenders having agreed at the request of the Promoters to grant to the Concessionaire the Existing Facility and the Additional Facility and NHAI having agreed to grant to the Concessionaire the NHAI OTFIS Facility, the Promoters, jointly and severally, undertake to the Senior Lenders and the Authority that they shall:



- (a) ensure that the Concessionaire achieves PCOID by April, 2017 and completes the balance work of developing the Project Highway (for which the land is available) by April 30, 2017 and the remaining stretch of the Project Highway within a reasonable time agreed to by NHAI as and when the balance land is made available to the Concessionaire (i.e. the Right of Way, access and license is made available to the Concessionaire) and the Promoters shall also ensure that the Concessionaire completes the balance work of developing the entire Project Highway within the Balance Project Cost (as defined above in Recital F);
- (b) provide, in the form and manner satisfactory to the Senior Lenders and the Authority, funds (from our own sources) towards the balance amount of the Balance Project Cost (i.e. amounts over and above the amounts disbursed under the NHAI OTFIS Facility and undisbursed balance available under the Additional Facility of the Senior Lenders) to the Concessionaire without any recourse to the Project Assets, the Senior Lenders, the Project, the Concessionaire and/or the Authority; and
- (c) provide, in the form and manner satisfactory to the Senior Lenders and the Authority, additional funds to the Concessionaire (from our own sources) without any recourse to the Project Assets, the Senior Lenders, the Project, the Concessionaire and/or the Authority, to meet the shortfall of funds (after exhausting the funds available towards the Balance Project Cost), if any, in meeting the costs of completing the construction and development of the Project Highway as stated herein and the other costs associated therewith.
- (d) provide, in the form and manner satisfactory to the Senior Lenders and the Authority, additional funds to the Concessionaire without any recourse to the Project Assets, the Senior Lenders, the Project, the Concessionaire and/or the Authority, to meet the shortfall of funds, if any, in building up and maintaining the major maintenance reserve and/or for servicing the debt i.e. the principal amounts, interest and other charges and costs in relation to the NHAI OTFIS Facility and the Facility, as aforesaid.

## 6. OPERATING PROCEDURE

The Authority, after having consultation with the stakeholders has decided to have following operating procedure for disbursement of NHAI OTFIS Facility and the operation of the Escrow Account and the Parties agree to the same:-

- (a) The Concessionaire will open a new sub account of the Escrow Account titled "Sub-Escrow Account (Construction) under OTFIS" for completion of balance works of the Project Highway as stated herein under the OTFIS;



- (b) Entire receivables of NHAI OTFIS Facility, Concessionaire equity and debt from Senior Lenders and any other receivables of the Concessionaire will be deposited directly in the Sub-Escrow Account (Construction) under OTFIS till the complete repayment of the outstanding principal amount of the NHAI OTFIS Facility and the interest thereon;
- (c) Notwithstanding anything to the contrary contained in the Concession Agreement, the Escrow Agreement or any Financing Agreement, the mechanism provided in this Clause 6 shall override the waterfall mechanism stated in any of the aforesaid documents;
- (d) The Authority will infuse funds under the NHAI OTFIS Facility in stages commensurate to progress of construction of the Project Highway and in proportion to disbursement made by the Senior Lenders of the balance amount under the Additional Facility;
- (e) Except the payments required to be made to the Authority and the Senior Lenders in terms of Clause 6(h), all the other payments out of Sub-Escrow Account (Construction) under OTFIS will be done only against work done duly verified by the Independent Engineer and the senior lender and will be made directly to the contractor/suppliers/other beneficiaries, to the extent possible;
- (f) No advances will be made out of the Sub-Escrow Account under OTFIS other than for necessary inputs for procurement of materials etc. necessary for completion;
- (g) No withdrawal of interest or principal debt by Senior Lenders will be permitted by the Authority beyond what is agreed at the time of OTFIS and as per the waterfall mechanism stipulated in Clause 6(h) below.
- (h) The detailed waterfall for payments to be made from the Sub-Escrow Account under OTFIS (i.e. order of priority in which payments are to be made) during the construction period (i.e. till the time COD is achieved as per the terms contained herein) shall be as under:
- (i) all taxes due and payable by the Concessionaire;
  - (ii) all payments relating to construction of the Project Highway, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
  - (iii) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
  - (iv) O&M Expenses and other cost and expenses incurred by the Authority in accordance with the provisions of the Concession Agreement and certified by the Authority as due and payable to it;
  - (v) Concession Fee due and payable to the Authority;



*Signature*



- (vi) monthly proportionate provision of Debt Service due in an Accounting Year. The principal amount of NHAI OTFIS Facility and the interest thereon shall keep on accruing but will not be paid till the achievement of PCOD /COD in terms hereof when the same shall be adjusted/recovered/repaid from the amounts of the restored Annuities to be released by the Authority in terms of Clause (2)(ii)(a) hereof;
  - (vii) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement;
  - (ix) debt service payments in respect of Subordinated Debt;
  - (x) any reserve requirements set forth in the Financing Agreements; and
  - (xi) balance, if any, shall be retained in the Sub-Escrow Account (Construction) under OTFIS and shall be utilized for the payments to be made in the succeeding month;
- (f) Except as provided herein, the Sub-Escrow Account under OTFIS and the escrow arrangement shall be governed in terms of the Escrow Agreement and any supplemental agreement thereof;
- (g) Upon occurrence of COD in terms hereof, the Funds transferred to and lying to the credit of Sub-Escrow Account under OTFIS shall then be transferred back to the Escrow Account and the monies there shall be applied and used as per the escrow arrangement in terms of the Escrow Agreement and any supplemental agreement thereof.
- (h) The procedure for making disbursement under the NHAI OTFIS Facility and the Additional Facility, monitoring and review of the development of the Project Highway shall be as per the agreed procedure stipulated under Clause 3.2 above and the Concessionaire agrees to co operate with NHAI, Senior Lenders and their respective agents, officers and consultants in such procedure;
- (i) The Senior Lenders and the Authority may require the Concessionaire to open such number of sub-accounts of the Sub-Escrow Account (Construction) under OTFIS as may be required by them.
- (m) The procedure for making disbursement under the NHAI OTFIS Facility and the Undisbursed Amount, monitoring and review of the development of the Project Highway shall be as per the agreed procedure stipulated under clause 3.2 hereto and the Concessionaire agrees to co-operate with NHAI, Senior Lenders and their respective agents, officers and consultants in such procedure.

## 7. REPRESENTATIONS AND WARRANTIES

7.1 Each of the Parties represent, warrant and confirm the following:

- (a) This Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this



15



Agreement will be legally valid, binding and obligations enforceable against it in accordance with its terms;

- (b) the execution, delivery and performance of this Agreement will not conflict with or result in a breach or constitute default under or accelerate performance required by any of the terms of Memorandum and Articles of Association of any Party or any applicable law or any covenant, contract, arrangement or understanding, or any decree or order of any court to which it is a party or by which it or any of its properties or assets is bound or affected;
- (c) all information provided by the Party is true and accurate in all material respects;
- (d) there are no actions, suits, proceedings or investigations pending or to its knowledge threatened against it at law or in equity before any court or any other judicial, quasi judicial or other authority or body, the outcome of which may result in a material breach of this Agreement;
- (e) the Party has complied with all Applicable Laws and Applicable Permits in all material respects;
- (f) the Concessionaire is not in a material breach of the Concession Agreement or of any Project Agreements or Financing Agreements; and
- (g) no representation or warranty contained herein or in the Concession Agreement or any other document furnished by the Party contains or will contain any untrue or misleading statement of material facts or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.

7.2 In the event of any occurrence or circumstance coming to the knowledge of the Party making any representation hereunder which renders any of its aforesaid representations or warranties untrue or incorrect at any time during the subsistence of this Agreement, such Party shall immediately notify the other Parties hereto about the same. Such notification shall not have the effect of remedying any such representation or warranty that has been found to be incorrect or untrue.

## 8. GOVERNING LAW AND JURISDICTION

8.1 This Agreement shall be governed by the laws of Republic of India.

8.2 The Parties agree that the courts and tribunals in New Delhi shall, subject to the provisions of Clause 8.3 below, have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceedings arising out of or in connection with this Agreement may be





brought in such courts or the tribunals and the Parties irrevocably submit to and accept for themselves, respectively, and in respect of their property, generally and unconditionally, the jurisdiction of those courts or tribunals.

- 8.3 Nothing contained in this Clause 8, shall limit any right of the Authority or the Senior Lenders or the Senior Lenders' Representative or the Escrow Bank to bring any suit or take action or proceedings in any other court or tribunal of competent jurisdiction in India, nor shall the bringing of any such suit, taking of any such action or proceedings in one or more jurisdictions preclude Authority or the Senior Lenders or the Senior Lenders' Representative or the Escrow Bank from filing of any suit and/or taking of any action or proceedings in any other jurisdiction whether concurrently or not and the Concessionaire irrevocably submits to and accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of such court or tribunal. The Concessionaire irrevocably waives any objection now or in future, to the venue of any such suit, action or proceedings in any such courts and tribunals and any claim that any such suit, action or proceedings have been brought in an inconvenient forum and further irrevocably agrees that a judgment in any such suit, action or proceedings brought in any such courts and tribunals shall be conclusive and binding upon it and may be enforced in the courts of any other jurisdiction, (subject to the laws of such jurisdiction) by a suit upon such judgment, a certified copy of which shall be conclusive evidence of such judgment, or in any other manner provided by law.

## 9. COMING INTO FORCE AND DURATION OF THE AGREEMENT


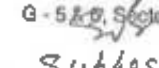
This Agreement shall come into force and effect on the date hereof and shall remain in force until mutually terminated by the Parties. However, NHAI shall cease to be a Party to this Agreement on the date on which all of the dues and monies owed or payable by the Concessionaire to them in terms of the OTFIS shall have been irrevocably and unconditionally paid and discharged in full by the Concessionaire to them, to their satisfaction.





IN WITNESS WHEREOF, this Agreement has been executed on the day and year first above written.


For and on behalf of the Authority

**THE NATIONAL HIGHWAYS AUTHORITY  
OF INDIA**


Signature :   
Name : जे.बी. श्रीवास्तव / J.B. Srivastava  
Designation : महाप्रबंधक (सक.) / GM(Tech)  
भारतीय राष्ट्रीय राजमार्ग प्राधिकरण  
National Highways Authority of India  
(सड़क परिवहन और राजमार्ग मंत्रालय)  
For and on behalf of (Minister of Road Transport & Highways)  
जी-5 एव 6, सेक्टर-10, द्वारका, नई दिल्ली-75  
G-5 & 6, Sector-10, Dwarka, New Delhi-75  
Signature :   
Name : Subhash Chander Bali  
Designation : Vice President (Tech.)

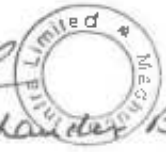


1.  (CGM(T), NHAI)
2.  (GM(F), NHAI)
- 3.

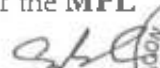
Witness  
  
Subhash Kewalga, MPL  
307 Sena (opposite) Park  
Gurgaon.

For and on behalf of the MIL

Signature :   
Name : Subhash Chander Bali  
Designation : Vice President (Tech.)




For and on behalf of the MPL

Signature :   
Name : Subhash Chander Bali  
Designation : Vice President (Tech.)




For and on behalf of the MTH

Signature :   
Name : Subhash Chander Bali  
Designation : Vice President (Tech.)




Agreed, Accepted, Countersigned and Witnessed by the Lenders' Representative for and on behalf of Senior Lenders by

Signature :   
Name : SHISHIR S. Khera  
Designation : Dy. Mgr



Agreed, Accepted, Countersigned and Witnessed by the Escrow Bank by

Signature :   
Name : SHISHIR S. Khera  
Designation : Dy. Mgr



## SCHEDULE-I

(Refer Recital C)

### PARTICULARS OF SENIOR LENDERS

**ALJAHABAD BANK**, a body corporate constituted under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970 having its Head Office at 2, Netaji Subhas Road, Kolkata 700 001 and having its Industrial Finance Branch office at Industrial Finance Branch, 6-3-850/3, Srinivas Plaza, 1st Floor Ameerpet, Hyderabad - 500 016 (hereinafter referred to as "**AB**", which expression shall, unless it be repugnant to the subject or context thereof, include its successors and assigns).

**ANDHRA BANK**, a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act of 1970 having its head office at 3-9-11, Saifabad, Hyderabad - 500 004, Andhra Pradesh, having its branch office at Khammam Main Branch, Gandhi Chowk, Khammam (hereinafter referred to as "**Andhra B**", which expression shall, unless it be repugnant to the subject or context thereof, include its successors and assigns).

**INDUSIND BANK LIMITED**, a Banking Company registered under the Companies Act 1956 and having its Registered Office at 2401, Gen. Thimmayya Road, Cantonment, Pune 411 001, and a branch office at Secunderabad Branch, 1-8-448, Sardar Patel Road, Begumpet, Secunderabad - 500 003 (hereinafter referred to as "**IndusIB**", which expression shall, unless it be repugnant to the subject or context thereof, include its successors and assigns);

**PUNJAB AND SIND BANK**, a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 and having its Head Office at 21, Bank House, Rajindra Place, New Delhi and having a Branch at Panchasheela Towers, Parklane, M.G. Road, Secunderabad - 500 003 (hereinafter referred to as "**PSB**", which expression shall, unless it be repugnant to the subject or context thereof, include its successors and assigns);

**STATE BANK OF BIKANER AND JAIPUR**, a body corporate constituted under the State Bank of India (Subsidiary Banks) Act, 1959 having its Head Office at Tilak Marg, C-Scheme, Jaipur - 302005, Rajasthan having a branch office at 122, 6th Cross, Gandhinagar Branch, Bangalore - 560 009 (hereinafter referred to as "**SBBJ**", which expression shall, unless it be repugnant to the subject or context thereof, include its successors and assigns);

**STATE BANK OF INDIA**, a body corporate constituted under the State Bank of India Act, 1955 with its Project Finance SBU at 2nd Floor, Voltas House, 23, J.N. Heredia Marg, Ballard Estate, Mumbai - 400 001, in the State of Maharashtra, India (hereinafter referred to as "**SBI**", which expression shall, unless it be repugnant to the subject or context thereof, include its successors and assigns);

(**AB**, **AndhraB**, **IndusIB**, **PSB**, **SBBJ** and **SBI** are individually referred to as "**Lender**" and are collectively referred to as the "**Lenders**" which expression shall include all or any one or more of them as the context may require or admit).



## SCHEDULE-II

### PARTICULARS OF SENIOR LENDERS & FACILITY

NAME OF THE LENDER	AMOUNT OF COMMITMENT OF EACH SENIOR LENDER FOR FACILITY IN RUPEES CRORES UNDER EXISTING FACILITY	LC FACILITY AS SUBLIMIT OF EXISTING FACILITY	AMOUNT OF COMMITMENT OF EACH SENIOR LENDER FOR FACILITY IN RUPEES CRORES UNDER ADDITIONAL FACILITY
AB	100.00	(75.00)	29.39
AndhraB	85.00	(63.75)	25.00
IndusIB	80.00	(60.00)	23.52
PSB	80.00	(60.00)	23.52
SBBJ	70.00	(52.50)	20.56
SBI	170.00	(85.00)	50.00
<b>TOTAL</b>	<b>585.00</b>	<b>(396.25)</b>	<b>171.99</b>



ANNEX-1

*(Refer Recital A)*

*[Attach copy of the Concession Agreement]*





भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(राष्ट्रीय परिवहन और राजमार्ग भवन)

National Highways Authority of India

Ministry of Road Transport and Highways

प्लॉट नं. 10, द्वारका, नई दिल्ली

Plot No. 10, Dwarka, New Delhi

प्रमाणित किया गया है कि यह प्रतः सही है।

प्रमाणित किया गया है कि यह प्रतः सही है।

28/7/16  
GM(T)/Mn  
PS to keep copy

**MOST IMMEDIATE  
BY HAND**

BM-11041/168/2016-Coord

Dated: 01.08.2016

Sub: ATR on Minutes of Special Meeting of the Authority held on Friday, the 15<sup>th</sup> July, 2016 at 5:00 PM in Room No-169D, Fresco, North Block, New Delhi.

The extract of the Minutes of Special Meeting of the Authority of the agenda item pertaining to your division are mentioned below:

Agenda Item No.SM-3	<b>Rehabilitation and up-grading to 4-laning Chhapra-Hajipur section of NH-19 from KM.143+200 to 207+200 in the State of Bihar under NHDP-III on annuity basis-comprehensive revival package inclusive of one time fund infusion and restoration of missed annuities reg.</b>
	The agenda item was discussed in detail in the light of CCEA approved schemes for revival and completion of languishing projects of NHAI. It was noted that for completion of this languishing project for which LOA was issued on 13.05.2010, the revival package of the project involves a one time fund infusion of Rs.175.00 crore by NHAI subject to conditions as per para 5.4 of agenda note and restoration of missed annuities for the delay attributable to the Authority as 790 days recommended by Independent Engineer amounting to Rs.283.23 crore in terms of missed annuity. It was noted that the proposal has been examined and recommended by the 3 CGMs Committee of NHAI and later concurred upon by the Executive Committee of NHAI. The aforesaid revival package was accordingly approved.
Agenda Item No.SM-5	<b>Widening of existing 2-lane road to 4/6 lane divided configuration from km.0.000 to 84.000 (Panvel Indapur section) of NH-17 under NHDP Phase-III on BOT (Toll) basis on Design, Build, Finance, Operation and Transfer (DBFOT) pattern in the State of Maharashtra-Comprehensive revival package reg.</b>
	The agenda item was discussed in detail in the light of CCEA approved schemes for revival and completion of languishing projects of NHAI. It was noted that for completion of this languishing project for which LOA was issued on 28.10.2010, the revival package of the project involves a one time fund infusion of Rs.540 crores by NHAI subject to conditions as per para 5.4 of agenda note and extension of concession period by 1095 days for the delay not attributable to the Concessionaire as determined by Independent Engineer. It was noted that the proposal has been examined and recommended by the 3 CGMs Committee of NHAI and later concurred upon by the Executive Committee of NHAI. The aforesaid revival package was accordingly approved with the understanding that this would not include any premium deferment.
	<b>General Decisions on languishing projects (Agenda Item Nos.SM-3, 4 &amp; 5):</b>
	(i) The Authority desired that a robust monitoring mechanism should be put in place for ensuring utilization of funds infused. This will be supervised by the concerned Member of NHAI.
	(ii) The Authority be apprised on a quarterly basis about the progress in Languishing Projects and the revival package, if any.

	(iii) The issue of extent of fund infusion by NHAI was also discussed. It was decided that as long as the fund infusion is less than the 50% of the revised cost estimate of the project, such fund infusion can be considered to be moderate funding in view of the enhanced IDC, cost escalation etc.
	(iv) A report be put for perusal of Board why the projects were started even when land had not been fully acquired.
Agenda Item No.SM-8	Four laning of Rimuli-Roxy-Rajamunda section of NH-215 from km.163.000 to km.269.000 in the State of Odisha under NHDP-III as BOT (Toll) basis on DBFOT pattern - Foreclosure of the Concession Agreement with M/s OSEPL reg.
	The Authority noted the reasons of delays and directed that NHAI shall have conciliation meeting with the Concessionaire and make an appropriate reference to the Board.

2. Action Taken Report on the above mentioned Minutes, duly approved by concerned Member, may be forwarded to the Coord. Division at the earliest for taking further necessary action.

(A.K. Sadhu)

Chief General Manager (Coord.)

To

1. Shri Atul Kumar  
CGM (Tech)
2. Smt. Nivedita Srivastava  
CGM (F&A)

Copy to:

Member (Projects)-RKP  
Member (PPP/Finance)  
Member (Project)AKS

## BOARD AGENDA

Agenda Item No \_\_\_\_\_

Sub:- Rehabilitation and up-grading to 4-laning Chhapra-Hajipur section of NH-19 from km.143+200 to 207+200 in the State of Bihar under NHDP-III on annuity basis - comprehensive revival package inclusive of one time fund infusion and restoration of missed annuities reg.

### 1. Proposal

The proposal for approval of Authority is to facilitate revival of the cash-crunched and languishing Chhapra - Hajipur project of national importance and inter-alia consider the proposal submitted by State Bank of India (SBI) under the following policies that have already been approved by the CCEA:

- (i) Rationalized compensation to concessionaire in case of delay not attributable to the Concessionaires for languishing highway projects on BOT mode (Annexure-1)
- (ii) One time fund infusion (Annexure-2)

### 2. Project Details

State	Bihar
Project Name /Promoter	Chhapra-Hajipur (SBI) (Madhucon Projects Ltd)
NH No	19
TPC / CPC (Rs in crs) /Toll/Annuity	575/812.5 (Annuity-Rs 65.43 Crs)
Concession Period	15 years (upto 21 <sup>st</sup> Jan, 2026)
Date of Start	Jan-11
Scheduled Date Of Completion	Jul-13
Likely Completion	Apr-17
Project Length (in km)	66.74
Length Completed (in km)	14.8
Physical Progress (%)	52.7 (28 km)
Financial Progress (%)	107.5
Money drawn from the Escrow Account	873.12
% LA at Appointed Date	21.65

### 3. Brief History

- a) The project agreement was signed on 28.07.2010 with Concession period of 15 years including construction period of 2.5 years. The appointed date was fixed on 27.01.2011 and accordingly the schedule completion date was 24.07.2013. The project is however delayed initially due to LA hindrances, slow progress by the concessionaire and also later on due to financial problems of the concessionaire.



Work was almost stopped by the concessionaire since June, 2012 and even after several notices the concessionaire did not take up the work. Many meetings with the Concessionaire and Lenders have taken place in the past in PMO, MoRTH and NHA to resolve the issues but remained un-conclusive. As a result, cure period notice under clause 37.1 of the CA was issued to the concessionaire on 27.04.2015 (Annexure-3). Concessionaire vide letter dated 02.05.2015 without elaborating the means/methods to address the defaults pointed out by the Authority, requested for financial assistance on loan basis to complete the balance work in the available stretch of 51.74 km within next 12 months from the effective date of release of said bridge finance (Annexure-4).

- b) The request of the concessionaire was forwarded to the bankers namely the SBI for their comments. The lead banker SBI vide letter dated 02.09.2015 has asked advice / clarifications. The proposal however remained un-conclusive.
- c) Due to failure of the concessionaire in curing the defaults pointed out in the cure period notice and no progress in the work under clause 37.1.2 of CA--a notice for intention to terminate was issued to the concessionaire on 16.11.2015 (Annexure-5). The Concessionaire, vide letter dated 28.11.2015, submitted its reply to the notice for intention to terminate issued by NHA (Annexure-6) In the meanwhile, the review of languishing projects was done by Secretary (MoRTH) on 14.12.2015 minutes available at (Annexure-7).
- d) A meeting was convened in PMO on 18.01.2016 with the lenders where Chhapra-Hajipur project was also discussed and SBI officials suggested plan to facilitate moving the project further. SBI vide letter dated 27.01.2016 (Annexure-8) has submitted the details of discussion in PMO.
- e) NHA had asked the concessionaire to submit a detailed work programme along with the cash flow. Vide letter dated 22.02.2016 the concessionaire has submitted the detailed work programme for construction of 51.47 km with cash flow to the PD, PIU, Hajipur. Further they have requested for considering release one semi annuity of Rs. 65.43 Cr. in advance.
- f) On the proposal of concessionaire for one time fund infusion and restoration of missed annuities, Senior Lender M/s SBI vide its letter dated 12.5.2016 has conveyed its in-principal approval to one time fund infusion of Rs. 175 Cr. on priority charge basis (Annexure-9) with following terms:
  - i) Restoration of 6 lost annuities to be paid upfront by NHA on achievement of PCOD
  - ii) PCOD to be achieved by April 2017.
  - iii) NHA dues to be paid upfront from the proceeds of restored lost annuities.

4. **Proposal-I:** Restoration of missed annuities for the delay attributable to the Authority as 790 days recommended by Independent Engineer. This will be equal to Rs 283.23 Crore in terms of missed annuity and 4.33 semi-annuities in terms of number of semi-annuity.

The Concessionaire vide letter dated 19.04.2016 addressed to PD, PIU, Hajipur has requested for revision of scheduled completion date as per policy circular no. 195/2016

dated 19.01.2016 mentioning that the project has been delayed due to reasons not attributable to the concessionaire giving their details (Annexure-10). The matter was examined by IE and IE vide letter dated 26.04.2016, 27.04.2016 and 18.5.2016 (Annexure-11 colly) has recommended restoration of missed annuities for the delay attributable to the Authority as 790 days. This will be equal to Rs 283.23 Crore in terms of missed annuity. IE has determined quantum of delays in accordance with the Policy circular of the NHAI, ignoring past commitments/correspondences. Recommendation of IE is examined and vetted by the 3 CGM committee. Detailed report is enclosed at Annexure-12.

**5. Proposal -II :One time fund infusion for Rs. 175.00 Crore**

**5.1** The proposal for one time fund infusion to revive and physically complete languishing BOT projects was considered and approved by the Cabinet Committee on Economic Affairs in its meeting held on 13.05.2015 and formulated vide MoRTH Letter No. NH-37012/20/2014-H dated 20.05.2015 and NHAI Circular No. NHAI/11033/CGM(FA)/2015 dated 09.06.2015.

**5.2 Independent Engineer Evaluation of request of concessionaire for Rs 175 Crs**

As per the assessment of the Independent Engineer Rs 386.94 Crores are adequate to complete the project.

**5.3** As per NHAI financial evaluation, for completion of project at Rs 386.94 crores, with infusion of Rs 175 crores by NHAI and restoration of 4.33 semi-annuities amounting to Rs 283.23 crores, there is a hit of Rs 81.33 crores to the senior lenders. For financial evaluation O&M expenditure projections have been restricted to 1% of TPC for normal years and 5% of TPC every 5<sup>th</sup> year in which major maintenance is assumed. The O&M values have been escalated by 5% per annum. Thus NHAI deviated from the SBI model on account of payment of missed annuities and provision for O&M.

**5.4** Financial evaluation reveals that the complete fund infused (Rs 175 crores) with interest of Rs 18.32 crores is being recovered upfront at PCOD /COD (Annexure-13) hence the same should be approved to salvage this project in public interest subject to following conditions;

- a. Till the amount of **One time Fund Infusion** is repaid or recovered, they shall at all times carry an interest rate equal to 2% above the Bank Rate per annum. As and when the Bank rate of RBI changes, the interest rate applicable also would undergo a corresponding change. Interest will be compounded annually and calculated on the daily outstanding balance of loan and interest thereon. In the event of any tax being imposed on the interest so paid/ payable, such amounts will be recovered separately over and above the applicable interest liability.
- b. The fund infused Rs 175 crores along with interest will be recovered from amount of missed annuities upfront at the time of PCOD/COD.
- c. In the event of Termination, the outstanding NHAI loan including interest thereon, shall be recovered on priority charge basis in full along with other recoveries as prescribed in Article 31.4 of the MCA.
- d. To ensure regular monitoring of the project, NHAI will have the right to appoint a concurrent Auditor.

- e. NHAI will also ensure execution of Tripartite Agreement between the senior lender, concessionaire and the Authority to ensure priority charge on the annuity receivables of the project.
- f. NHAI will have the right to impose any further condition /monitoring mechanism to ensure project completion and recovery of NHAI loan.

5.5 NHAI proposes to give an offer on the above lines to Senior Lender M/s State Bank of India for acceptance.


6. **Recommendations of Executive Committee of NHAI**

The case was discussed in the 284<sup>th</sup> meeting of Executive Committee of NHAI held on 6<sup>th</sup> June 2016 at NHAI Headquarters, Delhi wherein the Executive Committee recommended and approved the agenda note for seeking approval of NHAI board through circulation.

7. **Proposal to the Board:-**

NHAI proposes to give an offer to State Bank of India to accept;

- (i) One time fund infusion for Rs. 175.00 Crore by NHAI to complete the project subject to conditions brought out in para 5.4 above.
- (ii) Restoration of missed annuities for the delay attributable to the Authority as 790 days recommended by Independent Engineer equal to Rs 283.23 Crore in terms of missed annuity.

  
(R K Pandey)  
Member(P)  
8.5.2016



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(सर्वतन्त्र संचालित और राजमार्ग प्रकल्प)

National Highways Authority of India

Ministry of Road Transport and Highways

प्लॉट एच ८, सेक्टर १८, द्वारका, नई दिल्ली-११००२९

G-5 & 6, Sector-18, Dwarka, New Delhi-110029

Annexure - 1

दूरभाष / Phone : ३१-३१ २९०७४१०३२००/४२००

फैक्स / Fax : ३१-३१ २९०७४१०००७ / २९०७३९१६

No.11041/218/2007-Admn

Dated: 19.01.2016

**POLICY MATTERS-Technical (195/2016)**

(Decision taken on File No: NHAI/CMC/Misc(Maint)/2015)

**Sub: Rationalised compensation to concessionaires in case of delay not attributable to Concessionaires for languishing highway projects on BOT mode.**

As communicated vide MORTH letter No. NH-37012/06/2015-H Dated 26.11.2015, Cabinet Committee on Economic affairs (CCEA) has approved the proposal of rationalised compensation to Concessionaires in case of delays not attributable to the Concessionaires for languishing National Highway project on BOT (Toll)/Annuity Mode. As per the approval of CCEA, extension of concession period shall be allowed for all current projects on BOT mode, except for projects where tolling is permitted on the Appointed Date, which are languishing during construction period due to the reasons not attributable to the Concessionaire.

2. For all current projects in BOT (Toll) mode that are languishing during the construction period due to reasons not attributable to the Concessionaire, NHAI has been authorised to allow extension of concession period subject to the following conditions:

- Tenure of the Operations Period as envisaged originally in the concession agreement remaining unchanged. This will result in a corresponding increase in concession period.
- The decision regarding eligibility of projects for the extension of concession period, and the extent of time extension required will be taken by NHAI on a case to case basis on the recommendation of the concerned Independent Engineer (IE). The concerned IE, both individual and the firm, shall be accountable for the assessment of the extension recommended in the concession period.
- Authority shall follow the guidelines given hereunder in para 4 & 5 while determining the period of delay NOT attributable to the concessionaire.
- The projects using the above special dispensation shall have to achieve physical completion in the next 3 years.

2016

6/59

3. For all current projects in BOT (Annuity) mode that are languishing during the construction period due to reasons not attributable to the Concessionaire, NHAI has been authorised to restore missed Annuities to the Concessionaire corresponding to the actual period of such delay without any ceiling on number of days of delay upon successful completion of the project i.e. on achieving COD subject to the following conditions:

- a. While the construction period will get enhanced, the tenure of the concession will remain unchanged.
- b. The total number of annuities payable, including the compensatory annuities, will be capped by the number of annuities envisaged in the said Concession Agreement.
- c. Compensatory Annuity (ies) payable by the Authority to the concessionaire for such delayed period would be the product of Average Daily Annuity and the actual period of such delay in number of days as recommended by the Independent Engineer (IE) of the concerned project, and approved by the Authority as per guidelines.
- d. The decision regarding eligibility of projects for accessing such dispensation for delays NOT attributable to concessionaires and the duration of such delays will be considered by NHAI on a case to case basis based on the recommendation of the concerned Independent Engineer (IE). The concerned IE, both individual and the firm, shall be accountable for the above assessment.
- e. Authority shall follow the guidelines given hereunder in para 4 & 5 while determining the period of delay NOT attributable to the concessionaire.
- f. The projects using the above special dispensation shall have to achieve physical completion in the next 3 years.

4. The procedure to be followed for seeking relief under above policy is as detailed below:

- (i) This policy is applicable for all current BOT (Toll)/Annuity projects where PCC /COD has been delayed due to reasons NOT attributable to the Concessionaire. This policy will not be applicable for projects where PCC has been granted for entire length, however, completion certificate is pending for want of completion of some minor items/punch lists.
- (ii) This policy is applicable for such cases also where NHAI and the Concessionaire agreed to mutually waive certain Conditions Precedent (CP) for Appointed Date and also for cases where waiver of extension of concession period was given for extension of milestone/project completion date etc. However, the Concessionaire seeking relief of extension of concession period under this policy shall waive his claims for compensation, if any, under clauses 16.3.4 and 35.2 of extant MCA.


Contd...3/-

- (iii) The Concessionaire seeking such relief shall approach IE/NHA with an application with complete details of delay with evidences in line with the objective guidelines formulated for the purpose.
- (iv) The IE shall determine the delay duration as per objective guidelines and Excel sheet and submit its recommendation to NHA. The concerned IE, both individual and the firm, shall be accountable for the assessment of the extension recommended in the concession period.
- (v) The assessment of IE shall be vetted by Competent Authority through the mechanism of 3 CGM Committee and thereafter the proposal shall be placed before Authority (NHA Board) for decision on case to case basis.

5. A copy of the objective guidelines approved by CCEA determining the period of delay NOT attributable to the concessionaire, is enclosed at **Annexure-I**. In order to understand the procedure, an illustration with an example in excel sheet is also enclosed for reference **[Annexure-II]**.

6. This Issues with the approval of Competent Authority.

Encl.: As above

  
(S.P. Sharma)  
GM (Coord.)

To:

All Officers & Employees of HQ/ROs/ PIUs/ CMUs/ Site Offices

\$ 3/59

## TENTATIVE PROCEDURE FOR DETERMINING DELAY DURATION

1. If the Authority has not granted to the Concessionaire at least 80% encumbrance free land<sup>1</sup> i.e. vacant access and Right of Way of the site on the Appointed Date, then in that case the delay duration may be determined in the following manner:

(i) First of all, the Scheduled Project Completion Date (SPCD) based on the Appointed Date and Construction Period may be calculated. Further, status of encumbrance free land handed over to the Concessionaire as on Appointed Date shall also be assessed.

(ii) The status of encumbrance free land handed over to the Concessionaire may be assessed by the Independent Engineer/Authority periodically, say in every 3 months, starting from the Appointed Date till the date of 100% handing over of encumbrance free land made available to the Concessionaire. The said assessment is to be carried out to assess the dates on which 80% and 100% of encumbrance free land has been handed over to the Concessionaire by the Authority respectively (80% in first phase and 100% in final phase)<sup>2</sup>.

(iii) Based on the aforesaid dates, Completion Period of Construction<sup>3</sup> of that stretch for which land has been handed over to the Concessionaire is to be realistically and judiciously assessed by IE taking into consideration of the quantum and nature of balance work affected by non-handing over of land and original and impacted work programme of the Concessionaire and delay by the Concessionaire due to his inadequate mobilisation and financial constraints, if relevant. For avoidance of doubt, this determination of delay should confine to the corresponding work activities affected due to delayed handing over of land.

(iv) It is presumed that the Concessionaire will be in a position to complete the works at least 75% length of Project Highway and achieve the Provisional COD as per Concession Agreement on handing over of 80% encumbrance free land to the Concessionaire.

(v) The delay (in no. of days) due to non-handing over of encumbrance free land to Concessionaire on Appointed Date shall be the summation of the following:

(a) Delay period for not handing over of encumbrance free land (vacant access and Right of Way) for 80% length of Project Highway on Appointed Date: Difference in number of days between the expected date of completion of construction of stretch calculated, as per para (iii) above, reckoned from the date on which at least 80% encumbrance free land handed over and the Scheduled Project Completion Date (SPCD)

OR

Difference in no. of days between actual provisional COD/ COD<sup>4</sup> and Scheduled Project Completion Date (SPCD); whichever is less;

and

- (b) Delay period for delay in handing over of encumbrance free land (vacant access and Right of Way) of 100% length of Project Highway (period between 80% to 100% land availability): 25% of [Difference in no. of days between expected Date of Construction of stretch calculated, as per para (iii) above, from the date on which the 100% encumbrance free land made available to the Concessionaire and the Scheduled Project Completion Date (SPCD);

OR

Difference in no. of days between actual COD<sup>4</sup> and Scheduled Project Completion Date (SPCD); whichever is less]

NEW ASSUMPTIONS:

1. Encumbrance free land: The encumbrance free land (vacant access and Right of Way of the site) availability should be defined in linear km. available free of all encumbrances for construction of Project Highway (2-lane with paved shoulder/4-lane/6-lane as the case may be) as a percentage of total project length. The land should be declared as fully acquired only after completion of formalities as per provisions of 3 (H) of NH Act 1956. However In case the Concessionaire is able to construct the Project Highway in any stretch through his own liaison/efforts, even though formalities as per provision of Section-3 (H) of NH Act 1956 are not yet completed, this length shall be treated as encumbrance free land available for the purpose of calculation for determination of delay
2. The procedure is based on the assumption that with 80% availability of unencumbered land (linear frontage length), the Concessionaire will be in a position to complete at least 75% length of project highway to achieve the Provisional COD. This assumption may be modified as per project specific requirement to be determined by IE with justification.
3. Completion Period of Construction: If the corresponding balance work activities due to delayed handing over of land at any stage (80% or 100%) involves major structures (flyover/ VUP/Major Bridges/ROBs etc.), it may be assumed that it will take 01 year time to complete these project works, else 6 months' time may be considered as a reasonable period for construction of balance activities including minor structures like PUPs. The aforesaid period may be increased by another 3 months in case of a rainy season falls in the extended delay period. However, these assumptions may be modified as per project specific requirement and conditions, to be determined realistically and judiciously by IE. This determination of delay should confine to the corresponding work activities on delayed handing over of land and while making this assessment, the IE may also keep in view the Concessionaire's construction programme and any delay by the Concessionaire due to his inadequate mobilisation and financial constraints, if relevant.

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4. The delay duration should be restricted to actual PCDD/COO, as the case may be, in case the same is achieved before the extendable period.

Example: If the Appointed Date of Project (having total Project Length is 120 kms) is 01-04-2009 and Period is 2.5 Years, then the Scheduled Project Completion Date (SPCD) would be 01-04-2011. Encumbrance free land handed over to the Concessionaire by the Authorised Date is 60 kms i.e. 50% of the total encumbrance free land required for the

# Determination of Delay Duration - An illustrative example

1. Project Name	[Redacted]		
2. Project Location	[Redacted]		
3. Project Start Date	9/10/2011	[Redacted]	
4. Project End Date	[Redacted]	[Redacted]	
5. Project Manager	[Redacted]		
6. Project Budget	[Redacted]		
7. Project Status	[Redacted]		
8. Project Description	[Redacted]		
9. Project Objectives	[Redacted]		
10. Project Risks	[Redacted]		
11. Project Deliverables	[Redacted]		
12. Project Milestones	[Redacted]		
13. Project Stakeholders	[Redacted]		
14. Project Communication Plan	[Redacted]		
15. Project Change Management	[Redacted]		
16. Project Quality Management	[Redacted]		
17. Project Risk Management	[Redacted]		
18. Project Resource Management	[Redacted]		
19. Project Procurement Management	[Redacted]		
20. Project Integration Management	[Redacted]		
21. Project Monitoring and Control	[Redacted]		
22. Project Closing	[Redacted]		
23. Project Summary	[Redacted]		
24. Project Conclusion	[Redacted]		
25. Project Appendix	[Redacted]		
26. Project Glossary	[Redacted]		
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- 4.1 If the corresponding balance work actual is due to delayed handing over of land at any stage (80% or 100%) involves major structures (flyover/VUP/Major Bridges/ROBs etc.), it may be assumed that it will take 6 months to complete these project works, else 5 months' time may be considered as a reasonable period for construction of balance activities including minor structures like PUPs. The delay period may be increased by another 3 months in case of a rainy season falls in the extended delay period. However, these assumptions may be modified as per project specific requirement and conditions, to be determined realistically and judiciously by IE. This determination of delay should confine to the corresponding work activities on delayed handing over of land and while making this assessment, the IE may also keep in view the Concessionaire's construction programme, if relevant.
- 4.2 The procedure is based on the assumption that with 80% availability of unencumbered land (linear frontage length), the Concessionaire will be in a position to complete at least 75% length of project in order to achieve the Provisional COD. This assumption may be modified as per project specific requirement to be determined by IE with justification.
- 4.3 The delay calculation should be restricted to actual PCOD/COD, as the case may be, in case the same is achieved before the extendable period.
- 4.4 The land shall be deemed to be encumbered free land if it satisfies the following:
  - (i) The encumbered free land (vacant access and Right of Way of the site) availability should be defined in linear km. available free of all encumbrances for construction of Project Highway (2-lane with paved shoulder/4-lane/6-lane as the case may be) as a percentage of total project length. The land should be declared as fully acquired only after completion of formalities as per provisions of Section 3 (H) of NH Act 1956.
  - (ii) However in case the Concessionaire is able to construct the Project Highway in any stretch through its own liaison/efforts, even though formalities as per provision of Section-3 (H) of NH Act 1956 are not yet completed, this length shall be treated as encumbrance free land available for the purpose of calculation for determination of delay.
  - (iii) Environment clearance for the stretch in place;
  - (iv) Forest Clearance obtained from MoEF and consequently permission for tree cutting and commencement of work received from Forest Authorities as per prevailing policy of MoEF.
  - (v) The COD of ROB/RUA obtained by the Authority from Railways;
  - (vi) Sanctions for utilities shifting (electrical, water/gas pipelines and other utilities hindering the construction of Project Highway) have been sanctioned by the Authority and supervision charges are deposited in the respective organisations owning the utilities.

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*Chinabhai*

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COPY  
EDITION

G. SURESH

Chief General Manager

NHAI, NH-37012, New Delhi

Date: 09.06.2015

To: All Regional Offices

Subject: BOT Projects

भारतीय राष्ट्रीय राजमार्ग प्राधिकरण  
NATIONAL HIGHWAYS AUTHORITY OF INDIANHAI, NH-37012, New Delhi  
प्राधिकृत पता: 37012, नई दिल्लीCircular

NHAI/1033/CGM(FA)/2015

09.6.2015

**Sub: One time fund infusion to revive and physically complete languishing BOT projects.**

As communicated vide MoRTH letter No. NH-37012/20/2014-H dated 20.05.2015, the proposal for one time fund infusion to revive and physically complete languishing BOT projects was considered and approved by the Cabinet Committee on Economic Affairs in its meeting held on 13.05.2015 as under:

- (i) For any languishing highway project in BOT(Toll) mode that has achieved at least 50% physical completion and it is also established that infusion of moderate funding can quickly bring this project to completion, NHAI will provide financial assistance to such a project from the corpus earmarked for this purpose. The assistance (say bridge fund) will be provided on a loan basis at bank rate +2% drawing a parallel with the provisions of Article 28 of the Model Concession Agreement. A robust third party evaluation mechanism would be developed by NHAI to determine a) the eligibility of the concerned project and b) the extent of bridge fund required to complete the project in a time-bound manner.
- (ii) After completion of construction of such projects, the first charge on the toll receivables of these projects would be ensured for NHAI through execution of tripartite agreement between the senior lender, concessionaire and the Authority.
- (iii) This is proposed to be a one-time dispensation for all such projects that are languishing as on 1.11.2014.
- (iv) All such cases and the amount of bridge fund would be required to be approved by NHAI board.


09/6

B. Suresh

16/5/59

2. The procedure to be followed for seeking relief under the above scheme is as detailed below:

- i. The concessionaire seeking such relief shall approach NHAI with an application which shall clearly state the financing plan required for completing the project construction and justifying one time fund infusion.
- ii. Based on the application, the Authority shall seek the acceptance of the concerned Senior Lenders for providing such a relief in accordance with the approved scheme.
- iii. On receipt of Senior Lenders acceptance, the Independent Engineer (IE) shall assess the balance expenditure requirement for construction completion of the project and submit a report thereon to NHAI.
- iv. NHAI, after due diligence, on the financial viability of the project, shall place the proposal before the Authority for its decision.
- v. Subsequent to the Authority's approval, the same shall be implemented through signing of a Tripartite Agreement between the NHAI concessionaire and the Senior Lenders. In addition, there will be a Supplementary Agreement to the existing concession agreement between NHAI and the concessionaire.

  
(G. Suresh)  
CGM(FA)

All PDS/ROs/CGMs & GMs. at HQ.

Copy for information to :

1. PS to Hon'ble Minister MoRTH
2. PS to Chairman
3. PS to Secretary, MoRTH
4. PS to all Members at HQ.
5. PS to CVO.



17/16/59

NHA/BH/Chhap-Hajipur/BOT/NH-19/Imp/ 27.4.2015  
To,

27<sup>th</sup> April 2015

**M/s Chhapra-Hajipur Expressways Limited**  
3<sup>rd</sup> Floor, Madhucon House,  
Plot No. 1123/A, Road No. 36,  
Jubilee Hills Hyderabad-500033  
E-mail: [rama.krishna@madhuconinfra.com](mailto:rama.krishna@madhuconinfra.com)  
[prgdn@vsnl.net](mailto:prgdn@vsnl.net); [hyinfo@madhucon.com](mailto:hyinfo@madhucon.com)

**Sub.:** Rehabilitation and up-grading to 4-laning Chhapra-Hajipur section of NH-19 from km 143+200 to 207+200 in the State of Bihar under NHDP-III on annuity basis.  
- Cure Period Notice under cl. 37.1 of the CA - reg.

Sir,

Whereas, you are aware that the appointed date of this project was 27-01-2011, whereas schedule completion date was 24.07.2013. For this project, 3D was notified on 30.07.2010 well before appointed date. Work was started from appointed date but just after one year, progress of work got delayed due to your financial problem.

2. Whereas, as per the terms of the concession agreement, you are required to undertake the design, engineering, procurement, construction operation & maintenance of the project highway at your own cost and expense, is and also inter alia observe, full fill, comply with and perform the following obligations:

- Adhere to its undertaking of completion requirement of the project highway and the project completion schedule set forth in clause 12.4 and schedule G respectively.
- Comply with the maintenance obligations as stipulated under Clause 12.2 of the concession agreement.
- Reimburse one-half of the remuneration cost and expenses of the Independent Engineer to the Authority within 15days of receiving a statement of expenditure from the authority as per clause 23.3 of the concession agreement.

3. Whereas, despite repeated reminders by the authority and the Independent engineer, you have miserably failed to perform its obligation under the concession agreement causing inordinate delay in the progress of the project, compromising with the safety and maintenance requirements of the project highways by the concessionaire and causing irreparable loss to the authority.

4. Whereas, you have failed to reimburse one -half of the remuneration cost and expenses of the Independent Engineer to the Authority within 15days of receiving a statement of expenditure from the authority as per clause 23.3 of the concession agreement. The said default of the concessioner had been intimated to the concessionaire vide NHA letters no NHA/PIU/Hajipur/ Stanley/Payment/2012/ 3099 dt16.09.2014, 2882 dt 02.08.2014, 2846 dt 21.07.2014, 2764 dt 25.06.2014, 2670 dt 20.05.2014, 2566 dt 24.04.2014, 2473 dt 01.02.2014 & 2295 dt 06.01.2014

17/59

5. Whereas, you have failed to adhere to its undertaking of completion requirements of the project highways and the project completion schedule set forth in clause 12.4 and schedule G, respectively. In this regard it is important to note that the IE vide letter no SCI/Chhapra-Hajipur/NH-19/585/2013/590 dt 02.05.2013 & 455 dt 05.01.2013 issued a letter to the concessionaire requiring the concessionaire to provide the proposed steps that it intends to take to expedite the construction activities and achieve the project completion date. The Authority also issued reminders to you vide letter no NHAI/PIU/HAI/Chh-Haj/work/2011/1604 dt 06.06.2013 & 1385 dt 01.04.2013 to expedite the construction activities and comply with its obligations to meet the project completion schedule.

However, you did not take any corrective measures to remedy its default. In the meeting on 12.12.2013, completion of unhindered 51 kms by 31-05-2014 was targeted. However, this was never complied by you. Again, in the meeting chaired by Member (PPP), on 19.03.2014 & 20.03.2014 at Patna, this target was reiterated, but, it was never realized by you. Again in the meeting on 03.11.2014 at NHAI HQ, New Delhi, it was noted that only 12.5 kms has been completed and work is almost stopped from last two year due to cash flow problem of concessionaire. Vide letter dt. 01.07.2014 and 01.10.2014, you have expressed your inability in infusing more money at site and bankers also expressed his inability in releasing more loan until equity part is not contributed by concessionaire. Vide these letters, the concessionaire has requested Authority for releasing Rs. 237.298 cr. as advance annuities for completing the balance work even though there is no such provision in the concession agreement. Therefore, it is evident that due to the non-fulfillment of concessionaire's obligation for arranging finance, this important project is being delayed and causing financial loss to the Authority by way of loss of toll revenue which could have other-wise accrued to Authority.

6. Whereas, you have failed to comply with the maintenance obligations as stipulated under clause 12.2 of the concession agreement. In fact, you had almost stopped working at the site of the project since July 2012 and had stopped maintaining the project highway in good condition as well. The IE vide letter no SCI/Chhapra-Hajipur/NH-19/2014/861 dt 24.05.2014, 902 dt 19.08.2014, 616 dt 05.06.2013, 577 dt 27.04.2013 535 dt 23.03.2013. The authority also issued letter regarding maintaining the highways vide letter no NHAI/PIU/HAI/Chh-Haj/work/2011/1604 dt 06.06.2013, 1384 dt 01.04.2013 & 1385 dt 01.04.2013. The chief engineer, RCD Bihar in the meeting on 12.12.2013 at NHAI HQ New Delhi expressed his concern over maintenance of existing NH-19. He mentioned that an estimate of Rs 65.00 Crs has been prepared by RCD for maintaining the road in traffic worthy condition and you assured in that meeting, the all stretches shall be maintained in good condition before December 2013. But it was never complied.

7. Whereas, here it is also pertinent to note that as per clause 42.2.1 of the concession agreement, you have failed to deposit the labour cess to be paid by it as per applicable law. In this regard NHAI has issued a letter no NHAI/PIU/Hajipur/Accounts/1150 dt 07.01.2013, NHAI/PIU/Hajipur/NH-19/Misc/2011/605 dt 10.07.2012 & NHAI/PIU/Hajipur/chh-haj/Misc/2011/502 dt 08.06.2012, but it was never complied.



8 Now, therefore, from the above it is very clear that you have been in default of its obligations under the terms of clause 42.2 of the concession agreement.

9 Be that as it may and without prejudice, it is evident that you have committed a material default in complying with the provisions of the concession agreement. Accordingly, you are hereby put to notice to remedy the set defaults not later than a period of 60 days failing which action as provided under clause 37.1 shall be initiated against the concessionaire. This letter may be construed as a cure period notice for remedying your defaults under clause 12.2 & clause 37.1.1 (i), (e), (h), (m), (v) of the concession agreement.

10 This is without prejudice to the Authority's right to claim damages for your failure to comply with the unambiguous obligations casted upon the Concessionaire under the Concession Agreement and/or to realize any dues, losses and damages whatsoever under such Clause or Sub Clauses or under Applicable Law, as the case may be.

Yours faithfully,

(A. Srivastava)  
General Manager (T) Bihar

Copy to:

1. **M/s Madhucon Projects Limited**  
Plot No. 1129/A, Road No. 36  
Hitech City Road, Jubilee Hills  
Hyderabad - 500 033
2. **PFSBU, State Bank of India**  
Project Finance SBU,  
2nd Floor, Voltas House,  
23, J.N. Heredia Marg,  
Ballard Estate, Fort  
Mumbai-400 001  
E-mail: [mukund.kakar@sbi.co.in](mailto:mukund.kakar@sbi.co.in)  
[padma.das@sbi.co.in](mailto:padma.das@sbi.co.in)
3. **M/s Stanley Consultants Inc.**  
Unit no. 405 A&B  
Rectangle I, 4<sup>th</sup> Floor  
Plot No. D-4, District Centre,  
Saket, New Delhi-110017  
E-mail: [carol.stanley@stanley.com](mailto:carol.stanley@stanley.com)  
[stanleyinc@stanley.com](mailto:stanleyinc@stanley.com)
4. **Regional Officer (Bihar),**  
NHAI, D-63, Shri Krishna Puri  
Patna, Bihar - 800001
5. **Project Director - PIU, Hajipur**  
National Highways Authority of India  
Sharma House, 2nd Floor  
Ramachish Chowk,  
Hajipur-844101 (Bihar)



## CHHAPRA-HAJIPUR EXPRESSWAYS LIMITED

No. CHEL/HO/NH-19/2015/20251

Date: 2<sup>nd</sup> May 2015

To:

✓ General Manager(T)  
National Highways Authority of India  
(Ministry of Road Transport and Highways)  
G-5 & 6, Sector-10, Dwarka,  
New Delhi - 110 075

Urgent pl put up d  
12/5

Myl LDBH

Sub: Rehabilitation and Up gradation to Four Laning Chhapra-Hajipur Section of NH-19 from Km. 143+200 to Km 209+940 in the state of Bihar under NHDP-III on DBFOT Annuity Basis - Cure Period Notice under cl.37.1 of the CA - reg.

Ref: Your letter No: NHA/BH/Chhap-Hajipur/BOT/NH-19/Imp/65253 dated 27<sup>th</sup> April 2015

Dear Sir,

We acknowledge the receipt of Cure Period Notice under clause 37.1 of the CA. The compliances to the issues raised in the Cure Period Notice shall be submitted within 60 days.

The program to complete the Project Highway of 51.74 km (made available) shall be prepared on actual basis considering the time required to complete the balance works based on practical limitations and the same shall be submitted within 60 days.

Whereas, the maintenance of the existing highway, the payment of IC charges and payment of statutory charges shall also be complied in 60 days.

The additional finances of Rs. 237.298 Crores required to complete the 51.74 km Project Highway is in final stages of negotiation with the existing Lenders.

The cash flow constraints and liquidity crunch for infrastructure projects are main cause for delay in completion of the Project. The project cost escalated due to increase in interest component which has encroached debt component considered in financial arrangements and price escalation due to initial stage delays in handing over ROW.

It is the general responsibility of the government and NHA that required cash liquidity be made available in the market, so that additional funding through lenders could have been achieved, in the circumstances where project completion is delayed due to delay in Land Acquisitions and other such project specific constraints.

The constraints and policy guide lines issued to Banks by RBI has brought difficulties to raise the funds in delayed projects, the interest during construction is severely limiting the availability of debt component in the already approved financial arrangements to the project. Inspite of all



20/59

*[Handwritten signature]*

CORRESPONDENT OFFICE :

3 rd Floor, Madhucon House, Plot No. 1129/A,  
Road No :-36, Jubilee Hills, Hyderabad - 500033.

REGISTERED OFFICE :

Madhucon House, Plot No. 1129/A, Road No.36,  
Jubilee Hills, Hitec City Road, Hyderabad - 500033.

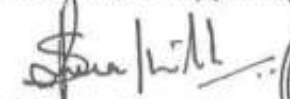
kinds of problems, which are beyond the limits of Concessionaire, we are putting continuous efforts to raise the additional funds required to complete the Project.

We have earnestly attempted and requested the NHAI to support the project by releasing Rs. 237.298 Crores in the form of advance annuities to facilitate the completion. This request was made in the circumstances when the Banks (Project lending agencies) have shown least interest in financing additional funds required to complete the balance works. We renew our request that NHAI even now may consider this option and facilitate to complete the project.

However, we are putting sincere efforts to raise the additional funds from the Banks and the discussions are in advance stages and we hope that the financial arrangements within 60 days shall be achieved for additional funding and accordingly we will submit the actual completion program.

Thanking you and assuring the best services at all times.

For Chhapra-Hajipur Expressways Ltd

  
(Ramakrishna S)  
Authorized Signatory



1. Copy submitted to Chief General Manager and Regional Officer, NHAI, Patna for information and needful action please.
2. Copy submitted to Project Director, NHAI, PIU, Hajipur for information and needful action please.
3. Copy submitted to Independent Engineer, M/s Stanley Consultants, Saket, New Delhi for information and needful action please.
4. Copy submitted to PFSBU, State Bank of India, Mumbai for information and needful action please.

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21/59



Annexure - 4

## **CHHAPRA-HAJIPUR EXPRESSWAYS LIMITED**

No. CHEL/HO/NH-19/2015/20251

Date: 2<sup>nd</sup> May 2015

To:

✓ General Manager(T)  
National Highways Authority of India  
(Ministry of Road Transport and Highways)  
G-5 & 6, Sector-10, Dwarka,  
New Delhi -110 075

Urgent - H. P. Sub. 1/2/15

M. P. Sub. 1/2/15

**Sub:** Rehabilitation and Up gradation to Four Laning Chhapra-Hajipur Section of NH-19 from Km. 143+200 to Km 209+940 in the state of Bihar under NHDP-III on DBFOT Annuity Basis - Cure Period Notice under cl.37.1 of the CA - reg.

**Ref:** Your letter No: NHAI/BH/Chhap-Hajipur/BOT/NH-19/Imp/65253 dated 27<sup>th</sup> April 2015

Dear Sir,

We acknowledge the receipt of Cure Period Notice under clause 37.1 of the CA. The compliances to the issues raised in the Cure Period Notice shall be submitted within 60 days.

The program to complete the Project Highway of 51.74 km (made available) shall be prepared on actual basis considering the time required to complete the balance works based on practical limitations and the same shall be submitted within 60 days.

Whereas, the maintenance of the existing highway, the payment of IC charges and payment of statutory charges shall also be complied in 60 days.

The additional finances of Rs. 237.298 Crores required to complete the 51.74 km Project Highway is in final stages of negotiation with the existing Lenders.

The cash flow constraints and liquidity crunch for infrastructure projects are main cause for delay in completion of the Project. The project cost escalated due to increase in interest component which has encroached debt component considered in financial arrangements and price escalation due to initial stage delays in handing over ROW.

It is the general responsibility of the government and NHAI that required cash liquidity be made available in the market, so that additional funding through lenders could have been achieved, in the circumstances where project completion is delayed due to delay in Land Acquisitions and other such project specific constraints.

The constraints and policy guide lines issued to Banks by RBI has brought difficulties to raise the funds in delayed projects, the interest during construction is severely limiting the availability of debt component in the already approved financial arrangements to the project. Inspite of all

1

**CORRESPONDENT OFFICE :**

3<sup>rd</sup> Floor, Madhucan House, Plot No. 1129/A,  
Road No :-36, Jubilee Hills, Hyderabad - 500033.  
Tel: +91 40 23554517/15/13 Fax: +91 40 23554513



**REGISTERED OFFICE :**

Madhucan House, Plot No. 1129/A, Road No.36,  
Jubilee Hills, Hitec City Road, Hyderabad - 500033.  
Tel: +91 40 23558001/3034 Fax: +91 40 23556005

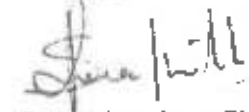
kinds of problems, which are beyond the limits of Concessionaire, we are putting continuous efforts to raise the additional funds required to complete the Project.

We have earnestly attempted and requested the NHAI to support the project by releasing Rs. 237.298 Crores in the form of advance annuities to facilitate the completion. This request was made in the circumstances when the Banks (Project lending agencies) have shown least interest in financing additional funds required to complete the balance works. We renew our request that NHAI even now may consider this option and facilitate to complete the project.

However, we are putting sincere efforts to raise the additional funds from the Banks and the discussions are in advance stages and we hope that the financial arrangements within 60 days shall be achieved for additional funding and accordingly we will submit the actual completion program.

Thanking you and assuring the best services at all times.

For Chhapra-Hajipur Expressways Ltd



(Ramakrishna S)  
Authorized Signatory



1. Copy submitted to Chief General Manager and Regional Officer, NHAI, Patna for information and needful action please.
2. Copy submitted to Project Director, NHAI, PIU, Hajipur for information and needful action please.
3. Copy submitted to Independent Engineer, M/s Stanley Consultants, Saket, New Delhi for information and needful action please.
4. Copy submitted to PFSBU, State Bank of India, Mumbai for information and needful action please.





भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

National Highways Authority of India

National Highways, New Delhi-110011

सं. नं. १९, चहप्रा-हाजिपुर, बिहार-८०००३३

१६१११, चहप्रा-हाजिपुर, बिहार-८०००३३

NHAI/BH/Chhap-Hajipur/BOT/NH-19/Imp/

16.11.2015

To,

M/s Chhapra-Hajipur Expressways Limited

3<sup>rd</sup> Floor, Madhucon House,

Plot No. 1129/A, Road No. 36,

Jubilee Hills, Hyderabad-500033

E-mail: [rama.krishna@madhuconinfra.com](mailto:rama.krishna@madhuconinfra.com)

[prodin@vsnl.net](mailto:prodin@vsnl.net), [hyinfo@madhucon.com](mailto:hyinfo@madhucon.com)

**Sub.:** Rehabilitation and up-grading to 4-laning Chhapra-Hajipur section of NH-19 from km.143+200 to 207+200 in the State of Bihar under NHDP-III on annuity basis.  
- Notice for Intention to Terminate.

**Ref.:** (i) Cure Period Notice vide letter no. NHAI/BH/Chhap-Hajipur/BOT/NH-19/Imp/65253 dated 27.04.2015  
(ii) Concessionaire reply vide letter no. CHEL/HO/NH-19/2015/20251 dated 02.05.2015

Sir,

A Concession Agreement dated 25.07.2010 has been signed between NHAI and M/s Chhapra-Hajipur Expressway Limited (M/s Madhucon projects) under NHDP-III on Design, Build, Finance, Operation and Transfer (DBFOT) Annuity basis with construction period of 2.5 years from appointed date. The appointed date of this project was 27.01.2011 and accordingly schedule completion date was 24.07.2013. Though work was started from appointed date, but just after about one year, progress of work suffered due to poor planning, inadequate mobilization of resources etc.

2. Whereas, the Authority and Independent Engineer (IE) had advised you time to time to perform as per concession agreement. Despite that, you have failed to adhere to your undertaking of completion requirements of the project highway and the project completion schedule set forth in clause 12.4 and schedule G, respectively. In this regard you may refer:-

(i) IE's letter no SCI/Chhapra-Hajipur/NH-19/585/2013/590 dt 02.05.2013

(ii) IE's letter no SCI/Chhapra-Hajipur/NH-19/585/2013/455 dt 05.01.2013

requesting therewith to you to provide the proposed steps that you intend to take to expedite the construction activities and to achieve the project completion date.

The Authority also vide following letters requested you to expedite the construction activities and comply with your obligations to meet the project completion schedule -

(i) letter no NHAI/PIU/HAJ/Chh-Haj/work/2011/1604 dt 06.06.2013

(ii) letter no NHAI/PIU/HAJ/Chh-Haj/work/2011/1385 dt 01.04.2013.

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3. Whereas, you have been reminded time to time by IE vide various letters to adhere with stipulations made under clause 12.4 and schedule-G of the Agreement, however, despite reminders no action whatsoever was taken or responded by you. In this regard your kind attention is drawn to following letters of IE and NHAI:-

- (i) IE's letter no SCI/Chhapra-hajipur/Nh-19/2014/993 dated 23.02.2015,
- (ii) IE's letter no SCI/Chhapra-hajipur/Nh-19/2014/991 dated 20.02.2015,
- (iii) IE's letter no SCI/Chhapra-hajipur/Nh-19/2014/905 dated 22.08.2014,
- (iv) IE's letter no SCI/Chhapra-hajipur/Nh-19/2014/860 dated 20.05.2014,
- (v) IE's letter no SCI/Chhapra-hajipur/Nh-19/2014/847 dated 26.04.2014

and

- (i) NHAI letter no NHAI/PIU/Hajipur/NH-19/CHEL/2010/3696 dated 01.04.2015,
- (ii) NHAI letter no NHAI/PIU/Hajipur/NH-19/CHEL/2010/3615 dated 23.02.2015 &
- (iii) NHAI letter no NHAI/PIU/Hajipur/NH-19/CHEL/2010/2176 dated 29.11.2013.

However, no corrective measures have been undertaken to remedy the defaults pointed out to you vide above letters. In absence of any curative measures to cure the defaults, meetings were also called on 12.12.2013, 19.03.2014 and 20.03.2014 at NHAI's HQs and in office of RO-Patna wherein the targets to complete 51 kms by 31.05.2014 was agreed by you. However, against the said target of 51 kms, it is regretted to point out that you could complete only 12.5 kms and have deserted the work thereafter since May, 2012, thus leaving the project of National importance in incomplete shape.

4. Whereas, you have also failed to comply with the maintenance obligations as stipulated under clause 12.2 of the concession agreement. In fact, you had almost stopped working at the site of the project since May, 2012 and had stopped maintaining the project highway in traffic worthy condition. The IE vide following letters also brought out the above maintenance default to you -

- (i) IE letter no. SCI/Chhapra-Hajipur/NH-19/2014/861 dt 24.05.2014,
- (ii) IE letter no. SCI/Chhapra-Hajipur/NH-19/2014/902 dt 19.08.2014,
- (iii) IE letter no. SCI/Chhapra-Hajipur/NH-19/2014/616 dt 05.06.2013,
- (iv) IE letter no. SCI/Chhapra-Hajipur/NH-19/2014/577 dt 27.04.2013 &
- (v) IE letter no. SCI/Chhapra-Hajipur/NH-19/2014/535 dt 23.03.2013.

Based on no visible efforts from your side for keeping the road in traffic worthy condition, the authority also issued following letters to you for maintaining the project highway in traffic worthy condition:-

- (i) NHAI letter no. NHAI/PIU/HAJ/Chh-Haj/work/2011/1604 dt 06.06.2013,
- (ii) NHAI letter no. NHAI/PIU/HAJ/Chh-Haj/work/2011/1384 dt 01.04.2013 &
- (iii) NHAI letter no. NHAI/PIU/HAJ/Chh-Haj/work/2011/1385 dt 01.04.2013.



In fact, in the review meeting held in NHAI HQ on 12.12.2013, the Chief Engineer, RCD Bihar expressed his concern over maintenance of existing NH-19 in the project section. He mentioned that an estimate of Rs 65.00 Crs has been prepared by RCD for maintaining the road in traffic worthy condition and you have unequivocally assured in that meeting, the all stretches shall be maintained in good condition before December 2013. But, the assurance had never been acted upon by you. Even after cure period notice issued to you on 27.04.2015, the IE has pointed out that maintenance requirement for the existing highway but no action whatsoever was taken by you.

5. Whereas, you have also failed to comply with clause 42.2.1 of the concession agreement, whereby it is incumbent upon concessionaire to deposit the labour cess to be paid by it as per applicable law. In this regard NHAI has issued several letters such as:

- (i) NHAI/PIU/Hajipur/Internal audit/ monthly basis/2015/4210 dt. 05.08.2015,
- (ii) NHAI/PIU/Hajipur/Internal audit/2013/3822 dated 07.05.2015,
- (iii) NHAI/PIU/Hajipur/ Internal audit/2011/ 3741 dated 16.04.2015,
- (iv) NHAI/PIU/Hajipur/Internal audit/2011/ 3425 dated 19.12.2014,
- (v) NHAI/PIU/Hajipur/Accounts/1150 dt. 07.01.2013,
- (vi) NHAI/PIU/Hajipur/NH-19/Misc/ 2011/605 dated 10.07.2012 &
- (vii) NHAI/PIU/Hajipur/chh-haj/Misc/2011/502 dt 08.06.2012,

But they were never complied.

6. Whereas, you have failed to reimburse one-half of the remuneration cost and expenses of the Independent Engineer to the Authority within 15 days of receiving a statement of expenditure from the authority as per clause 23.3 of the concession agreement. The said default of the concessioner had been intimated to the concessionaire vide NHAI letter nos.

- (i) NHAI/PIU/Hajipur/Stanley/payment/2012/229 dated, 06.01.2014,
- (ii) NHAI/PIU/Hajipur/Stanley/payment/2012/2358 dated 01.02.2014,
- (iii) NHAI/PIU/Hajipur/Stanley/payment/2012/2566 dated 24.04.2014,
- (iv) NHAI/PIU/Hajipur/Stanley/payment/2012/2670 dated 20.05.2014,
- (v) NHAI/PIU/Hajipur/Stanley/payment/2012/ 2764 dated 26.06.2014,
- (vi) NHAI/PIU/Hajipur/Stanley/payment/2012/2846 dated 21.07.2014,
- (vii) NHAI/PIU/Hajipur/Stanley/payment/2012/2882 dated 02.08.2014 &
- (viii) NHAI/PIU/Hajipur/Stanley/payment/2012/3099 dated 16.09.2014

But they were never complied.

7. Whereas, you in complete disregard to concession agreement signed between parties have failed to submit compliance of the issues raised in the cure period notice within 60 days.

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8. Whereas, your reply submitted vide letter No. CHEL/HO/NH-19/2015/20251 dated 02.05.2015 in response to the cure period notice issued on 27.04.2015 has also been examined by IE. The para-wise reply on your submission is as under:-

Para no.	Comments of Concessionaire	IE's observations
01	The compliance to the issues raised in the cure period notice shall be submitted within 60 days	No work has been done in the last 60 days nor any compliance received.
02	The program to complete the Project Highway of 51.74Km (made available) shall be prepared on actual basis considering the time required to complete the balance works based on practical limitation and the same shall be submitted within 60 days.	No program has been submitted within the 60 days cure period. In fact they were supposed to complete the balance work within the 60 days cure period as per CI no. 37.1.1 of the CA.
03	Whereas the maintenance of the existing highway, the payment of IC charges and payment of statutory charges shall also be complied in 60 days.	The maintenance of the existing highway is still not in compliance with CI. No. 12.2 of the CA. The payment of the statutory charges such as Labour cess still to be made.
04	The additional finance of Rs.-237.298 Crores required to complete the 51.740 Km project highway is in final stages of negotiation with the existing lenders.	The matter for arranging fund for the project is responsibility of concessionaire. The funding arrangement has not been informed to NHAI / IE by you so far.
05	The cash flow constraints and liquidity crunch for infrastructure project are main cause for delay in completion of the project. The project cost escalated due to increase in interest component which was encroached debt component considered in financial arrangements and price escalation due to initial stage delay in handing over ROW.	There was no appreciable delay in handing over the ROW. In fact 80% of the total land required was handed over by Nov-2011, thus as per CI no. 10.3.5 of the CA, the length of 51.74 Km should have been completed by the Scheduled completion period i.e. 24 July 2013. But as on date only 14.8 Km of DBM has been laid.
06	It is the general responsibility of the government and NHAI that required cash liquidity be made available in the market, so that additional funding through lenders could have been achieved, in the circumstances where project completion is delay due to delay in land acquisition and other such project specific constraints.	Since the contention of the concessionaire is not in compliance with the agreement conditions, IE has not agreed to the allegation as mentioned above. Further, IE has also not agreed with the allegation that there was any appreciable delay in land acquisition for the project.
07	Difficult in raising fund from bank due to policy guidelines of RBI. We are putting continuous efforts to raise the additional funds required to complete the project.	Arranging for the fund is responsibility of concessionaire. On the ground, there is no work going on and in fact most of the man and machinery has been demobilized. Therefore, there are no visible effort by concessionaire to complete the project.
08	We have earnestly attempted and requested the NHAI to support the project	Release of advance annuity as requested by the Concessionaire, is not in compliance with

Para no.	Comments of Concessionaire	IE's observations
	by releasing Rs. - 237.298 Crores in the form of advance annuities to facilitate the completion.	the agreement. Arrangement of fund is the responsibility of the concessionaire.
09	However we are putting sincere efforts to raise the additional funds from the banks and the discussions are in advance stages and we hope that the financial arrangements within 60 days shall be achieved for additional funding and accordingly we will submit the actual completion program.	IE has mentioned that they have no knowledge that any additional funds have been raised from the bank for this project. Further, the concessionaire has also not submitted the revised completion programme along with fund resources.

Accordingly, the IE has not agreed with your compliance (submitted vide your letter dated 02.05.2015) in reply to the cure period notice dated 27.04.2015. Further, even after lapse of more than 60 days the defaults pointed out in cure period notice have remained uncured till date.

9. Whereas, your request for disbursement of one time fund infusion (Bridge funds) vide letter no. CHE/ND/2015/27 dated 24.06.2015 has been considered and is not found to be rational in accordance with terms and conditions of the concession agreement and also the policy of Authority dated 09.06.2015 for one time fund infusion to revive and physically complete languishing BOT projects. Further, your lender vide letter dated 02.09.2015 has also not agreed to abide by the conditions in the policy of Authority dated 09.06.2015.

10. Whereas, your non fulfillment of the obligations envisaged in the agreement and non completion of the project is resulting into direct financial loss to the Authority and to Govt. of India in terms of loss of toll revenue from the project after 24.07.2013. Further, the non maintenance of the project highway in traffic worthy condition is causing great hardships to NH users and is also making the project highway unsafe.

11. Whereas, from the above it is evident that following concessionaire's default have occurred in accordance with article 37 of the concession agreement:-

- (i) Under cl. 37.1.1 (c) and (e) due to inordinate delay in completion of the project and no cure for the same till date.
- (ii) Under cl. 37.1.1 (g) due to your failure to meet maintenance and safety requirement specified in the concession agreement and no cure for the same till date.
- (iii) Under cl. 37.1.1 (h) for your failure to deposit 50% of the fee for IE remuneration specified in the concession agreement and no cure for the same till date.
- (iv) Under cl. 37.1.1 (v) for your failure to arrange necessary finances for completing the project as was required to be done by you and no cure for the same till date.

*Signature*

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*Signature*

- (v) Under cl. 37.1.1 (w) for your failure to complete the project in time and thereby causing loss of toll revenue to the authority for the delayed period causing Material Adverse Effect on authority.
- (vi) Under cl. 37.1.1 (d) for your failure to provide satisfactory resources necessary for completion of the project thereby exhibiting your intention to abandon construction and completion of the project highway without consent of the Authority.
- (vii) Under cl. 37.1.1 (m) & (t) for your failure to complete the project and meet maintenance requirements and inability to arrange funds necessary for completion of the project.

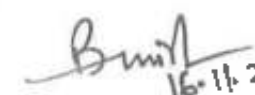
12. Be that as it may and without prejudice, it is evident that you have failed to cure the various concessionaire's defaults stated above and therefore the Authority under cl. 37.1.2 of the agreement hereby issues you its Intention to Terminate the concession agreement and call upon you to submit your representation if any within 15 days from this notice to put forth any explanation no action on alleged default stated above.

13. A copy of this Intention to Terminate Notice is also being given to the senior lender in accordance with clause 37.1.3 of the agreement with the request for making any representation on behalf of senior lenders stating to intention to substitute the concessionaire in accordance with the substitution agreement.

14. This is without prejudice to the Authority's right to claim damages for your default/failure to comply with the unambiguous obligations casted upon the Concessionaire under the Concession Agreement and/or to realize any dues, losses and damages whatsoever under such Clause or Sub Clauses or under Applicable Law, as the case may be.

15. This issues with the approval of Competent Authority.

Yours faithfully,

  
16.11.2015

(Bhaskar Mishra)  
Dy. General Manager (T) Bihar

Copy to:

State Bank of India, Project Finance SBU, 2nd Floor, Voltas House, 23, J.N. Heredia Marg, Ballard Estate, Fort, Mumbai-400 001.  
E-mail: milind.kalkar@sbi.co.in;  
badal.das@sbi.co.in

- With the request for necessary action as per para 13 of this letter.

Copy also to the following for information and necessary action:-

- ✓(i) M/s Madhucon Projects Limited, Plot No. 1129/A, Road No. 36, Hitech City Road, Jubilee Hills, Hyderabad - 500 033.
- (ii) M/s Stanley Consultants Inc., Unit no. 405 A&B, Rectangle I, 4<sup>th</sup> Floor, Plot No. D-4, District Centre, Saket, New Delhi-110017.  
E-mail: [benoy@scipl.in](mailto:benoy@scipl.in); [stanleyhajipur@gmail.com](mailto:stanleyhajipur@gmail.com)
- (iii) Regional Officer(Bihar), NHAI, D-63, Shri Krishna Puri, Patna, Bihar-800001.
- (iv) PD, PIU, Hajipur, NHAI, Sharma House, 2nd Floor, Ramashish Chowk, Hajipur-844101(Bihar).

Received  
19/11/10

Bunil

28/59  
7/7



Annexure - 6

## CHHAPRA-HAJIPUR EXPRESSWAYS LIMITED

Ref: CHEI /NH-19/NCR/2015/65

To

Dy General Manager (T) Bihar,  
National Highways Authority of India,  
G-5 & G-6, Sector - 10, Dwarka,  
New Delhi - 110075

Date: 28-11-2015  
May like to see please.  
Binit  
30-11-15  
DGM(T)-BH

GIM(T)-BH-AA

ashu  
30/11/15

Kind Attn: Mr. Bhaskar Mishra, Dy. GM (T), Bihar

Mgr(T)-BH

Sub: Rehabilitation and Upgradation to 4-Laning of Chhapra-Hajipur Section of NH-19 from Km 143+200 to Km 207+200 in the State of Bihar under NHDP-III on Design, Build, Finance, Operate & Transfer (DBFOT) Annuity Basis - Notice for Intention to Terminate.

Ref: Your letter No. NHAI/BH/Chhap-Hajipur/BOT/NH-19/Imp/74350 Dated 16.11.2015

Dear Sir,

The Contract for 'Four Laning of Chhapra-Hajipur Section of NH-19 from Km 143+200 to Km 207+200 in the State of Bihar under NHDP-III on Design, Build, Finance, Operate & Transfer (DBFOT) Annuity Basis' was awarded to Madhucon Projects Ltd on 13.05.2010. The Concession Agreement between NHAI and the Concessionaire M/s Chhapra-Hajipur Expressways Ltd was entered into on 28.07.2010. The Concessionaire achieved the Financial Closure on 24.01.2011 and the Appointed Date was declared as 27.01.2011. The ROW available at that time was only 14.45 Km as was also informed to the PD, NHAI, Hajipur vide our letter No. CHA-HAJ/NH-19/PM/66 dated 08.06.2011. The Appointed Date was declared keeping in view the provisions of NHAI Circular No. NHAI/CMC/2010/Misc. dated 07.09.2010 which caters for the situation where the contractually required encumbrance free land is not provided to the Concessionaire within the stipulated time period. It would thus be appreciated that though as per the Condition Precedent, the NHAI should have handed over 80% of the total ROW required for the 4-laning of the Project, only 14.45 Km (21.65%) was actually made available on the Appointed Date.

While on the subject, we may also submit that when the work was taken up, it was noticed that a number of plots coming on the alignment had been left out and were not acquired. The landowners of these missing plots, therefore, obstructed the work. We identified these missing plots and submitted the details to NHAI to initiate the process of acquisition through consent or acquisition vide our letter No. CHA-HAJ/NH-19/PM/2012-13/163 dated 06.07.2012. The land owners, as we understand, did not agree for consent acquisition as they would have had to relinquish the rights for claiming the award revision through the process of Arbitration as the price offered to them by the Land Acquisition Officer was far less than the prevailing market price. The PD, NHAI had then initiated the land acquisition process under the National Highways Land Acquisition Act. There was considerable delay in publishing of 3A Notification in the Central Gazette for the missing plots. Details regarding handing over of land are as under:

Contd...2

Corp. Office: "Madhucon House", 1129/A, Road No. 36, Jubilee Hills, Hyderabad- 500 033, A.P. India  
Tel: +91-40-23556001-4 Fax: + 91-40-23556005 Email: hyinfo@madhucon.com

Site Office: Madhucon Projects Limited, Near Middle School, Village - Baharbagachi, Po+Ps- Nayagaon  
Distt - Saran (Chhapra), Bihar - 841217, Ph No. 9771415950, 9771450616 E-mail: chappra@madhuconinfra.com

~~www.madhuconinfra.com~~

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- Total Project Length	:	66.74 Km
- Encumbrance free land available as on 27.01.2011	:	14.45 Km (21.65%)
- Encumbrance free land available after 6 months i.e. on 26.06.2011	:	16.34 Km (24.5%)
- Encumbrance free land available after 30 months i.e. on 25.07.2013 (COD)	:	48.24 Km (72.3%)
- Encumbrance free land available after 42 months i.e. on 25.07.2014	:	51.74 Km (77.53%)
- Encumbrance free land available as on date	:	51.74 Km (77.53%)

Since the land was made available in bits and pieces and continuous long stretches were not available, the work was taken up wherever it was possible with emphasis on the construction of structures. The progress achieved on structures as on date is about 80%. This is inspite of the fact that the work of ROBs has been adversely affected due to non-execution of MoU between NHAI and the Railways as a result of which the work on ROBs in the Railway's ROW could not be taken up. In this connection it is also pertinent to mention that since continuous stretches were not available, it was our endeavour to complete the work upto the stage of WMM. Initially as execution of bituminous work would have resulted in a number of joints. It is because of this reason that while the DBM has been done over a length of only 14 Kms, the earthwork in embankment has been completed over a length of more than 45 Kms. Unfortunately, by the time long stretches became available and we had completed the earth work, we were confronted with an unforeseen problem of shortage of aggregate as the Govt. of Bihar amended the existing 'Bihar Minor Mineral Concession (Amendment) Rules 210' as a result of which the Govt. of Bihar stopped issuing new quarry licences and also stopped renewing the existing licences. As per the amended rules, the stone quarry operation/extraction was permitted only for the projects which were in public interest and did not adversely affect the ecology and environment. An application submitted by us through NHAI in getting this project declared as a project in the public interest was not accepted with the result that we could not operate our quarry/crushers already installed at Rajauli in Bihar. To overcome the problem of shortage of aggregate, we even installed crushers at Pakur in West Bengal and also constructed a private railway siding at that place for transportation of aggregate from Pakur to the railway siding at Sarai and Gautam sthan in Bihar. But, due to limited availability of rakes the above arrangement was also not much of help.

Works involving use of aggregate also suffered as plying of 8 wheeler dumpers over Ganga Sethu has been prohibited since the bridge is under repair and maintenance since many months now. As this is the only viable link between Patna and Hajipur, we had no other option but to unload the aggregate on the Patna side of Ganga Sethu, reload it into 6 wheeler dumpers, transport it to the Hajipur side of the bridge, unload it and again re-load it into 8 wheeler dumpers and then transport it to the project site. Needless to mention that multiple rehandling of aggregate results in not only wastage of time but money also.

Contd...3.

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The Govt. of Bihar has now decided to issue the stone quarry licences and had recently invited the tenders in this connection. We had also participated in the tendering process and were successful in getting one quarry. We have now obtained the Forest & Environmental clearance and shall be starting the quarry operations shortly.

The works have also suffered due to proximity of River Ganga because of which the adjacent areas get inundated as and when the water level rises in the river. It is because of this reason that the construction of Bypass in the Vishunpura Village area took two seasons and the bridge over Gandak river took 4 seasons.

The works have also suffered all along due to the problem of Naxalites in the area. In this connection it would kindly be recalled that on 13.04.2012 a group of miscreants had set on fire one excavator and 4 dumpers in the Nayagaon/Dumri Bujurg area. The matter was reported to the District Administration vide letter No. MPL/CHA-HAJ/NH-19/PM/270 dated 14.04.2012. On 25.09.2012 our Dighwara Camp was attacked by a group of miscreants with series of bomb blasts. This matter was also reported to the District Administration vide our letter No. CHA-Haj/NH-19/PM/2012-13/337 dated 26.09.2012. This incident was covered prominently in Hindustan and Dainik Jagarn Newspapers on 01.10.2012. In yet another incident, the miscreants carried out the attack at ROB and minor bridge site at Km 157.860 in Vishunpura Village, Chhapra Bypass. The miscreants had set on fire a Baby Roller, Hydra, Motorbike, DG Set, Water Pump, Sheathing Pipe. The matter was reported to the Hon'ble Chief Minister of Bihar on 04.12.2012. Needless to mention that we have been getting the extortion letters from these naxal groups.

The work in the initial stages had suffered due to delay in approval of construction drawings because of delay in deployment of the Independent Engineer. The IE took over the charge in the month of September 2011. The works have also suffered due to delay/non-shifting of utilities because of non payment/non-approval of estimates by NHAI. Some of such cases are as under:

- i) **Transmission Tower:** Estimate was approved vide letter no. NHAI/RO/PAT/HAJ-CHHAP/US/1/2013/90 dated 11.01.15 i.e. after 1445 days from the Appointed date.
- ii) **Electrical Shifting:** Estimate was approved vide letter NHAI/BH/Chhap-Hajipur/BOT/NH-19/Imp/68076 dated 24.06.15 i.e. after 1609 days from the Appointed date.
- iii) **Tree Cutting:** Estimate was approved vide letter no. NHAI/BH/11019/02/2009/US/53716 dated 30.06.14 i.e. after 1250 days from the Appointed date.
- iv) **Temple Estimate:** Estimate was approved vide letter no. NHAI/BH/Chhap-Hajipur/BOT/NH-19/Imp/68686 dated 08.07.2015 i.e. after 1623 days from the Appointed date.
- v) **School (Bagmali & Mouzampur):** Estimate was approved vide letter no. NHAI/BH/Chhap-Hajipur/BOT/NH-19/Imp/66276 dated 19.05.2015 i.e. after 1573 days from the Appointed date.
- vi) **Hand Pumps:** Not yet approved
- vii) **Pump House:** Not yet approved

Needless to mention that due to the above reasons we have suffered heavy losses. As against the original Project cost of Rs.812.50 crores the expenditure already incurred as on date is Rs.617.30 crores as per details given below:

- |    |  |
|----|--|
| 1. | Amount infused as equity by Concessionaire till 30.06.2015 |
| 2. | Debt drawn from the Banks so far                           |
|    | <b>Total</b>   |

Yours faithfully,  
  
 Concessionaire

**Para 3:**

It is not true that the Concessionaire has deserted the work since May 2012. In this connection we would invite your kind attention to PD, NHAI, Hajipur's letter No. NHAI/PIU/Haj/CHH-HAJ/2013/2077 dated 17.11.2013 bringing out status of the work as under:

**Land availability as on 15<sup>th</sup> September 2013**

Land required	-	425 Hectare
Land availability	-	367 Hectare
Land to be acquired	-	58 Hectare

Total length affected is about 15 Km the details of which are as under:

Sl. No.		Place	Chainage (Km)	Affected length (in Kms) due to Encumbrances/hindrances	Reasons/Remarks
A	Existing Stretches	Ramashish Chowk To Bakarpur	209+940 to 200+500	1.50	Encumbrances (Structures/ Buildings
		Himmatpur etc.	181+400 to 180+900	0.00	NA
		Aami to Bishanpura	176+000 to 158+300	3.50	Encumbrances (Structures, Buildings) and Unauthorized possession)
		Sub-Total		5.00	
B	Sheetalpur Bypass	Parmanandpur, Apsaid, Murthan etc.	200+500 to 195+300	2.80	Hindrance (Arbitration Issues)
		Sheetalpur, Akbarpur, Sumerpatti, Hemantpur, Manoharpur, Manpur etc	185+900 to 181+400	3.90	3G, Non-possession etc.
		Sub-Total		6.70	
C	Dighwara & Aami Bypass	Aami	177+000 to 176+000	0.80	Non-payment of trees, 3G etc.
		Sub-Total		0.80	
D	Chhapra Bypass	1.0 Km at the start, 0.5 Km in between and 1.0 Km at the end of Chhapra Bypass	158+800 to 143+200	2.50	Missing plots, 3G and structures etc.
		Sub-Total		2.50	
		Total		15.00	

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Thus, the land available as on 15.09.2013 as per PD was 51.74 Km i.e. 77.52% of the total stretch.

In the above referred letter, the PD has shown the progress of DBM as 6 Km whereas the progress as on date as indicated by you in Para 3 of your letter cited above is 12.5 Km which shows that the DBM work executed after 15.09.2013 is 6.5 Km. It would thus be appreciated that inspite of having suffered heavy losses and confronted with cash flow constraints, we have been executing the works. Incidentally, the progress of DBM work as on date is 14 Kms.

**Para 4:**

We do not agree with your contention that we have failed to comply with the maintenance obligations. In this connection we would invite your kind attention to the following letters which would show that it has always been our endeavour to keep the project road in traffic worthy condition:

- i) SCI letter No. SCI/Chhapra-Hajipur/NH-19/611/2013/616 dated 05.06.2013
- ii) CHEL letter No. CHA-HAJ/NH-19/PM/2012-13/334 dated 25.06.2013
- iii) CHEL letter No. CHA-HAJ/NH-19/PM-NHAI/2013-14/313 dated 11.09.2014
- iv) CHEL letter No. CHA-HAJ/NH-19/PM-NHAI/2015-16/347 dated 18.05.2015

Your kind attention in this connection is particularly invited to the Team Leader's letter No. SCI/Chhapra-Hajipur/NH19/611/2013/616 dated 05.06.2013 which states, inter alia, that "We are glad to note that you are taking corrective steps as required for maintenance of the existing road". While it is duly noted that in the Review Meeting held in NHAI on 12.12.2013, the CE, RCD Bihar had mentioned that an estimate of Rs.65 crores has been prepared by RCD for maintaining the road in a traffic worthy condition and that the NHAI had assured that the stretches shall be maintained in good condition, it is also a fact that we had taken up the maintenance work in the right earnest and it was because of this reason only that when the revised maintenance estimates were prepared subsequently by the Team Leader during April, 2015, the estimated cost had come down to only Rs. 64.20 lakhs. In this connection we would invite your kind attention to NHAI HQ's letter No. NHAI/BH/Maintenance/2015-16/65303 dated 27.04.2015 which speaks for itself. You will kindly appreciate that the entire construction work was to be completed in a period of 910 days from the Appointed Date i.e. by 25.07.2013, whereas even as on date we have got a total ROW of only 51.74 Kms (77.53%). Had the ROW been handed over in time as per the Concession Agreement, we would have had to maintain the project road for not more than one year whereas we have been maintaining the entire road since 27.01.2011 and as such a period of 58 months has already elapsed. This also explains as to how we have suffered losses on this project. Our problems got further compounded due to non release of our due payments in time. In this connection we are giving hereunder some such cases:

- i) We completed the work of shifting and construction of 50% of the Temples/Schools before June 2013, but the payment over Rs. 1.6 crores is yet to be released.
- ii) Shifting of 50% of the Electric Lines was completed before December 2012, whereas we still have to get the payments amounting to Rs. 1.0 crore for the work.

**Para 5:**

Statutory payments towards Royalty, Entry Tax and WCT have already been cleared as per details given below:

- |      |           |   |                   |
|------|-----------|---|-------------------|
| i)   | Royalty   | : | Rs.3,03,83,000/-  |
| ii)  | Entry Tax | : | Rs.2,06,24,878/-  |
| iii) | WCT       | : | Rs.18,73,68,670/- |

Contd...6

As regards Labour Cess, we have been requesting the PD, NHAI to release our long pending payments against shifting of Temples/Schools, Hand Pumps, Electric Lines and works executed under Change of Scope so that we could deposit the Labour Cess. In this connection we would invite your kind attention to our following letters requesting NHAI to release our due payments:

- i) CHEL letter No. CHA-HAJ/NH-19/PM-NHAI/2015-16/350 dated 29.05.2015
- ii) CHEL letter No. CHA-HAJ/NH-19/PM-NHAI/2014-15/359 dated 06.08.2015
- iii) CHEL letter No. CHA-HAJ/NH-19/PM-NHAI/2015-16/361 dated 02.09.2015
- iv) CHEL letter No. CHA-HAJ/NH-19/PM-NHAI/2015-16/364 dated 09.10.2015

Since we have already suffered heavy losses due to prolongation of Project because of reasons beyond our control and are facing acute paucity of cash flow, we would request you to kindly arrange to release our due payments. In the meantime we are also trying to make arrangements to deposit the Labour Cess.

**Para 6:**

As regards reimbursement of one half of the remuneration cost and expenses of the Independent Engineer, we would like to submit that we have already paid Rs.3.46 crores against the total payable amount of Rs.3.84 crores. The balance amount of Rs.38 Lakhs shall be paid soon.

**Para 7,8 & 9:**

The position brought out hereinabove would show that the Project got delayed due to reasons entirely beyond the control of the Concessionaire and the problems have now got further compounded because of the increased cost of construction coupled with the increased IDC. The Project has thus become financially unviable on account of cost over run and time delays.

It was against the above backdrop that we had submitted a proposal vide our letter No. CHEL/HO/NH-19/2014/20183 dated 01.07.2014 that NHAI may release Rs.237.298 crores, the estimated cost of balance work in 51.74 Kms, in tranches against the certified expenditure in proportion to the progress of work to be certified by the Independent Engineer. This payment was requested to be treated as an advance payment against Half yearly Annuity Payments. We had even proposed that NHAI may impose an applicable rate of interest till the amount is recovered on achievement of COD after completion of 75% of the road length. The proposal, however, has not agreed to by the NHAI so far.

While we are still putting in our sincerest efforts to raise the additional funds from the banks we would again request you also to kindly consider our proposal for one time fund infusion as per NHAI Circular No. NHAI/11033/CGM(FA)/2015 dated 09.06.2015 since this Project meets the required criteria of having achieved 50% physical completion and infusion of moderate funding can help in reviving and completing the Project. In this case we have already achieved an overall physical progress of about 65% and financial progress of about 75% and an infusion of just Rs.377 crores can help in reviving and completing this project within 12 months from the effective date of release of the said Bridge Fund.

**Para 10, 11:**

Due to prolongation of this Project, we have suffered heavy losses and these losses are increasing with each passing day. We have since infused Rs.232.50 crores as Equity and the Banks have advanced a loan of Rs.585 crores and as such the funds utilised so far are Rs.817.50 crores against the original Project cost of Rs.812.50 crores (for total Project length of 64.74 Kms). In this connection it would also be pertinent to mention that we have been maintaining the entire stretch of 66.74 Km since 27.01.2011 although a total stretch of only 53.64 Kms (80.37%) has been handed over so far. It is also important to note that the COD as per the Agreement was 27.07.2013.

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**Para 12:**

As already submitted in Para 8,9 above, we may again submit that while we are still putting in our sincerest efforts to raise the additional funds from the banks we would again request you also to kindly consider our proposal for one time fund infusion as per NHAI Circular No. NHAI/11033/CGM(FA)/2015 dated 09.06.2015 since this Project meets the required criteria of having achieved 50% physical completion and infusion of moderate funding can help in reviving and completing the Project. In this case we have already achieved an overall physical progress of about 65% and financial progress of about 75% and an infusion of just Rs.377 crores can help in reviving and completing this project within 12 months from the effective date of release of the said Bridge Fund.

**Para 13:** No comments.

**Para 14:**

In view of the position explained above, it would kindly be appreciated that the Project got delayed due to reasons entirely beyond our control and not attributable to us and it is the Concessionaire who has suffered heavy losses. We would, therefore, request you to kindly withdraw your Notice for Intention to Terminate the Contract.

Thanking you and assuring you of our best services at all times,

For Chhapra-Hajipur Expressways Ltd



(S.C. Bali)

Authorized Signatory

Cc: State Bank of India, Project Finance SBU, 2<sup>nd</sup> Floor, Voltas House, 23, J.N. Heredia Marg, Ballard Estate, Fort, Mumbai - 400 001

Email: [Milind.kalkar@sbi.co.in](mailto:Milind.kalkar@sbi.co.in); [badal.das@sbi.co.in](mailto:badal.das@sbi.co.in)

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No. NH-37012/06/2015-H(Vol-II)  
Government of India  
Ministry of Road Transport & Highways  
(Highways Section)

**MOST IMMEDIATE**

Annexure-7

1, Sansad Marg, Parivahan Bhawan  
New Delhi, dated 18<sup>th</sup> December, 2015

To,

The Chairman,  
National Highways Authority of India,  
G-5 & 6, Sector - 10,  
Dwarka, New Delhi - 110075

**Subject :- REVIEW MEETING OF LANGUISHING NATIONAL HIGHWAY PROJECTS**  
-reg.

Sir,

I am directed to refer to the subject cited above and to forward the minutes of the meeting taken by Secretary (RT&H) on 14.12.2015 at 03:00 P.M in Committee Room, 05<sup>th</sup> Floor, Transport Bhawan, New Delhi to review the languishing projects, for information and necessary action.

2. This has the approval of Competent Authority.

Yours faithfully,

*(Signature)*  
(S.K.Jha)

Under Secretary to the Government of India  
Telephone No.: 23353141

Encl: As above

Copy for Information to Sr. PPS to Secy(RTH)/ PPS to JS (H)/ DS(H)

*(Signature)*  
23/12/15  
CGM(AK)  
CGM(LPP)

*(Signature)*  
28/12/15

*(Signature)*  
28/12/15

*(Signature)*  
28/12/15

CGM(RTH) - 28/12/15

CGM(DH) - 28/12/15

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# **PROCEEDINGS OF REVIEW MEETING OF LANGUISHING PROJECTS CHAIRED BY SECRETARY (RT&H)**

Secretary (RT&H) held a review meeting of languishing BOT projects with Chairman, NHAI, Member (Fin), NHAI, Member (Tech), NHAI, JS (H), MoRTH, DS (H), MoRTH, concerned Concessionaires and Lenders in attendance on 14.12.2015 at 3.00 PM. At the outset it was clarified that the Government in the recent past has taken a number of policy initiatives to bring back private participation in the sector. Especially, policy decisions have been taken to increase the comfort level of the Concessionaire and Lenders and bring back the languishing projects on track.

2. The concessionaires were heard one by one and it was categorically communicated to them that further delays in the field will invite termination from Authority. The Lenders who were also present along with the Concessionaires were consulted on this issue and they were asked to take benefit of the recent Cabinet decision with respect to policy measures to revive languishing projects, namely one time fund infusion to physically complete languishing BOT projects and the provision of extension of concession period/ disbursement of remaining annuity for BOT (Toll) and BOT (Annuity) projects respectively for delays not attributable to the Concessionaire. It was categorically told by the Secretary that any suggestion for tweaking of new policy initiatives shall not be entertained. Concessionaires and Lenders were advised to make good of the initiatives available to salvage the languishing BOT projects, failing which the same would be terminated and fresh proposals would be invited.

3. Overall 19 projects were reviewed Concessionaire-wise and the decisions taken in the meeting are as follows:

Sl. No.	Project/Promoter/length	TPC/CPC (Rs. In crs) Toll/ Annuity	Physical progress (%) length	Money drawn from the Escrow Account (Rs.in crores)	Decisions taken in the meeting
1	Vijayawada-Gundugolanu 6-laning/Gammon (length 103.59 Kms.)	1684/2087 (Toll)	0	24.48	Since the Lender has given a proposal for substitution, this project will be reviewed at end Jan-2016.
2	Mohhari-Raxau/ Jangau (JV) (length 38.79 Kms.)	375/429 (Toll)	42.77 (28.573 Kms.)	341	Indian Bank is the lead banker. They were asked to make considerable physical progress in the next one and half a month, otherwise termination notice will be issued by end January 2016.

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3	Rohtak-Jind Section/VIL (length 48.8 Kms.)	283.25/41 0 (Toll)	28.15 (0.5 Kms.)	237.45	Central Bank of India is the lead banker, and the pointed out that Rs.9 crores drawn from escrow as mobilization advance is not accounted for by the Concessionaire on ground. The bank said that this project is a fit case for one time fund infusion and they have also agreed for NHAI having first charge on receivable post completion of the project. The Secretary urged the bank to give a written communication in this regard to the Authority for further action. He said that Central Bank of India can participate in selection of a EPC contractor as Member of the Procurement Committee to complete the project in case the same is terminated or they decide to substitute VIL with NHAI.
4	Gurgaon-Kotputli-Jaipur 6-laning/Emirates Trading Agency LLC-KMC Construction Ltd (length 225.6 Kms.)	1898/3289 (Toll)	92 (213.4 Kms.)	3048	Secretary categorically said that this project will be terminated by 31.12.2015, if Bank Guarantee is not submitted by the Concessionaire against deferment of payment of premium to the Authority.
5	Belgaum-Khanapur 6-laning/GVR (length 81.89 Kms.)	359/398 (Toll)	0	2.38	Not reviewed

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6	Gwalior-Jhansi/DS Construction (length 80.127 Kms.)	804/721 (Annuity)	62.13	504	Punjab National Bank is the lead banker. This is a case where annuities shall be restored to the Concessionaire under the recent Cabinet decision to give rationalized compensation to concessionaires in case of delays not attributable to them. It was decided that the Concessionaire would seek self restoration into the project and the certified number of days of delay not attributable to the Concessionaire shall be finalized by Member (F) by 31.12.2015 as per due process.
7	Panvel-Indapur/ Supreme (length 84 Kms.)	942.69/12 00 (Toll)	38.36 (28 Kms.)	917	SBI is the lead banker for this project. Since there is a eco-sensitive zone within this project for which wildlife clearance came late. The Authority and Concessionaire have the option of de-scoping the same from the project length. If the Concessionaire does not work in this project, then NHAI can substitute the Concessionaire and complete the project. This project was kept for review in the last week of Jan. 2016.
8	Rimoli-Roxy-Rajamunda/MBL-SREI (length 96 Kms.)	566/772.7 5 (Toll)	9 (9.8 Kms.)	137	United Bank is their lead banker. So far the Concessionaire has not drawn any fund from the bank and the project is languishing for the past 4 years. Cure period notice has been issued to the Concessionaire, which is for 60 days and thereafter termination will follow.
9	Elevated road from Chennai Port-Maduravoyal/Soma (length 23 Kms.)	1345/2148 (Toll)	14.79 (0 Kms.)	1013.9	Matter is sub-judice. Termination notice will be issued in two months time, if steps are not taken to resolve the deadlock.
10	Chennai-Tada 6-laning/ Larsen & Toubro Ltd. (length 43.4 Kms.)	418 75/65 (Toll)	55.65 (23 Kms.)	365.03	Matter is sub-judice.



11	Walajahpet-Poonamallee 6-laning/ Essel Infra Projects Ltd (length 93 Kms.)	1287.95/1 548.81(To II)	11.82 (2.37 Kms.)	715.5	Punjab National Bank is their lead banker. The Concessionaire has not paid full premium to NHAI. There is an arrear of Rs.300 crores. Premium rescheduling proposal is to be accepted only when Govt. revenue is paid. Partial payment of premium is unacceptable and may invite criminal action on the Concessionaire if the same is not paid by 31.12.2015.
12	Haridwar-Dehradun/ Era (length 39 Kms.)	478/691.4 1 (1021) (Annuity)	35.21 (14.61 Kms.)	753	They were told to complete the project by January 2016, failing which they will be debarred from bidding for future projects by NHAI/other State Govt. agency.
13	Raiganj-Dalkhola/ HCC (length 50 Kms.)	580.43/68 4.33 (Annuity)	9 (0 Kms.)	212.48	Termination notice shall be issued after 31.12.2015 and they will be debarred from participating in future bids for NHAI/State Govt. agency. Yes Bank is their lead banker and they were told to substitute M/s. HCC by NHAI so that the project can be completed in the next 6-8 months. Yes Bank can also be part of the Procurement Committee to select the EPC contractor on behalf of NHAI if the above proposal is accepted.
14	Krishnagar-Behrapore/ SEW (length 78 Kms.)	702.18/75 0.44 (Annuity)	51.2 (39.7 Kms.)	527.75	SBI is the lead banker. This project suffers from lack of equity. It was decided that Cure period notice of 80 days shall be issued followed by termination notice by 31.01.2016.
15	Hoskote-Dobbaspet 4- laning/ Tranastroy (length 80.020 Kms.)	720.69/72 7.42 (Toll)	1.4 (0 Kms.)	189	Central Bank of India is the lead banker. The Concessionaire was asked to submit detailed work plan by 31.12.2015 to Authority failing which termination notice will be issued by 31.01.2016.



16	Obedulaganj-Betul/ Transstroy (length 121.36 Kms.)	912/983 (Toll)	0.95 (0 Kms.)	448.45	By 31.01.2016 if 12 Kms. of road are not constructed then termination notice will be issued.
17	Chappra-Hajipur/ Madhucon Projects Ltd. (length 66.74 Kms.)	575/812 (Annuity)	52.7 (14.8 Kms.)	813	SBI is the lead banker for this project. The Concessionaire is yet to infuse his equity to draw the debt component from the bank. SBI is not willing to allow first charge on toll receivables to NHAI in case one time fund infusion for this project is envisaged. It was decided that termination notice shall be issued after 31.12.2015.
18	Ranchi-Rargaon- Jamshedpur/ Madhucon Projects Ltd. (length 183.5 Kms.)	1479/1850 (Annuity)	20 (8 Kms.)	975	This project will be reviewed by end January 2016.
19	Barasat-Krishnagar/ Madhucon Projects Ltd. (length 84 Kms.)	887/980 (Annuity)	13.62 (1.46 Kms.)	654.14	Oriental Bank of Commerce (OBC) is their lead bank. There is suspected diversion of funds by the Concessionaire, and there- fore, termination notice shall be issued to them by end December 2015.

4. The Chair advised NHAI to develop a mechanism so that defaulters can be debarred for bidding in new projects. It was suggested that wherever after discussion with lenders and other stakeholders, it is clear that the developer/concessionaire is not able to infuse the requisite equity, which further, in turn, is preventing the lenders from further disbursement and which is hampering the public asset from being operational such Concessionaire should be debarred from bidding in new projects. The reason is that if they are not able to organize equity where they are committed to do so, it would be difficult for them to arrange equity for new projects and thus by letting them participating in new projects we will also be putting the new projects at the risk of languishing in future.

5. This meeting shall be held again on 01.02.2016. NHAI is requested to take action as proposed in the table above and report compliance.

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भारतीय स्टेट बैंक  
भारतीय स्टेट बैंक  
State Bank of India

परियोजना चिन्त एसबीयू, कोल्हास हाउस, महिला आणि दुसरा मजला,  
23, जे. एन. हेरेडिया मार्ग, बालार्ड इस्टेट, फोर्ट, मुंबई - 400 001.  
परियोजना चिन्त एसबीयू, वोल्तास हाउस, प्रथम एवं द्वितीय तला,  
23, जे. एन. हेरेडिया मार्ग, बालार्ड इस्टेट, फोर्ट, मुंबई - 400 001.  
Project Finance SBU, Voltas House, 1st & 2nd Floor,  
23, J. N. Heredia Marg, Ballard Estate, Fort, Mumbai - 400 001.

Tel.: 2268 6901 / 02 / 03 | Fax : 2268 6911

Annex-8

Mr Brijesh Pandey  
Deputy Secretary,  
Prime Minister's Office,  
152, South Block, Raisina Hill,  
New Delhi - 110011

PFSBU/2015-16/2339

**STRANDED ROAD PROJECTS**

**MEETING HELD BY PMO's OFFICE ON 18/01/2016**

- 1. Chhapra Hajipur Expressways Limited (CHEL)**
  - 2. SEW Krishnagar Baharampore Highways Limited (SKBHL)-**
  - 3. Supreme Panvel Indapur Tollways Private Ltd (SPITPL)**
- (Reference : PMO ID No.430/31/C/04/2016-ES.I Dated 13/01/2016)**

With reference to the captioned subject, we advise that pursuant to the meeting convened by PMO on 18.01.2016 for the above mentioned three Projects, we have to apprise PMO to arrive at specific action plan for each of the Projects including exploring the option for substitution for SPITPL.

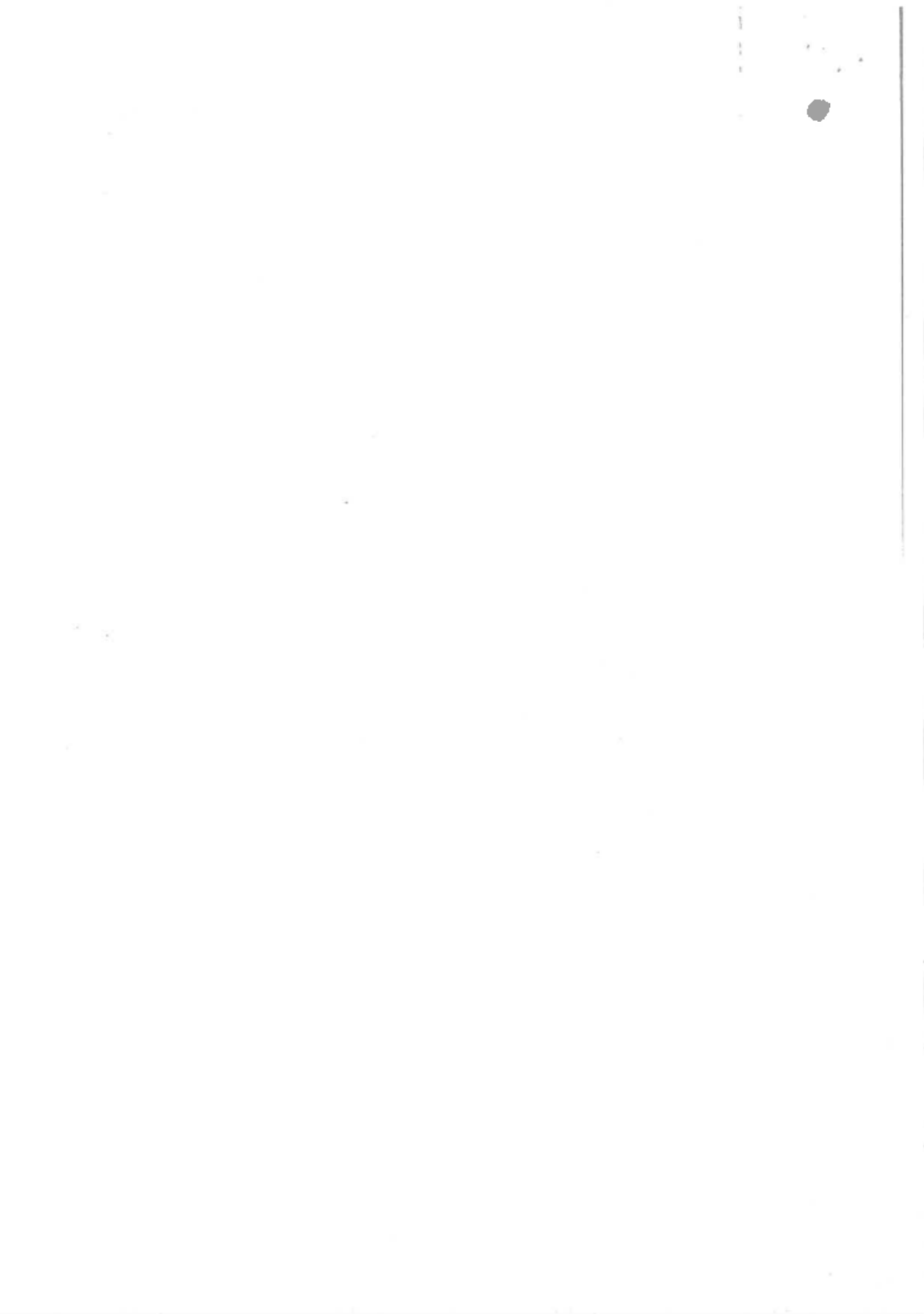
Accordingly, we had convened meeting with the promoters/ all lenders of the above Projects so as to firm up the future course of action for each project. Based on the deliberations, the future course of action for each of the above Projects is detailed below:

**1. Chhapra Hajipur Expressways Limited (CHEL)**

**Four laning of Chhapra to Hajipur Section from Km 143.200 to Km 207.200 (65.01 Kms) in the State of Bihar on NH-19(BOT-Annuity)**

The key points were highlighted during the PMO meeting dated 18.01.2016 for the account are as under:

- i. There is project cost difference from (at the time of bidding by NHAI) Rs. 585 cr. to (at the time of financial closure by the Banks) Rs. 812 cr., no approval taken from NHAI. It was informed that this was mentioned in the financing document and duly submitted to NHAI at the time of financial closure. Further as a part of due diligence process, this cost is got validated through lenders' engineering consultant (LIE).



- ii. Financial progress of the project is 100 % against Physical progress of 52% as per NHAI's Independent Engineer (IE) ( 67.21% as reported by Bank's LIE). Difference between physical & financial progress is mainly attributed to increase in IDC cost due to delay in project as well as cost overrun. Procurement of aggregates from nearby State of Jharkhand on account of non-renewal/non-issue of Quarry mining licenses by the State Government of Bihar led to substantial hike in the cost of aggregates. The difference in physical progress between NHAI's IE & Bank's LIE is mainly on account of valuation involving multiple stages of construction. IE recon the physical progress only after full completion of all the stages whereas LIEs consider valuation stage wise.
- iii. It was decided to give 15 days' time to promoter to bring the requisite equity and to start the work, failing which project may be terminated.

In view of above, a consortium meeting was conducted on 25.01.2016 at SBI, PFSSBU office, Mumbai with top officials of company. The following were the action points decided after deliberations:

1. Company to initiate immediately procedure for acceptance of sanction of the lenders for completing 51.74 km and complete the documentation within a week's time to start the work on the project.
2. The lenders whose NOC for sale of Madhucon Agra Jaipur Expressways Ltd.(MAJEL) is yet to be received should expedite their NOCs so that the receipt of sale proceeds and consequent infusion of Rs. 25 cr. in CHEL is done before end of February.
3. Simultaneously matter be taken up with NHAI for release of one semi-annual annuity of Rs. 65 cr. in advance, to fill the equity gap on interim basis and the promoters to undertake to replace the same with equity within 3 years period from Provisional COD.

**2. SEW Krishnagar Baharampur Highways Limited(SKBHL)**  
**Four-Laning of the existing two-lane from Krishnagar to Baharampur section of NH-34 from km 115.00 to km 193.00(78 kms.) in the State of West Bengal (BOT-Annuity)**

The key points that were highlighted during the PMO meeting are as under:

- i. Withdrawal of 'Intention to issue termination' notice, served to SKBHL was assured by NHAI.
- ii. NHAI advised that the estimated cost of balance work is Rs.218 cr and amount of Rs. 48 crore would be provided by NHAI with priority charge.
- iii. Two semi annual annuities for Rs. 123.00 crore would be extended
- iv. Lenders need to examine the position in the light of above facts and inform the PMO with their decision within 30 days.

*[Signature]*

A consortium meeting was convened on 21.01.2016, at SBI, PFSBU, Mumbai which was also attended by the Promoter Director of the Company. The Lenders asked the Company officials to follow up /seek clarification on the following from NHAI:

- a) Withdrawal of 'Intention to Termination' Notice served by NHAI, as discussed in the meeting dated 18.01.2016
- b) Reconcile the cost of work as suggested by NHAI of Rs.218.00 cr with the Company's estimate of Rs327.54 cr which is assessed for completion of 57 km to achieve PCOD. Since the lenders have agreed to part finance by way of debt of Rs.170 cr, the source from which this balance reconciled cost is being funded should also be advised.
- c) The total number of annuities that will be available (including 6 lost annuities), and out of this, how many would be paid upfront on achievement of PCOD.
- d) Whether the PCOD would be awarded on completion of work on 52 kms or 57 kms.
- e) Whether the remaining stretch out of total 78 kms would be de-scoped or not considering the present availability of land and clarity on the value of each annuity.

The Lenders agreed that continued support would be extended if the Project is found to be viable based on clarifications on the above points. NHAI officials during number of deliberations had agreed to consider pari-passu charge on the cash flows as against the priority of charge which they had been earlier insisting. Hence, the lenders are agreeable to pari-passu charge provided RBI allows special dispensation, if the repayment period is required to be extended on account of additional debt.

### 3. Supreme Panvel Indapur Tollways Private Ltd (SPITPL)

Four laning of Panvel-Indapur section of NH-17 from km. 0.000 to km. 84.000 in the State of Maharashtra(BOT-Toll)

The key points that were highlighted during the Prime Minister Office meeting are as under :

- i. Difference between Physical(36%) and Financial progress(76%) of the project.
- ii. Promoter is very weak, Concrete action plan otherwise project may be cancelled and lender to explore substitution.

A consortium meeting was conducted on 22/01/2016 at SBI, PFSBU, Mumbai wherein the Company was advised to present their strategy for bringing in requisite equity.

Following submission was made by Mr Vikram Sharma, promoter of the Company :

- i) Difference between physical and financial progress is due to IDC (Interest during construction) and on account of maintenance expenditure of Rs.19.39 cr (as accepted by NHAI) on the stretches where land is not available for four

45-44/59



A consortium meeting was convened on 21.01.2016, at SBI, PFSBU, Mumbai which was also attended by the Promoter Director of the Company. The Lenders asked the Company officials to follow up/seek clarification on the following from NHAI:

- a) Withdrawal of 'Intention to Termination' Notice served by NHAI, as discussed in the meeting dated 18.01.2016
- b) Reconcile the cost of work as suggested by NHAI of Rs.218.00 or with the Company's estimate of Rs327.54 or which is assessed for completion of 57 km to achieve PCOD. Since the lenders have agreed to part finance by way of debt of Rs.170 or, the source from which this balance reconciled cost is being funded should also be advised.
- c) The total number of annuities that will be available (including 6 lost annuities), and out of this, how many would be paid upfront on achievement of PCOD.
- d) Whether the PCOD would be awarded on completion of work on 52 kms or 57 kms.
- e) Whether the remaining stretch out of total 78 kms would be de-scoped or not considering the present availability of land and clarity on the value of each annuity.

The Lenders agreed that continued support would be extended if the Project is found to be viable based on clarifications on the above points. NHAI officials during number of deliberations had agreed to consider pari-passu charge on the cash flows as against the priority of charge which they had been earlier insisting. Hence, the lenders are agreeable to pari-passu charge provided RBI allows special dispensation, if the repayment period is required to be extended on account of additional debt.

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Following submission was made by Mr Vikram Sharma, promoter of the Company :

- i) Difference between physical and financial progress is due to IDC (Interest during construction) and on account of maintenance expenditure of Rs.19.39 or (as accepted by NHAI) on the stretches where land is not available for four

*[Handwritten signature]*

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45/59



laning. The cost of the remaining work to be done to complete the available stretch of 46.50 km to achieve PCOD is about Rs.158 cr. Further, as per LIE(Lenders independent engineer) Physical progress is 54% as on 31/10/2015 as against IEs 36%. The difference in physical progress between NHAI's IE & Bank's LIE is mainly on account of valuation involving multiple stages of construction. IE recon the physical progress only after full completion of all the stages whereas LIEs consider valuation stage wise.

ii) Promoter committed to bring in the required equity of Rs.46 cr to enable the lenders to disburse their share of debt of Rs.135 cr. He committed to infuse Rs.20 cr before 31.03.2016 in tranches and the balance amount of Rs.26 cr in the form of material before 30.06.2016 to complete the stretch of 46.50 km by June 2016 to achieve PCOD.

iii) He further stated that payment for maintenance bill is pending with NHAI since October 2015. The same has been approved by the IE, PD-Panvel and CGM-Maharashtra, as discussed and finalised in the various meetings with Minister MoRTH and Chief Minister, Maharashtra on 27th August 2015 and meeting with PMO on 24th September 2015. This delay is causing an adverse impact on the already strained cash flows. Once the Company receives the same, it will enable the Company to accelerate the progress and complete the entire stretch of 84 km of the Project. He also referred to the discussion held in Prime Minister Office meeting on 8<sup>th</sup> July and 24<sup>th</sup> September 2015 wherein NHAI was advised to examine the request for extension in concession period due to cumulative delay in handling over the land, various approval and clearance. He also sought cost overrun funding for the balance of the Project post PCOD.

It was conveyed to the Promoter that in case of any slippage of the commitments, lenders would take recourse to substitution. The lenders agreed for disbursement of their share of debt after infusion of equity according to the present debt equity ratio. It was also agreed to examine the cost overrun of the project simultaneously for completion of remaining stretch.

Yours faithfully,

  
Chief General Manager

✓ Copy to : The Chairman, National Highways Authority of India(NHAI), G-5 & 6, Sector-10, Dwarka, New Delhi-110075 for information.

  
Chief General Manager



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भारतीय स्टेट बैंक  
भारतीय स्टेट बैंक  
State Bank of India

परिचयना विस्तार एकाई, पोस्टाफ हाउस, ब्रिज आदि भुवना मकान,  
23, जे. एन. हेरेडिया मार्ग, बलार्ड एस्टेट, फोर्ट, मुंबई - 400 001.  
परिचयना विस्तार एकाई, पोस्टाफ हाउस, ब्रिज आदि भुवना मकान,  
23, जे. एन. हेरेडिया मार्ग, बलार्ड एस्टेट, फोर्ट, मुंबई - 400 001.  
Project Finance SBU, Voltas House, 1st & 2nd Floor,  
23, J. N. Heredia Marg, Ballard Estate, Fort, Mumbai - 400 001.

Tel.: 2266 8901 / 02 / 03 | Fax: 2266 6911

The Chairman,  
National Highways Authority of India  
G-5 & 6, Sector-10,  
Dwarka,  
New Delhi-110075



Date :

Ref. No. :

Dear Sir,

PFSBU/TEAM-08/2016-17/453

12<sup>th</sup> May 2016

**Chhapra Hajipur Expressways Limited (CHEL)**  
**One Time Fund Infusion Scheme- In Principle Approval**

We refer to our earlier discussions in order to revive stranded projects, where it was in-principle agreed by NHAI to provide funding of Rs. 175 cr. to the captioned Project, on priority charge basis. Also, the following assumptions were discussed with NHAI and were agreed upon:

1. Restoration of 6 lost annuities to be paid upfront on achievement of PCOD.
2. PCOD to be achieved by April 2017.
3. NHAI's dues to be paid upfront from the proceeds of restored lost annuities.
2. As desired, we convey our in-principle approval for infusion of funds from NHAI, under 'One Time Fund Infusion' Scheme for completion of the Project.
3. After receipt of your concurrence for the same we shall seek final approval from the Consortium/ Banks.

Yours faithfully,

(Ujjal Kr. Das)  
Chief General Manager  
Project Finance & Leasing SBU  
Mumbai

Pl. disun

19/5/16

Gm (T) BH

19/5/16

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Annexure 10

**CHHAPRA-HAJIPUR EXPRESSWAYS LIMITED**

Ref: CHA - HAJ/NH-19/PM-NHA/2016-17/378

Date: 19.04.2016

To,  
The Project Director,  
NHAI, PIU-Hajipur,  
Sharma House, 2<sup>nd</sup> Floor,  
Ramashish Chowk,  
HAJIPUR-844 101 (BIHAR)  
Tel. No. - 06224-274255  
Fax No. - 06224-274256  
Email: hajipur@nhai.org

Sub: Rehabilitation and up gradation to 4-laning, Chapra-Hajipur section of NH-19 from Km 143+200 to Km 209+940 (Design Challenge) in the State of Bihar under NHDP - III on Annuity basis- Missed Annuities Payable to Concessionaire

Dear Sir,

As per the Policy Matters - Technical (195/2016) Dated: 19.01.2016

The land shall be deemed to be encumbrance free land if it satisfies the following

- (i) The encumbrance free land (vacant access and Right of Way of the site) availability should be defined in linear km, available free of all encumbrances for construction of Project Highway (2-lane with paved shoulder/4-lane/6-lane as the case may be) as a percentage of total project length. The land should be declared as fully acquired only after completion of formalities as per provisions of 3 (H) of NH Act 1956. However in case the Concessionaire is able to construct the Project Highway in any stretch through his own liaison/efforts, even though formalities as per provision of Section-3 (H) of NH Act 1956 are not yet completed, this length shall be treated as encumbrance free land available for the purpose of calculation for determination of delay.
- (ii) Environment clearance for the stretch in place.
- (iii) First Stage Forest Clearance obtained from MoEF and consequently permission for tree cutting and commencement of work received from Forest Authorities as per prevailing policy of MoEF.
- (iv) GAD of ROB/RUB obtained by the Authority from Railways.
- (v) The estimates for utilities shifting (electrical, water/gas pipelines and other utilities hindering the construction of Project Highway) have been sanctioned by the Authority and supervision charges and deposited with the departments/organizations owning the utilities.

Corp. Office: "Madhucon House", 1129/A Road No. 36, Jubilee Hills, Hyderabad-500 033, A. P. India  
Tel: +91-40-23556001-4, Fax: +91-40-23556005, E-mail: hyinfo@madhucon.com

Site office: Madhucon Projects Limited, Near Middle School, Village - Baharbagachi, Po+Ps - Nayagaon, Dist. - Saran (Chhapra)  
Bihar - 841217, Ph. No 9771415950, 9771450616, E-mail: chappre@madhuconinfra.com

[www.madhucon.com](http://www.madhucon.com)

(1) Delay and payment of amount: The amount determined under section 10, shall be deposited by the concessionaire in the Government of Bihar account, which shall be credited to the account of the Government of Bihar, which shall be made in the benefit of that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

- 9) Further determination of Delay calculation is appended in Annexure 2 where it is reflected that total Land required is 425 Hectare in which 65 Hectare land in terms of existing road was available on the appointed date.

As per the policy, status of encumbrance free land handed over to the concessionaire is being assessed periodically in every three months in terms of 3H, all the data has been procured from district land accusation office which reflect to 361.52 Hectare ie 77.5% land available, in linear frontage length it comes to 51.7 km as on date.

Extension in the concession period for not handing over land of 60% on time comes to 1180 days for the stretch does not have Major Structure that is up to 17 January 2017 and 1362 days for the stretch having major structure that is up to 17 July 2017 Detail is appended in Annexure 2.

- 2) Land under encumbrance due to structure dotted with 1257 no. of buildings for which payment for only a few has been made and a few has been dismantled till date which is reflecting in the photograph and utility shifting like electrical and transmission line whose approval / supervision charges has not been deposited is appended in Annexure 3 with photograph that comes to approx 12.75 km.
- 3) Since inception of the project, we used to get the supply of aggregates from our crusher at Rajauli, Bihar where sufficient stock of materials was available. As we had our crusher installed at the place from long back, we had the required quarry license for the aggregates. On expiry of the said license we applied for further extension of the same but as per policy decision of State Government of Bihar, they have neither issued new quarry licenses nor extended the expiry dates of the existing licenses till January 15, now we have got the fresh quarry whose all administrative approval has been taken and crusher has started functioning from first week of April 2016 and this has offered an unexpected hit in our supply line of aggregates.
- 4) As you are well aware of the fact that necessary MOU between NHAI and Railway is required to be signed so that we can proceed with the works within railway ROW in ROBs. This issue is pending since beginning. As we are at advanced stages in all the five ROBs in the project, we request your early intervention to enter into the MOU expectantly to ensure uninterrupted progress of the work.

- 5) Approval of GAD for ROB at km 193-197 is pending from last four year after repeatedly submission of more than 12 times.

- 6) Movement of heavy vehicle through the Gandhi Setu over the river Ganges has been restricted by the Government of Bihar since 15<sup>th</sup> May 2014. As reported in the register in 10 meters to carry out the maintenance works of the dedicated bridge. Due to this, more than a fleet of heavy vehicles are deployed to meet the transport demand of aggregates and other construction materials. Due to the above restriction supply of aggregates is severely impacted. Due to this, the project is severely impacted and the project is facing a lot of delay.

*Sub.*

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7) We solicit your kind attention to the continuous disturbance being created at site by the miscreants since 01.03.2012 as communicated time to time to you and to the Administration.

Hence delay on the part of Authority was 1180 days for the stretch does not have Major Structure so the completion gets extended to 17 January 2017 and 1362 days for the stretch having major structure so the completion gets extended to 17 July 2017.

Hope, you will find the above in order.

Thanking you and assuring our best services at all times.

Yours faithfully,

For Chhapra-Hajipur Expressways Ltd.



(Mobashir Sabri)  
Project Manager

Encl: As above

Copy to: Team Leader, Stanley Consultant, Hajipur

For kind information

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authority, at a time and place and to state the nature of their respective interests in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration—

- (a) the market value of the land on the date of publication of the notification under section 3A;
- (b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;
- (c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;
- (d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

[3H. Deposit and payment of amount.—(1) The amount determined under section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1) the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

(5) Where the amount determined under sub-section (1) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration—



DETAILS OF OBSTRUCTIONS

SL NO	Chainage		Insurance Affected Length (Kmt)		Side	Description of Item	Remarks
	From	To	Left Side	Right Side			
1	204+300		150	150	B/S	Transmission Tower	
2	202+400	202+430	30		LHS	Water Tank and Toilet	
3	201+700	202+000	300		LHS	Entrance Gate, House and Electric Pole	
4	201+700	202+000		300	RHS	House and Electric Pole	
5	201+400	201+700		300	RHS	House, Electric Pole and Transformer	
6	201+400	201+700	300		LHS	House and Electric Pole	
7	201+000	201+400	400		LHS	House, Tree, Electric Pole	
8	200+700	201+000	300		LHS	House, Tree and Bakarpur Primary School	
9	200+400	200+700	300		LHS	Bakarpur Sabji Mandi, & House	
10	200+300	200+400	100		LHS	House and Electric Pole	
11	199+950	200+150	200		LHS	Tree, Electric Pole, Bore Well and House	
12	196+500	198+000	1500	1500	B/S	Disputed Land	
13	196+300	196+350	50	50	B/S	Disputed Land	
14	195+900	196+100	200	200	B/S	Tree & Chiman	
15	192+900	193+000	100	100	B/S	Disputed Land	
16	188+150		150	150	B/S	Transmission Tower	
17	185+950		50	50	B/S	Electrical Pole	
18	184+850		50	50	B/S	Transmission Tower & Electrical Pole	
19	184+750	184+850	100	100	B/S	House & Shop and Tree	
20	184+300	184+650	350	350	B/S	House and Tree	
21	184+100	184+250	150	150	B/S	Tree	
22	184+000		100	100	B/S	Transmission Tower	
23	183+050	183+150	100		LHS	Govt. School, House, Tree & Electric Pole	
24	183+450	183+530	80	80	B/S	Govt. School and House	
25	183+180	183+400	220	220	B/S	Boundary Wall, Electric Pole and House	
26	183+800		100	100	B/S	Transmission Crossing	
27	182+850	183+050		200	RHS	House and Tree	
28	182+000	182+250	250	250	B/S	Disputed Land and Tree	
29	181+750	181+850	100	100	B/S	Chiman	
30	175+450	176+200		750	RHS	Disputed Land and Tree	
31	176+600	177+050	450	450	B/S	Disputed Land and Tree	

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Canals					Location of Canal		Remarks
From	To	Left Side	Right Side	Side			
63	163+880	164+000		120	RHS	Panchayat Bhawan, Shop, Bore Well	
64	164+050	164+060		10	RHS	Tree	
65	163+630	163+860	230		LHS	Tree	
66	163+150	163+300	150		LHS	House and Tree	
67	163+400	163+550	150		LHS	House and Tree	
68	162+050	162+150	100		LHS	Shop, Tree, Police Station Dorganj	
69	162+200	162+530	330		LHS	Shop and Ara Machine	
70	162+800	163+150	350		LHS	Land Problem, Shop, House and Tree	
71	162+530	162+800	270		LHS	Govt. School, Shop and House	
72	161+300	161+450	150		LHS	House, Hut, Handpump and Electric Pole	
73	161+300	161+450		150	RHS	House, Hut and Electric Pole	
74	161+450	161+600		150	RHS	House and Well, Electric Pole	
75	161+500	161+550	50		LHS	House, Hut and Electric Pole	
76	161+600	161+800	200		LHS	House and Tree	
77	161+600	161+800		200	RHS	House, Bore Well	
78	161+930	162+950	1020		LHS	House, Panchayat Bhawan	
79	160+000	160+150	150		LHS	House and Tree	
80	160+000	160+350		350	RHS	Shop, Harizan Basti, Electric Pole and Tree	
81	160+600	160+700		100	RHS	Line Hotel and Petrol Pump Tree	
82	160+790	160+950		160	RHS	Shop	
83	160+950	161+100		150	RHS	House, Govt. School and Electric Pole	
84	159+400	159+700	300		LHS	Boundary Wall, House, Electric Pole and Harizan Basti	
85	159+400	159+750		350	RHS	House, Electric Pole, Tree, Shop and House	
86	159+850	159+900		50	RHS	Shop House and Tree	
87	159+900	159+920	20		LHS	Boundary Wall and Tree	
88	159+920	160+350		430	RHS	Tree, Well and House	
89	158+100	158+300		200	RHS	Shop, Hand pump and Tree	
90	158+600	158+850		250	RHS	House, Electric Pole, Well and Tree	
91	158+350	158+600		250	RHS	Hotel and Tree, Boundary Wall	
92	157+470	158+100	130	130	B/S	Transmission Tower, Boundary and Tree	
93	157+400	157+930	130	130	B/S	Tree	

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**Madhucon Projects Limited**

**Name of The Project: Chhapra - Hazipur Road Projcet, NH-19, Bihar.**

SL NO	Chainage		Side	Length	Description of Item	Remarks
	From	To				
1	204+300				Hightension Pole	
2	202+400	202+420	LHS	20	Hand Pump	
3	201+700	202+000	LHS	300	Piler, PSC Pole & Tree	
4	201+700	202+000	RHS	300	Pole	
5	201+400	201+700	RHS	300	PSC Pole & House	
6	201+400	201+700	LHS	300	PSC Pole & House	
7	201+000	201+400	LHS	400	PSC Pole, Tree & House	
8	201+000	201+400	RHS	400	PSC Pole, Tree & House	
9	200+700	201+000	LHS	300	PSC Pole, Tree & House	
10	200+400	200+700	LHS	300	School Tree & House	
11	200+300	200+400		100	RCC Pole & House	
12	199+950	200+150		200	House	
13	188+150				Hightension Pole	
14	185+950				PSC Pole-	
15	184+850				Hightension Pole	
16	184+650	184+750		100	PSC Pole & House	
17	184+650				Tree	
18	184+300	184+600		300	Temple & House	
19	184+000				Hightension Pole	
20	184+100	184+350		250	Bans Kothi	
21	184+500	184+650		150	House & Temple	
22	157+800	157+930		130	Tree	
23	157+970	158+100		130	Hightension Pole	
24	158+100	158+300		200	Tree	
25	158+300	158+600	RHS	300	Tree & Line Hotel	
26	158+600	158+850	RHS	250	Well, Huse & RCC Str	
27	159+400	159+700	LHS	300	Tree & House	
28	159+400	159+700	RHS	300	House	
29	159+700	159+750	RHS	50	Tree	
30	159+850	159+900	RHS	50	Tree & House	
31	159+900	159+920	LHS	20	Tree	
32	159+920	160+350	RHS	430	Tree & House	
33	160+000	160+150	LHS	150	House	
34	162+530	162+850	LHS	320	House	
35	183+050	183+150	LHS	100	House	
36	182+850	183+050	RHS	200	PSC Pole & Cul	
37	183+450	183+530		80	Temple & School	
38	160+000	160+350	RHS	350	House	
39	160+340	160+350	LHS	10	Temple	
40	160+600	160+700		100	Temporally shop	
41	160+790	160+950	LHS	160	Bos stop	
42	160+790	160+950	RHS	160	Panchor shop	
43	160+950	161+100	RHS	150	PSC Pole & School	
44	161+300	161+450	RHS	150	PSC Pole & Bans Kothi	

53/59

94	168+900	168+930	RHS	30	House	
95	168+940	168+950	LHS	10		
96	168+850	168+900	LHS	50	Tree	
97	169+530	169+850	RHS	220	House & Tree	
98	170+160	170+220	LHS	60	School	
99	170+400	170+420	RHS	20	House	
100	170+750	170+850	RHS	100	House & Tree	
101	176+600	177+050		450	Tree	
102	181+750	181+850		100	Brick	
103	182+000	182+250		250	PSC Pole & Tree	
104	183+180	183+400		220	PSC Pole	
105	183+800				Hightension Pole	
106	196+300	196+500		200	PSC Pole	
107	192+900	193+000		100	Tree	
		Total		17125		

*Br...*

54/59 *to exhibit*





# Stanley Consultants INC.

A Stanley Group Company  
Engineering, Environmental and Construction Services Worldwide

Ref: SCI/Chapra-Hajipur/2016/5410

27 April 2016

To: The Project Director  
Project Implementation Unit,  
National Highway Authority of India  
Chhapra Hajipur Road Project (NH-19)  
Hajipur, - 844101, Bihar

Sub: "Independent Engineer services for 4 laning of Chhapra - Hajipur section except 2 lane Chhapra Bypass of NH-19 from km 143.200 to km 207.200 in the state of Bihar under NHDP phase-III on BOT (Annuity) on DBFOT basis"-Rationalised compensation to concessionaire in case of delay not attributable to Concessionaire for languishing highway project on BOT mode-Corrigendum.

Ref: Our letter SCI/Chapra-Hajipur/2016/5409 dated 26 April 2016.

Dear Sir,

This has reference to our letter dated 26.04.2016 under reference.

You are requested to please read line no. 10 of Para 3 as "So it works out to 77.5% of linear length which is more than 75% required as per CI no. 14.3.2 of the CA for PCOD. Since the same was handed over to them by 12.09.2013 so as per the Circular concessionaire was to complete the same as follows" instead of "Therefore, we can assume that more than 80% of land was handed over by 12-09-2013 and as per the circular the concessionaire was to complete the same as follows".

The inconvenience is regretted.

Thanking you and assuring our best services at all times.

Yours sincerely,

Ravi Prabhat  
Authorized Representative

Encl: as above

Copy to:

- 1) Regional Officer, NHAI, Patna -800001, Bihar.
- 2) Team Leader, Stanley Consultants Inc., Hajipur



**MINUTES OF 3 CGMs COMMITTEE****Date:** 26<sup>th</sup> May, 2016

**Sub:** Rehabilitation and up-grading to 4-laning Chhapra-Hajipur section of NH-19 from km.143+200 to 207+200 in the State of Bihar under NHDP-III on annuity basis.

- Rationalized compensation to Concessionaire - reg.

**1. Proposal:-**

Payment of missed annuities as advance as per NHA's Policy Matter Technical Circular No. 11041/218/2007-Admn dated 19.01.2016 to the concessionaire M/s Chhapra Hajipur Expressways Ltd.

2. For consideration of Extension of construction period under rationalized compensation to Concessionaires in case of delay not attributable to Concessionaires for languishing highways Projects on Annuity mode(as per Policy Matter - 195/2016 dated 19.01.2016). 3 CGMs Committee has been constituted for vetting the proposal of Independent Engineer with following Members:

- (i) Shri Atul Kumar, CGM(Tech)
- (ii) Smt. Nivedita Srivastava, CGM(Fin.)
- (iii) Shri Alok Deepankar, CGM (Tech.)

The Committee has been informed that:-

**2.1 Background:-**

The Concessionaire M/s Chhapra Hajipur Expressways Ltd. was awarded the project. Salient features of the project are as under:-

<b>Name of the developer</b>	<b>M/s Chhapra Hajipur Expressways Ltd.</b>
<b>Bidder/Consortium Member</b>	<b>M/s Madhucon Projects Ltd.</b>
<b>Project length</b>	66.74 km
<b>TPC</b>	Rs. 575.00 Cr.
<b>Concessionaire Project Cost</b>	Rs. 812.50 Cr.
<b>Financing plan</b>	Debt Rs. 585.00 Cr. Equity Rs. 227.50 Cr.
<b>Date of Concession Agreement</b>	28.07.2010
<b>Appointed Date</b>	27.01.2011
<b>Construction Schedule completion date</b>	24.07.2013
<b>Concession period</b>	15 Yrs. (including construction period of 2.5 years)
<b>Semi annuity payable on COD</b>	Rs. 65.43 cr.
<b>Physical Progress</b>	52.70%
<b>Financial Progress</b>	107.46% (Rs. 873.12 cr.)

2.1.1 The concessionaire had started work on 27.01.2011 and on the basis of start of work the Appointed Date was declared as 27.01.2011 with scheduled project completion date 24.07.2013

*Nivedita* *Alok Deepankar*

2.1.2 The project is delayed by more than two years initially due to LA hindrances, slow progress of the concessionaire and also later on due to financial problems of the concessionaire. Work was almost stopped by the concessionaire since, June, 2012 and even after several notices by the IE and Authority the concessionaire did not take up the work.

2.1.3 As per the details of availability of land about 51.74 km was made available for construction upto 12.09.2013 out of which concessionaire could construct only 14.80 km up to DBM level till date. The concessionaire achieved 52.70% physical progress on the land made available. However, subsequently the project started struggling due to lack of available work fronts and cash flow problems.

2.1.4 The Independence Engineer of the project vide letter dated 21.04.2016, 26.04.2016, 27.04.2016 and 18.05.2016 has submitted the proposal for payment of missed annuity as advance in accordance with the NHAI's Policy Matter Technical Circular No. 11041/218/2007-Admn dated 19.01.2016. The circular gives the procedure to be followed for seeking relief under above policy and is as under:-

a) This policy is applicable for all current BOT (Toll)/ Annuity projects where PCC/ COD has been delayed due to reasons NOT attributable to the concessionaire. This policy will not be applicable for projects where PCC has been granted for entire length, however, completion certificate is pending for want of completion of some minor items/ punch lists.

b) This policy is applicable for such cases also where NHAI and the concessionaire agreed to mutually waive certain conditions precedent (CP) for appointed date and also for cases where waiver of extension of concession period was given for extension of milestone/ project completion date etc. However, the concessionaire seeking relief of extension of concession period under this policy shall waive his claims for compensation, if any, under clauses 10.3.4 and 35.2 of extant MCA.

c) The concessionaire seeking such relief shall approach IE/NHAI with an application with complete details of delay with evidences in line with the objective guidelines formulated for the purpose.

d) The IE shall determine the delay duration as per objective guidelines and excel sheet and submit its recommendation to NHAI. The concerned IE, both individual and the firm, shall be accountable for the assessment of the extension recommended in the concession period.

e) The assessment of IE shall be vetted by Competent Authority through the mechanism of 3 CGM Committee and thereafter the proposal shall be placed before Authority (NHAI Board) for decision on case to case basis.

## 2.2 Analysis of Delay by IE

2.2.1 Concessionaire, vide letter dated 19.04.2016, has submitted the request for revision of schedule completion date mentioning that the project has been delayed due to reasons not attributable to the concessionaire. They have requested for

Alok Deepankar

revision of schedule completion date mentioning that delay on the part of the authority was 1180 days for the stretch not having major structures and 1362 days for the stretches major structures.

2.2.2 IE of the project analyzed the submission of the concessionaire as per the policy matter referred above which is as under:

Independent Engineer has analyzed various data such as delay in land handing over, utility shifting etc. in line with Policy circular dated 19.01.2016. Three (3) months rainy season (Jun, July, August) has been considered. The matter was examined by IE and IE vide letter dated 21.04.2016, 26.04.2016 and 27.04.2016 has mentioned the following:-

- (i) That a committee consisting of Project Manager (Concessionaire), Manager (Tech.), NHAI, RE jointly certified that a stretch of 56.09 km was available for construction.
- (ii) However, later the concessionaire retreated from the joint report and again a joint inspection was carried out on 12.09.2013 and the concessionaire accepted that 51.75 km is available for construction and confirmed vide their letter dated 30.12.2013.
- (iii) Regarding land acquisition, as per available records, on the appointed date i.e. 27.01.2011, the land made available to the concessionaire was only 85 Ha as against 340 Ha required i.e. 80% of the total requirements.
- (iv) If we adhere to the new circular as mentioned above the required 80% land was handed over on 27.01.2016, as per the land acquisition data of 3H reflected in the concessionaire's letter and presumably verified by the authority. It may be submitted that the IE was not associated with the process of land acquisition at any stage. Accordingly, the length of road works out to 56.8 km. After deducting a length of 3.0 km of the road on account of utilities the net road length is 53.8 km i.e. 80.6%. To sum up, there has been a delay in handing over of land by the authority.
- (v) Apart from the above we reproduce the following extracts from the circular as mentioned above:-
  - a) However in case the concessionaire is able to construct the project highway in any stretch through his own liaison/ efforts, even though formalities as per provision of section-3(H) of NH Act 1956 are not yet completed, this length shall be treated as encumbrance free available for the purpose of calculation for determination of delay.
  - b) If we consider the above scenario a reference to the concessionaire's letter dated 30.12.2013 is called for wherein the concessionaire had accepted the fact that the unobstructed length of 51.74 km has been handed over as on 12.09.2013. This is also corroborated by PD's letter dated 17.10.2013 confirming that the total obstructed length is 15 km so it works out to 77.5% of linear length which is more than 75% required as per cl. No. 14.3.2 of the CA for PCOD. Since the same was handed over to them by 12.09.2013 so as per the circular concessionaire was to complete the same as follows:-
    - i. For the length without major structures should have been completed by 11.03.2014. In fact, in their above mentioned letter they have committed that the stretch will be completed by 31.05.2011 which they failed to do.

Alok Deepankar

- ii. For the stretch with approaches of major structures/ major structures, the length should have been completed by 11.09.2014. This stretch till date has not been completed.
- c) Further, clause no. 10.3.5 of CA stipulates as follows: "for the avoidance of doubt, it is expressly agreed that construction works on all land for which right of way is granted within 90 days of appointed date shall be completed before the project completion date".
- d) It has been observed that even though 85 Ha of land was handed over to concessionaire, which works out to the 13.3 kms in linear length, as on 27.04.2011 i.e. 90 days after appointment date, the concessionaire could not complete the road work for this length within the schedule completion date i.e. 24.07.2013. In fact concessionaire had laid only 4.9 kms of DBM within the completion schedule date. BC was not laid at all.
- e) As per clause no. 10.3.4, the authority was supposed to hand over the balance 20% of the land to the concessionaire but as on date the land made available to the concessionaire in accordance with 3H is about 85% only as per the version of the concessionaire.
- f) However, as per the above mentioned circular the scheduled completion date for the stretch which does not have major structures gets shifted to 23.10.2016 (1187 days) for the highways considering 6 months (180 days) construction period and 3 months (90 days) for monsoon.
- g) On the same analogy for the balance length i.e. approaches of the major structures/ major structure the scheduled completion dates gets shifted to 21.04.2017 (1367 days). This premise once again is based on the guidelines in the latest circular referred to above.
- h) Regarding the GAD of ROB at km 188+137 as per clause no. 4.1.2 (d), we do not in a position to offer any comments as it does not fall within our domain.

2.2.3 Further, vide letter dated 18.05.2016 the IE has informed the following:-

- (i) "Kindly refer to the annexure 5 of our letter dated 26.04.2016 under reference in which a delay of 1367 days has been shown inclusive of structures based on the data relating to land ascertained from the PD's office of Hajipur.
- (ii) It may also be mentioned that in terms of the contract the concessionaire was handed over land equivalent to 85 hectares translating into a linear length of 13.3 kms which he should have completed by 24.07.2013. But based on records it is seen that even this stretch was completed on 21.02.2015 upto DBM meaning a delay of 577 days.

Accordingly, delay attributable to the Authority would be 1367 days – 577 days = 790 days. Any payment to the concessionaire under the policy of missed annuity may be decided accordingly."

#### 2.2.4 Recommendations of PD/RO:-

- (i) On the recommendation of PD, RO vide letter dated 30.04.2016 has endorsed the submission of IE. RO has also submitted that the concessionaire has failed to complete the encumbrance free length of 13.3 km handed over on 27.04.2011 i.e. 90 days after appointed date within schedule completion date i.e. 24.07.2013. Further, as committed vide concessionaire letter dated

30.12.2013, the work in encumbrance free length of 51.74 km has not been completed by 31.05.2014.

- (ii) The concessionaire has been facing fund problem since May, 2012 therefore work has been stopped by them and request for infusion of bridge fund from NHAI was submitted. Therefore, there has been delay on the part of Concessionaire for non-completion of work undertaken on encumbrance free length running concurrently with delay on the part of NHAI in handing over encumbrance free length. However, details of delay in accordance with policy circular no. 195/2016 has been determined by IE based on area as per 3H and corresponding linear length available. The same has also been found in line with the LA records by PD, Hajipur.

### 3. Deliberations by 3 CGM Committee:-

- (i) The proposal is based on the guidelines issued vide NHAI Policy circular dated 19.01.2016 for delays not attributable to the Concessionaire.
- (ii) A joint inspection was carried out on 12.09.2013 and the concessionaire accepted that 51.75 km land is available for construction. It was noted that as per available records, the land available to the concessionaire on the appointed date i.e. 27.01.2011 was only 85 Ha. as against 340 ha. (80% of total requirement). It was also noted that out of total length of 66.74 km only 13.3 km was available after 90 days of appointed date. The concessionaire could not complete the road work within the scheduled completion date i.e. 24.07.2013, only 4.9 km of DBM was completed till that time. BC was not laid at all. It was also noted that the required 80% land is handed over to concessionaire on 27.01.2016. IE has analyzed the delays mentioning that the delays are 1187 days for highways without major structures and 1367 days with major structures. Further, it was mentioned by IE that in terms of the contract the concessionaire was handed over land equivalent to 85 hectares translating into a linear length of 13.3 kms which he should have completed by 24.07.2013. But based on records it is seen that even this stretch was completed on 21.02.2015 upto DBM meaning a delay of 577 days.

Accordingly, the IE has gone through the records & facts and determined the delay attributable to the Authority would be 1367 days – 577 days = 790 days and recommended that any payment to the concessionaire under the policy of missed annuity may be decided accordingly.

### 4. Recommendations of 3 CGM Committee:-

- (i) The proposal for Extension of Construction Period is reported to be based on records available on the ground. The details submitted by IE/PD/RO have been relied upon.
- (ii) The proposal is based on the guidelines issued vide NHAI Policy circular dated 19.01.2016 for delays not attributable to the Concessionaire and IE recommendation on the issue.
- (iii) As the due procedure has been followed for determination of extension of construction period by IE, we may accept the same.

(Atul Kumar)  
CGM (Tech.)

(Nivedita Srivastava)  
CGM (Fin.)

(Alok Deepankar)  
CGM (Tech.)



# भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(महानगर परिवहन और राजमार्ग प्राधिकरण)

## National Highways Authority of India

Ministry of Road Transport and Highways

प्लॉट नं. 10, सेक्टर-10, द्वारका, नई दिल्ली-110075

Plot No. 10, Sector-10, Dwarka, New Delhi-110075

संस्थापित किया गया 1988 में  
संस्थापक अधिनियम, 1988

21/7/16

Commitment / MN  
P.S. to keep copy

**MOST IMMEDIATE  
BY HAND**

BM-11041/168/2016-Coord

Dated: 01.08.2016

**Sub: ATR on Minutes of Special Meeting of the Authority held on Friday, the 15<sup>th</sup> July, 2016 at 5:00 PM in Room No-149D, Fresco, North Block, New Delhi.**

The extract of the Minutes of Special Meeting of the Authority of the agenda item pertaining to your division are mentioned below:

<b>Agenda Item No.SM-3</b>	<b>Rehabilitation and up-grading to 4-laning Chhapra-Hajipur section of NH-19 from KM.143+200 to 207+200 in the State of Bihar under NHDP-III on annuity basis-comprehensive revival package inclusive of one time fund infusion and restoration of missed annuities reg.</b>
	The agenda item was discussed in detail in the light of CCEA approved schemes for revival and completion of languishing projects of NHAI. It was noted that for completion of this languishing project for which LOA was issued on 13.05.2010, the revival package of the project involves a one time fund infusion of Rs.175.00 crore by NHAI subject to conditions as per para 5.4 of agenda note and restoration of missed annuities for the delay attributable to the Authority as 790 days recommended by Independent Engineer amounting to Rs.283.23 crore in terms of missed annuity. It was noted that the proposal has been examined and recommended by the 3 CGMs Committee of NHAI and later concurred upon by the Executive Committee of NHAI. The aforesaid revival package was accordingly approved.
<b>Agenda Item No.SM-5</b>	<b>Widening of existing 2-lane road to 4/6 lane divided configuration from km.0.000 to 84.000 (Panvel Indapur section) of NH-17 under NHDP Phase-III on BOT (Toll) basis on Design, Build, Finance, Operation and Transfer (DBFOT) pattern in the State of Maharashtra-Comprehensive revival package reg.</b>
	The agenda item was discussed in detail in the light of CCEA approved schemes for revival and completion of languishing projects of NHAI. It was noted that for completion of this languishing project for which LOA was issued on 28.10.2010, the revival package of the project involves a one time fund infusion of Rs.540 crores by NHAI subject to conditions as per para 5.4 of agenda note and extension of concession period by 1095 days for the delay not attributable to the Concessionaire as determined by Independent Engineer. It was noted that the proposal has been examined and recommended by the 3 CGMs Committee of NHAI and later concurred upon by the Executive Committee of NHAI. The aforesaid revival package was accordingly approved with the understanding that this would not include any premium deferment.
	<b>General Decisions on languishing projects (Agenda Item Nos.SM-3, 4 &amp; 5):</b>  (i) The Authority desired that a robust monitoring mechanism should be put in place for ensuring utilization of funds infused. This will be supervised by the concerned Member of NHAI.  (ii) The Authority be apprised on a quarterly basis about the progress in Languishing Projects and the revival package, if any.

Agenda Item No.SM-8	<p>(iii) The issue of extent of fund infusion by NHAI was also discussed. It was decided that as long as the fund infusion is less than the 50% of the revised cost estimate of the project, such fund infusion can be considered to be moderate funding in view of the enhanced IDC cost escalation etc.</p> <p>(iv) A report be put for perusal of Board why the projects were started even when land had not been fully acquired.</p> <p>Four laning of Rimuli-Roxy-Rajamunda section of NH-215 from km.163.000 to km.269.000 in the State of Odisha under NHDP-III as BOT (Toll) basis on DBFOT pattern - Foreclosure of the Concession Agreement with M/s OSEPL reg.</p> <p>The Authority noted the reasons of delays and directed that NHAI shall have conciliation meeting with the Concessionaire and make an appropriate reference to the Board.</p>
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2. Action Taken Report on the above mentioned Minutes, duly approved by concerned Member, may be forwarded to the Coord. Division at the earliest for taking further necessary action.

(A.K. Sadhu)

Chief General Manager (Coord.)

To

1. Shri Atul Kumar  
CGM (Tech)
2. Smt. Nivedita Srivastava  
CGM (F&A)

Copy to:

Member (Projects)-RKP  
Member (PPP/Finance)  
Member (Project)AKS



CHHAPRA HAJIPUR PROJECT - REVIVAL PACKAGE

	FY 18	FY 19	FY 20	FY 21	FY 22	FY 23	FY 24	FY 25	FY 26
Annuity	130.86	130.85	130.86	130.86	130.86	130.86	130.86	130.86	130.86
Less: O&M expenses including Periodic Maintenance	5.75	6.04	6.34	6.66	34.95	7.34	7.71	8.09	34.45
Balance available after O&M expenses	125.11	124.82	124.52	124.20	95.91	123.52	123.15	122.77	96.41
Add: Restored 790 days Annuity	283.23	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Balance available for Debt Servicing Including NHAI funds Infused	408.34	124.82	124.52	124.20	95.91	123.52	123.15	122.77	96.41
Less: Repayment of NHAI One Time fund Infused	175.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Less: Repayment of Interest on NHAI fund Infused	18.32	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Balance available for Debt servicing	215.02	124.82	124.52	124.20	95.91	123.52	123.15	122.77	96.41
Less: Interest Payment	87.60	72.85	66.84	60.17	52.76	47.76	39.00	29.26	18.44
Balance available for principal repayment	127.42	51.97	57.68	64.04	43.16	75.76	84.16	93.51	77.98
Less: Principal Instalment	127.42	51.97	57.68	64.04	43.16	75.76	84.16	93.51	77.98
Balance	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Loan Repayment Schedule:									
Opening Balance	757.00	629.58	577.62	519.94	455.90	412.74	336.98	252.82	159.31
Principal Payment	127.42	51.97	57.68	64.04	43.16	75.76	84.16	93.51	77.98
Interest	87.60	72.85	66.84	60.17	52.76	47.76	39.00	29.26	18.44
Closing Balance	629.58	577.62	519.94	455.90	412.74	336.98	252.82	159.31	81.93

Hit to Bank



# भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(सड़क परिवहन और राजमार्ग मंत्रालय)

## National Highways Authority of India

(Ministry of Road Transport and Highways)

जी-5 एवं 6, सेक्टर-10, द्वारका, नई दिल्ली-110075

G-5 & 6, Sector-10, Dwarka, New Delhi-110075

दूरभाष / Phone : 91-11-25074100/25074200

फैक्स / Fax : 91-11-25093507 / 25093514

सं. 11041/230/2007-समन्वय/284

14.06.2016

### विषय: कार्यकारिणी समिति की 284वीं बैठक का कार्यवृत्त।

कार्यकारिणी समिति (Executive Committee) की दिनांक 06.06.2016 को शाम 4:00 बजे हुई 284वीं बैठक का कार्यवृत्त सूचना तथा आवश्यक कार्यवाही के लिए इराके साथ परिचालित किया जाता है।

2. इसे सक्षम प्राधिकारी के अनुमोदन से जारी किया गया है।

(श्री. के. शर्मा)  
मुख्य महाप्रबंधक (समन्वय)

सेवा में,

सदस्य (सा. नि. गा. / वित्त/प्रशासन)

सदस्य (परियोजना)- RKP

सदस्य (परियोजना)-AKS

प्रतिलिपि निम्नलिखित को:

आयुक्त के निजी सचिव

Advisor (SA)

प्रतिलिपि निम्नलिखित को भी सूचना एवं आवश्यक कार्यवाही के लिए:

मुख्य महाप्रबंधक (T)-JKG

मुख्य महाप्रबंधक (T)-BSS

मुख्य महाप्रबंधक (T)-LPP

मुख्य महाप्रबंधक (F)-NS

मुख्य महाप्रबंधक (T)-AK

मुख्य महाप्रबंधक (T)-AKM

मुख्य महाप्रबंधक (T)-MS

संलग्नक: सथोपदि (8 पृष्ठ)

**Agenda Item No.284.12** Widening of existing 2-lane road to 4/6 lane divided carriageway configuration from km.0.000 to km.84.000 (Panvel-Indapur section) of NH-17 under NHDP Phase III on BOT (Toll) basis on Design, Build, Finance, Operate and Transfer (DBFOT) pattern in the State of Maharashtra – approval of Board Note for revival package for Panvel-Indapur project on NH-7.

**Decision:** The Executive Committee approved the report of 3 CGM committee on the matters, and recommended that technical division should seek approval of Board through circulation for revival of this languishing project which has been delayed for so long.

**Agenda Item No.284.13** Rehabilitation and up-grading of 4-laning of Chhapra-Hajipur section of NH-19 from km.143+200 to 207+200 in the State of Bihar under NHDP Phase III on annuity basis (comprehensive revival package inclusive of one time fund infusion and restoration of missed annuities) – Approval of Board note for revival of project reg.

**Decision:** The Executive Committee approved the report of 3 CGM committee on the matters, and recommended that technical division should seek approval of Board through circulation for revival of this languishing project which has been delayed for so long.

**Agenda Item No.284.14** (i) Proposal for Shifting of Electrical Utilities (02 estimates) under Sihora and Jabalpur Division falling in the RoW of four-laning of Rewa-Katni- Jabalpur section of NH-7 (km.397.000 to km.465.500 pkg IV)  
(ii) Proposal for Shifting of Electrical Utilities (02 estimates) under Jabalpur and Lakhnadon Division falling in the RoW of four-laning of Jabalpur-Lakhnadon section of NH-7 (km.465.500 to km.546.425).

**Decision:** The Executive Committee deliberated the Agenda and took note of requirement of Electrical Utility owning department duly recommended by PD, IERD, prior approval of Competent Authority and further verification by Independent Electrical Engineer (Retd. CE) MPPKVCL and accordingly approved the estimate of electrical utility shifting for progressing works. The details of approved estimates are as under:

Sl.No	Name of project	Total estimated amount (Rs.In Cr.)
1	Shifting of electrical utilities on project Rewa- Katni- Jabalpur (Pkg. IV) under Sihora Division	28.44
2	Shifting of electrical utilities on project Rewa-Katni-Jabalpur (Pkg -IV under Jabalpur Division)	19.94
3	Shifting of electrical utilities on project Jabalpur-Lakhnadon section under Jabalpur Division	28.98
4	Shifting of electrical utilities on project Jabalpur-Lakhnadon under Lakhnadon Division	17.68

*Handwritten signature*

## AGENDA NOTE FOR APPROVAL OF EXECUTIVE COMMITTEE

Sub:- Rehabilitation and up-grading to 4-laning Chhapra-Hajipur section of NH-19 from km.143+200 to 207+200 in the State of Bihar under NHDP-III on annuity basis ( comprehensive revival package inclusive of one time fund infusion and restoration of missed annuities).-- Approval of Board Note for Revival of project -reg.

1. **Proposal:** The proposal is for consideration of Executive Committee seeking approval for Board Note for Comprehensive Revival Package for Chhapra-Hajipur section of NH-19.
2. The salient features of the project are as following:

State	Bihar
Project Name /Promoter	Chhapra-Hajipur (SBI) (Madhucon Projects Ltd)
NH No	19
TPC / CPC (Rs in crs)	575/812.5 (Annuity-Rs 65.43 Crs)
/Toll/Annuity	
Concession Period	15 years(upto 21 <sup>st</sup> Jan,2026)
Date of Start	Jan-11
Scheduled Date Of Completion	Jul-13
Likely Completion	Apr-17
Project Length (in km)	66.74
Length Completed (in km)	14.8
Physical Progress (%)	52.7 (28 km )
Financial Progress (%)	107.5
Money drawn from the Escrow Account	873.12
% LA at Appointed Date	21.65

3. **Background:**

Proposal is required to be placed before the NHAI Board to seek approval to facilitate revival of the cash-crunched and languishing Chhapra-Hajipur project of national importance and inter-alia consider the proposal submitted by State Bank Of India (SBI) dated 12.5.2016. Finance Division has prepared the revival package under the following policies that have already been approved by the CCEA:

- (i) Rationalized compensation to concessionaire in case of delay not attributable to Concessionaires for languishing highway projects on BOT mode
- (ii) One time fund infusion

4. **Approval Sought:**

Agenda note is put up before the Executive Committee soliciting approval of draft Board Note for Comprehensive Revival Package for Chhapra-Hajipur section of NH-19.

  
(J.B. Srivastava)  
General Manager (Tech)

## MINUTES OF 3 CGMs COMMITTEE

**Date:** 26<sup>th</sup> May, 2016

**Sub:** Rehabilitation and up-grading to 4-laning Chhapra-Hajipur section of NH-19 from km.143+200 to 207+200 in the State of Bihar under NHDP-III on annuity basis.

- **Rationalized compensation to Concessionaire - reg.**

### **1. Proposal:-**

Payment of missed annuities as advance as per NHAI's Policy Matter Technical Circular No. 11041/218/2007-Admn dated 19.01.2016 to the concessionaire M/s Chhapra Hajipur Expressways Ltd.

2. For consideration of Extension of construction period under rationalized compensation to Concessionaires in case of delay not attributable to Concessionaires for languishing highways Projects on Annuity mode(as per Policy Matter - 195/2016 dated 19.01.2016), 3 CGMs Committee has been constituted for vetting the proposal of Independent Engineer with following Members:

- (i) Shri Atul Kumar, CGM(Tech)
- (ii) Smt. Nivedita Srivastava, CGM(Fin.)
- (iii) Shri Alok Deepankar, CGM (Tech.)

The Committee has been informed that:-

### **2.1 Background:-**

The Concessionaire M/s Chhapra Hajipur Expressways Ltd. was awarded the project. Salient features of the project are as under:-

<b>Name of the developer</b>	<b>M/s Chhapra Hajipur Expressways Ltd.</b>
Bidder/Consortium Member	M/s Madhucon Projects Ltd.
Project length	66.74 km
TPC	Rs. 575.00 Cr.
Concessionaire Project Cost	Rs. 812.50 Cr.
Financing plan	Debt Rs. 585.00 Cr. Equity Rs. 227.50 Cr.
Date of Concession Agreement	28.07.2010
Appointed Date	27.01.2011
Construction Schedule completion date	24.07.2013
Concession period	15 Yrs. (including construction period of 2.5 years)
Semi annuity payable on COD	Rs. 65.43 cr.
Physical Progress	52.70%
Financial Progress	107.46% (Rs. 873.12 cr.)

2.1.1 The concessionaire had started work on 27.01.2011 and on the basis of start of work the Appointed Date was declared as 27.01.2011 with scheduled project completion date 24.07.2013.

*Nivedita*

*Alok Deepankar*

*[Signature]*

- 2.1.2 The project is delayed by more than two years initially due to LA hindrances, slow progress of the concessionaire and also later on due to financial problems of the concessionaire. Work was almost stopped by the concessionaire since, June, 2012 and even after several notices by the IE and Authority the concessionaire did not take up the work.
- 2.1.3 As per the details of availability of land about 51.74 km was made available for construction upto 12.09.2013 out of which concessionaire could construct only 14.80 km up to DBM level till date. The concessionaire achieved 52.70% physical progress on the land made available. However, subsequently the project started struggling due to lack of available work fronts and cash flow problems.
- 2.1.4 The Independence Engineer of the project vide letter dated 21.04.2016, 26.04.2016, 27.04.2016 and 18.05.2016 has submitted the proposal for payment of missed annuity as advance in accordance with the NHAI's Policy Matter Technical Circular No. 11041/218/2007-Admn dated 19.01.2016. The circular gives the procedure to be followed for seeking relief under above policy and is as under:-
- a) This policy is applicable for all current BOT (Toll)/ Annuity projects where PCC/ COD has been delayed due to reasons NOT attributable to the concessionaire. This policy will not be applicable for projects where PCC has been granted for entire length, however, completion certificate is pending for want of completion of some minor items/ punch lists.
  - b) This policy is applicable for such cases also where NHAI and the concessionaire agreed to mutually waive certain conditions precedent (CP) for appointed date and also for cases where waiver of extension of concession period was given for extension of milestone/ project completion date etc. However, the concessionaire seeking relief of extension of concession period under this policy shall waive his claims for compensation, if any, under clauses 10.3.4 and 35.2 of extant MCA.
  - c) The concessionaire seeking such relief shall approach IE/NHAJ with an application with complete details of delay with evidences in line with the objective guidelines formulated for the purpose.
  - d) The IE shall determine the delay duration as per objective guidelines and excel sheet and submit its recommendation to NHAI. The concerned IE, both individual and the firm, shall be accountable for the assessment of the extension recommended in the concession period.
  - e) The assessment of IE shall be vetted by Competent Authority through the mechanism of 3 CGM Committee and thereafter the proposal shall be placed before Authority (NHAJ Board) for decision on case to case basis.

## 2.2 Analysis of Delay by IE

2.2.1 Concessionaire, vide letter dated 19.04.2016, has submitted the request for revision of schedule completion date mentioning that the project has been delayed due to reasons not attributable to the concessionaire. They have requested for

*live letter*

*Alok Deshpande*

*2*

revision of schedule completion date mentioning that delay on the part of the authority was 1180 days for the stretch not having major structures and 1362 days for the stretches major structures.

2.2.2 IE of the project analyzed the submission of the concessionaire as per the policy matter referred above which is as under:

Independent Engineer has analyzed various data such as delay in land handing over, utility shifting etc. in line with Policy circular dated 19.01.2016. Three (3) months rainy season (Jun, July, August) has been considered. The matter was examined by IE and IE vide letter dated 21.04.2016, 26.04.2016 and 27.04.2016 has mentioned the following:-

- (i) That a committee consisting of Project Manager (Concessionaire), Manager (Tech.), NHAI, RE jointly certified that a stretch of 56.09 km was available for construction.
- (ii) However, later the concessionaire retreated from the joint report and again a joint inspection was carried out on 12.09.2013 and the concessionaire accepted that 51.75 km is available for construction and confirmed vide their letter dated 30.12.2013.
- (iii) Regarding land acquisition, as per available records, on the appointed date i.e. 27.01.2011, the land made available to the concessionaire was only 85 Ha as against 340 Ha required i.e. 80% of the total requirements.
- (iv) If we adhere to the new circular as mentioned above the required 80% land was handed over on 27.01.2016, as per the land acquisition data of 3H reflected in the concessionaire's letter and presumably verified by the authority. It may be submitted that the IE was not associated with the process of land acquisition at any stage. Accordingly, the length of road works out to 56.8 km. After deducting a length of 3.0 km of the road on account of utilities the net road length is 53.8 km i.e. 80.6%. To sum up, there has been a delay in handing over of land by the authority.
- (v) Apart from the above we reproduce the following extracts from the circular as mentioned above:-
  - a) However in case the concessionaire is able to construct the project highway in any stretch through his own liaison/ efforts, even though formalities as per provision of section-3(H) of NH Act 1956 are not yet completed, this length shall be treated as encumbrance free available for the purpose of calculation for determination of delay.
  - b) If we consider the above scenario a reference to the concessionaire's letter dated 30.12.2013 is called for wherein the concessionaire had accepted the fact that the unobstructed length of 51.74 km has been handed over as on 12.09.2013. This is also corroborated by PD's letter dated 17.10.2013 confirming that the total obstructed length is 15 km so it works out to 77.5% of linear length which is more than 75% required as per cl. No. 14.3.2 of the CA for PCOD. Since the same was handed over to them by 12.09.2013 so as per the circular concessionaire was to complete the same as follows:-
    - i. For the length without major structures should have been completed by 11.03.2014. In fact, in their above mentioned letter they have committed that the stretch will be completed by 31.05.2011 which they failed to do.

*Divachit*

*Alok Deepankar*

*3*

- ii. For the stretch with approaches of major structures/ major structures, the length should have been completed by 11.09.2014. This stretch till date has not been completed.
- c) Further, clause no. 10.3.5 of CA stipulates as follows: "for the avoidance of doubt, it is expressly agreed that construction works on all land for which right of way is granted within 90 days of appointed date shall be completed before the project completion date".
- d) It has been observed that even though 85 Ha of land was handed over to concessionaire, which works out to the 13.3 kms in linear length, as on 27.04.2011 i.e. 90 days after appointment date, the concessionaire could not complete the road work for this length within the schedule completion date i.e. 24.07.2013. In fact concessionaire had laid only 4.9 kms of DBM within the completion schedule date. BC was not laid at all.
- e) As per clause no. 10.3.4, the authority was supposed to hand over the balance 20% of the land to the concessionaire but as on date the land made available to the concessionaire in accordance with 3H is about 85% only as per the version of the concessionaire.
- f) However, as per the above mentioned circular the scheduled completion date for the stretch which does not have major structures gets shifted to 23.10.2016 (1187 days) for the highways considering 6 months (180 days) construction period and 3 months (90 days) for monsoon.
- g) On the same analogy for the balance length i.e. approaches of the major structures/ major structure the scheduled completion dates gets shifted to 21.04.2017 (1367 days). This premise once again is based on the guidelines in the latest circular referred to above.
- h) Regarding the GAD of ROB at km 188+137 as per clause no. 4.1.2 (d), we do not in a position to offer any comments as it does not fall within our domain.

2.2.3 Further, vide letter dated 18.05.2016 the IE has informed the following:-

- (i) "Kindly refer to the annexure 5 of our letter dated 26.04.2016 under reference in which a delay of 1367 days has been shown inclusive of structures based on the data relating to land ascertained from the PD's office of Hajipur.
- (ii) It may also be mentioned that in terms of the contract the concessionaire was handed over land equivalent to 85 hectares translating into a linear length of 13.3 kms which he should have completed by 24.07.2013. But based on records it is seen that even this stretch was completed on 21.02.2015 upto DBM meaning a delay of 577 days.

Accordingly, delay attributable to the Authority would be 1367 days – 577 days = 790 days. Any payment to the concessionaire under the policy of missed annuity may be decided accordingly."

#### 2.2.4 Recommendations of PD/RO:-

- (i) On the recommendation of PD, RO vide letter dated 30.04.2016 has endorsed the submission of IE. RO has also submitted that the concessionaire has failed to complete the encumbrance free length of 13.3 km handed over on 27.04.2011 i.e. 90 days after appointed date within schedule completion date i.e. 24.07.2013. Further, as committed vide concessionaire letter dated

*Ch. Udit*

*Alok Deepanker*

*3*



30.12.2013, the work in encumbrance free length of 51.74 km has not been completed by 31.05.2014.

- (ii) The concessionaire has been facing fund problem since May, 2012 therefore work has been stopped by them and request for infusion of bridge fund from NHAI was submitted. Therefore, there has been delay on the part of Concessionaire for non-completion of work undertaken on encumbrance free length running concurrently with delay on the part of NHAI in handing over encumbrance free length. However, details of delay in accordance with policy circular no. 195/2016 has been determined by IE based on area as per 3H and corresponding linear length available. The same has also been found in line with the LA records by PD, Hajipur.

### 3. Deliberations by 3 CGM Committee:-

- (i) The proposal is based on the guidelines issued vide NHAI Policy circular dated 19.01.2016 for delays not attributable to the Concessionaire.
- (ii) A joint inspection was carried out on 12.09.2013 and the concessionaire accepted that 51.75 km land is available for construction. It was noted that as per available records, the land available to the concessionaire on the appointed date i.e. 27.01.2011 was only 85 Ha. as against 340 ha. (80% of total requirement). It was also noted that out of total length of 66.74 km only 13.3 km was available after 90 days of appointed date. The concessionaire could not complete the road work within the scheduled completion date i.e. 24.07.2013. only 4.9 km of DBM was completed till that time. BC was not laid at all. It was also noted that the required 80% land is handed over to concessionaire on 27.01.2016. IE has analyzed the delays mentioning that the delays are 1187 days for highways without major structures and 1367 days with major structures. Further, it was mentioned by IE that in terms of the contract the concessionaire was handed over land equivalent to 85 hectares translating into a linear length of 13.3 kms which he should have completed by 24.07.2013. But based on records it is seen that even this stretch was completed on 21.02.2015 upto DBM meaning a delay of 577 days.

Accordingly, the IE has gone through the records & facts and determined the delay attributable to the Authority would be 1367 days – 577 days = 790 days and recommended that any payment to the concessionaire under the policy of missed annuity may be decided accordingly.

### 4. Recommendations of 3 CGM Committee:-

- (i) The proposal for Extension of Construction Period is reported to be based on records available on the ground. The details submitted by IE/PD/RO have been relied upon.
- (ii) The proposal is based on the guidelines issued vide NHAI Policy circular dated 19.01.2016 for delays not attributable to the Concessionaire and IE recommendation on the issue.
- (iii) As the due procedure has been followed for determination of extension of construction period by IE, we may accept the same.

 (Atul Kumar) CGM (Tech.)	 (Nivedita Srivastava) CGM (Fin.)	 (Alok Deepankar) CGM (Tech.)
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भारतीय राष्ट्रीय राजमार्ग प्राधिकरण  
(सड़क परिवहन और राजमार्ग मंत्रालय)

**National Highways Authority of India**

(Ministry of Road Transport and Highways)

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No. NHA/11033/CGM(FA)/4/2015

16.10.2015

**CIRCULAR**

**Sub: One Time Fund Infusion to revive and physically complete languishing BOT projects.**

1. This is in continuation/partial modification of Circulars of even no. dated 09.06.2015 & 09.09.2015 issued on the same subject.
2. As communicated vide MoRTH D.O. No. JS/Misc./2015 dated 15.10.2015, the Cabinet Committee on Economic Affairs (CCEA) has now approved the Fund Infusion Policy in respect of both BOT (Toll) and BOT (Annuity) Projects for languishing projects.
3. The Competent Authority in the MoRTH has also decided that all such proposals for fund infusion in BOT (Toll) and BOT (Annuity) Projects, as per the dispensation approved by CCEA, are required to be placed before the NHA Authority (Board) for a final decision on a case to case basis under intimation to the Ministry.

(Nivedita Srivastava)  
Chief General Manager (Finance)

All PDs/ROs/CGMs & GMs at HQ

Copy for information to:

1. PS to Hon'ble Minister MORTH
2. PS to Chairman
3. PS to Secretary, MORTH
4. PS to all Members at HQ
5. PS to CVO
6. Web Admin for hosting the Circular on NHA Website.



जी. सुरेश  
मुख्य निदेशक (एफ ए)  
**G. SURESH**  
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भारतीय राष्ट्रीय राजमार्ग प्राधिकरण  
NATIONAL HIGHWAYS AUTHORITY OF INDIA  
[राज्य परिवहन और मंत्रालय]  
MINISTRY OF ROAD TRANSPORT AND HIGHWAYS  
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G-5 & C SECTOR-10 DWARKA NEW DELHI 110075

Circular

NHAI/11033/CGM(FA)/2015

09.6.2015

**Sub: One time fund infusion to revive and physically complete languishing BOT projects.**


As communicated vide MoRTH letter No. NH-37012/20/2014-H dated 20.05.2015, the proposal for one time fund infusion to revive and physically complete languishing BOT projects was considered and approved by the Cabinet Committee on Economic Affairs in its meeting held on 13.05.2015 as under:

- "(i) For any languishing highway project in BOT(Toll) mode that has achieved at least 50% physical completion and it is also established that infusion of moderate funding can quickly bring this project to completion, NHAI will provide financial assistance to such a project from the corpus earmarked for this purpose. The assistance (say bridge fund) will be provided on a loan basis at bank rate +2% drawing a parallel with the provisions of Article 28 of the Model Concession Agreement. A robust third party evaluation mechanism would be developed by NHAI to determine a) the eligibility of the concerned project and b) the extent of bridge fund required to complete the project in a time-bound manner.
- (ii) After completion of construction of such projects, the first charge on the toll receivables of these projects would be ensured for NHAI through execution of tripartite agreement between the senior lender, concessionaire and the Authority.
- (iii) This is proposed to be a one-time dispensation for all such projects that are languishing as on 1.11.2014.
- (iv) All such cases and the amount of bridge fund would be required to be approved by NHAI board."

pg 1/2

2. The procedure to be followed for seeking relief under the above scheme is as detailed below:

- i. The concessionaire seeking such relief shall approach NHAI with an application which shall clearly state the financing plan required for completing the project construction and justifying one time fund infusion.
- ii. Based on the application, the Authority shall seek the acceptance of the concerned Senior Lenders for providing such a relief in accordance with the approved scheme.
- iii. On receipt of Senior Lenders acceptance, the Independent Engineer (IE) shall assess the balance expenditure requirement for construction completion of the project and submit a report thereon to NHAI.
- iv. NHAI, after due diligence, on the financial viability of the project, shall place the proposal before the Authority for its decision.
- v. Subsequent to the Authority's approval, the same shall be implemented through signing of a Tripartite Agreement between the NHAI concessionaire and the Senior Lenders. In addition, there will be a Supplementary Agreement to the existing concession agreement between NHAI and the concessionaire.

  
(G. Suresh)  
CGM(FA)

All PDS./ROs./CGMs & GMs. at HQ.

Copy for information to :

1. PS to Hon'ble Minister MoRTH
2. PS to Chairman
3. PS to Secretary, MoRTH
4. PS to all Members at HQ.
5. PS to CVO



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(सड़क परिवहन और राजमार्ग मंत्रालय)

**National Highways Authority of India**

(Ministry of Road Transport and Highways)

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No. NHAI/11033/CGM(FA)/4/2015

16.10.2015

**CIRCULAR**

**Sub: One Time Fund Infusion to revive and physically complete languishing BOT projects.**

1. This is in continuation/partial modification of Circulars of even no. dated 09.06.2015 & 09.09.2015 issued on the same subject.

2. As communicated vide MoRTH D.O. No. JS/Misc./2015 dated 15.10.2015, the Cabinet Committee on Economic Affairs (CCEA) has now approved the Fund Infusion Policy in respect of both BOT (Toll) and BOT (Annuity) Projects for languishing projects.

3. The Competent Authority in the MoRTH has also decided that all such proposals for fund infusion in BOT (Toll) and BOT (Annuity) Projects, as per the dispensation approved by CCEA, are required to be placed before the NHAI Authority (Board) for a final decision on a case to case basis under intimation to the Ministry.

(Nivedita Srivastava)  
Chief General Manager (Finance)

All PDs/ROs/CGMs & GMs at HQ

Copy for information to:

1. PS to Hon'ble Minister MoRTH
2. PS to Chairman
3. PS to Secretary, MoRTH
4. PS to all Members at HQ
5. PS to CVO
6. Web Admin for hosting the Circular on NHAI Website.



रोहित कुमार सिंह  
ROHIT KUMAR SINGH, I.A.S.  
Joint Secretary  
Phone : 91-11-23753551  
Fax : 91-11-23753552  
E-Mail : rohitsingh@gmail.com



सत्यमेव जयते

भारत सरकार  
Government of India  
सड़क परिवहन और राजमार्ग मंत्रालय  
MINISTRY OF ROAD TRANSPORT & HIGHWAYS  
1, संसद मार्ग/1, PARLIAMENT STREET  
परिवहन भवन/PARIVAHAN BHAWAN  
नई दिल्ली-110001/ NEW DELHI-110001

D.O.No. JS/Misc./2015

October 15, 2015

Dear Sir,

M(F)  
M(T)  
(UM(F)-NJ)  
(UM(UM))  
15/10

CGM(F) NS

As you would be aware, that the Cabinet Committee on Economic Affairs (CCEA) has now approved the Fund Infusion Policy in respect of both BoT(Toll) and BoT(Annuity) projects for languishing projects.

2. The competent authority in the Ministry has decided that all such proposals for fund infusion in BoT(Toll) and BoT(Annuity) projects, as per the dispensation approved by the CCEA, are required to be placed before the NHAI Authority(Board) for a final decision on a case to case basis under intimation to the Ministry.

3. This is for kind information and further necessary action.

With warm regards,

Yours sincerely,

*(Signature)*  
15/10/2015  
(ROHIT KUMAR SINGH)

Shri Raghav Chandra  
Chairman  
National Highways Authority of India  
G-5&6, Sector 10, Dwarka





2733/MP

M(P)/M(T)/CMTF  
CGMCFN

9269/2015  
28/10/15

No. NH-37012/20/2014-H  
Government of India  
Ministry of Road Transport & Highways  
(Highways Section)  
\*\*\*\*\*

1, Sansad Marg, Transport Bhavan,  
New Delhi, dated 20<sup>th</sup> October, 2015

Q 21

To  
✓ The Chairman,  
National Highways Authority of India,  
G-5 & 6, Sector-10, Dwarka,  
New Delhi - 110075.

Have we issued  
the circular.

**SUBJECT: ONE TIME FUND INFUSION TO REVIVE AND PHYSICALLY COMPLETE LANGUISHING BOT PROJECTS-Extension of provision available for BOT (Toll) projects to BOT (Annuity) projects.**

GM (F) SR  
Jary  
4

Sir,

The Competent Authority considered the above mentioned proposal of Ministry of Road Transport & Highways on 14<sup>th</sup> October, 2015 (Case No. 105/CCEA/2015). A copy of the note dated 06<sup>th</sup> October, 2015 for Cabinet Committee on Economic Affairs (CCEA) on the subject mentioned above is placed at Annexure - A of this letter for information.

Copy of circular dt. 16.10.15  
is placed below  
05/11

**Approval Paras:**

- Provisions of the Policy Circular of NHAI dated 09<sup>th</sup> June, 2015 be extended and made applicable in case of languishing projects on BOT(Annuity) mode subject to the condition that after completion of construction of such projects, such loan is to be recovered along with interest at the rate of Bank Rate + 2% by NHAI from the Annuities payable, bi-annually, through execution of a tripartite agreement between the senior lender, concessionaire and the Authority.
- This infusion of fund would be a one-time dispensation for all such projects that are languishing as on 01<sup>st</sup> November, 2014.
- All such cases and the amount of bridge fund required in each case shall be approved by the Authority, on a case to case basis.

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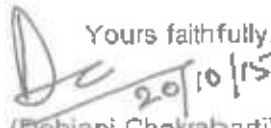
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2. The Cabinet Secretariat, vide O. M. No. CCEA/29/2015 (i) dated 16<sup>th</sup> October, 2015 has circulated the minutes of the meeting of the CCEA, held on 14<sup>th</sup> October, 2015, wherein, inter-alia, the above mentioned proposal was considered and approved. The minutes of the said meeting are placed at Annexure – B of this letter.

3. It is further advised that NHAI, while issuing the policy circular, shall ensure that the decisions/directions of the CCEA are followed in letter and spirit; and that further necessary action is taken accordingly. The action taken report with regard to implementation of the decision of the CCEA may please be furnished to this Ministry for apprising the Cabinet Secretariat.

4. As already conveyed vide D.O. letter No. JS/Misc./2015 dated October 15, 2015 to Chairman, the same is reiterated that the competent authority in the Ministry has decided that all such proposals for fund infusion in BoT(Toll) and BoT(Annuity) projects, as per the dispensation approved by the CCEA, are required to be placed before the NHAI Authority(Board) for a final decision on a case to case basis under intimation to the Ministry.

5. This bears the approval of Competent Authority.

Yours faithfully,  
  
(Debjani Chakrabarti)

Deputy Secretary to the Government of India  
Telephone No. 23718575

Encls: As above

Copy to:- Cabinet Secretariat {Shri S.G.P.Verghese, Director (Cabinet)}, Rashtrapati Bhavan, New Delhi with reference to Cabinet Secretariat's communication CCEA/29/2015 (i) dated 16<sup>th</sup> October, 2015.

Copy for information to: PS to Hon'ble Minister (RT&H,S)/PS to Hon'ble MOS (RT&H,S).

COPY NO. \_\_\_\_\_

GOVERNMENT OF INDIA  
MINISTRY OF ROAD TRANSPORT & HIGHWAYS  
NEW DELHI

The 6<sup>th</sup> October, 2015

NOTE FOR CABINET COMMITTEE ON ECONOMIC AFFAIRS (CCEA)

SUBJECT: ONE TIME FUND INFUSION TO REVIVE AND PHYSICALLY COMPLETE LANGUISHING NATIONAL HIGHWAY PROJECTS - EXTENSION OF PROVISION AVAILABLE FOR BOT (TOLL) PROJECTS TO BOT (ANNUITY) PROJECTS.

1. INTRODUCTION

1.1 The proposal of the Ministry of Road Transport & Highways (MoRTH) for one time fund infusion to revive and physically complete languishing BOT (Toll) Projects has been considered and approved by the Cabinet Committee on Economic Affairs (CCEA) in its meeting held on 13<sup>th</sup> May 2015 [Case No.62/CCEA/2015].

1.2 Accordingly, National Highways Authority of India (NHAI) circulated the policy circular dated 09<sup>th</sup> June 2015. A copy of which is placed at Annexure-I (Page 8-9).

2. BACKGROUND

2.1 NHAI has been authorized to provide financial assistance on a loan basis at Bank Rate +2% to any languishing highway project in BOT (Toll) mode that has achieved at least 50% physical completion from the overall budget corpus of NHAI on loan basis for a short tenure and with a pre-determined return as per conditions laid down in the Policy Circular of NHAI dated 09<sup>th</sup> June 2015 [Annexure-I (Page 8-9)].

- 2.2 NHAI and other stakeholders, concessionaire(s) and the National Highways Builders Federation (NHBF), have now suggested to extend the facility to languishing BOT (Annuity) projects during construction period, where delays have occurred on account of land acquisition or in grant of statutory clearances, local issues, resultant cash-flow problems etc.
- 2.3 This CCEA Note was circulated to all the Ministries and Departments concerned i.e., NITI Aayog, Department of Economic Affairs, Department of Expenditure, Department of Financial Services and Department of Legal Affairs for their comments on the proposal before sending the Note for consideration of CCEA. On the issues pertaining to this and other two related CCEA Notes, a meeting of Committee of Secretaries (CoS) was held on 09.09.2015. A copy of the minutes of the meeting of CoS held on 09.09.2015 is placed at Annexure-II (Page 10-14).

### 3. PROPOSAL

- 3.1 It is proposed that the provisions of the Policy Circular of NHAI dated 09<sup>th</sup> June 2015 [Annexure-I (Page 8-9)] may be extended and made applicable in case of languishing projects on BOT (Annuity) mode during construction stage subject to the condition that after completion of construction of such projects, such loan would be recovered along with interest at the rate of Bank Rate +2% by NHAI from the Annuities payable, bi-annually, by execution of a tripartite agreement between the senior lender, concessionaire and the Authority.
- 3.2 This is proposed to be a one-time dispensation for all such already awarded projects that are languishing as on 1<sup>st</sup> November, 2014. A list of all languishing BOT (Annuity) projects is placed at Annexure-III (Page 15).

- 3.3 For all such projects, the amount of bridge fund required shall be approved by the Authority, on a case to case basis.

#### 4. JUSTIFICATION

This proposal of moderate fund infusion would help physical completion of languishing projects bringing relief thereby, to the citizens /highway users in the area.

#### 5. IMPLEMENTATION METHODOLOGY

Once the CCEA approves this proposal, the National Highways Authority of India (NHAI) shall accordingly amend the policy circular dated 09<sup>th</sup> June 2015 with the approval of the MoRTH.

#### 6. ENVIRONMENT AND FOREST CLEARANCES

No specific clearance from Ministry of Environment, Forests and Climate Changes (MoEF&CC) is required.

#### 7. VIEWS OF THE OTHER MINISTRIES

The CCEA Note has also been circulated to all the Ministries and Departments concerned i.e., NITI Aayog, Department of Economic Affairs, Department of Expenditure, Department of Financial Services and Department of Legal Affairs on 21.8.2015 with a subsequent reminder on 10.9.2015. The comments of Department of Economic Affairs, Ministry of Finance and Department of Legal Affairs were received on 18.09.2015 and 16.09.2015 respectively. Their comments and consolidated detailed reply of the MoRTH thereupon is placed at Annexure-IV (Page 16-20). A meeting of the Committee of Secretaries (CoS) was, also held on 09.09.2015 [Minutes of

the meeting at Annexure-II (Page 10-14)]. This Note for CCEA has also been seen and concurred by the Integrated Finance Division of MoRTH

**8. APPROVAL SOUGHT**

CCEA approval is sought on the following:

- (i) Provisions of the Policy Circular of NHAI dated 09<sup>th</sup> June 2015 be extended and made applicable in case of languishing projects on BOT (Annuity) mode subject to the condition that after completion of construction of such projects, such loan is to be recovered along with interest at the rate of Bank Rate +2% by NHAI from the Annuities payable, bi-annually, through execution of a tripartite agreement between the senior lender, concessionaire and the Authority.
- (ii) This infusion of fund would be a one-time dispensation for all such projects that are languishing as on 1<sup>st</sup> November, 2014.
- (iii) All such cases and the amount of bridge fund required in each case shall be approved by the Authority, on a case to case basis.

- 9. The Implementation schedule is placed at **Appendix - I (Page 5-6)**.
- 10. The Statement on equity, public accountability and innovation is placed at **Appendix-II (Page 7)**.
- 11. This Note has the approval of Minister of Road Transport & Highways.

  
(ROHIT KUMAR SINGH)  
Joint Secretary  
Tele: 2375 3991

APPENDIX - I

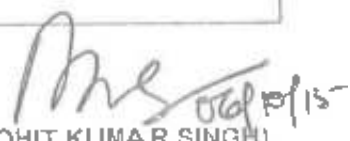
**GOVERNMENT OF INDIA  
MINISTRY OF ROAD TRANSPORT & HIGHWAYS  
NEW DELHI**

**STATEMENT OF IMPLEMENTATION SCHEDULE**

**SUBJECT: ONE TIME FUND INFUSION TO REVIVE AND PHYSICALLY COMPLETE LANGUISHING NATIONAL HIGHWAY PROJECTS – EXTENSION OF PROVISION AVAILABLE FOR BOT (TOLL) PROJECTS TO BOT (ANNUITY) PROJECTS.**

<b>Gist of Decision Required</b>	<b>Benefits / Result</b>	<b>Time Schedule for Implementation</b>
<p>The approval of the CCEA is sought on the following :</p> <p>(i) Provisions of the Policy Circular of NHAI dated 09<sup>th</sup> June 2015 be extended and made applicable in case of languishing projects on BOT (Annuity) mode subject to the condition that after completion of construction of such projects, such loan is to be recovered along with interest at the rate of Bank Rate +2% by NHAI from the Annuities payable, bi-annually, through execution of a tripartite agreement between the senior lender, concessionaire and the Authority.</p> <p>(ii) This infusion of fund would be</p>	<p>This will result in physical completion of the languishing projects which will bring relief thereby to citizens /travelers in that area.</p>	<p>Action will be taken to implement the CCEA decision and its impact shall be reported to the Cabinet Secretariat from time to time</p>

<p>a one-time dispensation for all such projects that are languishing as on 1<sup>st</sup> November, 2014.</p> <p>(iii) All such cases and the amount of bridge fund would be required to be approved by the Authority.</p>		
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(ROHIT KUMAR SINGH)  
Joint Secretary to the Government of India  
Tele: 2375 3991