



भारतमाला
प्रगति के पथ पर अग्रसर
BHARATMALA
ROAD TO PROSPERITY

भारतीय राष्ट्रीय रातमार्ग प्राधिकरण

(सड़क परिवहन और राजमार्ग मंत्रालय, भारत सरकार)

National Highways Authority of India

(Ministry of Road Transport and Highways, Govt. of India)



परियोजना कार्यान्वयन इकाई - कृष्णनगर Project Implementation Unit - Krishnagar ग्राम एवं डाक : भातजांगला, कृष्णनगर Vill. & P.O.- Bhatjangla, Krishnagar
जिला-नदीया, पिन-741102 Dist.- Nadia, Pin-741102 दूरभाष / Phone : 03472-271713 ईमेल / e-mail : krishnagar@nhai.org / plukrishnagar@gmail.com

Memo No: 22795 /NHAI/PIU-Krishnagar/W-39

Date: 19.07.2021

To

The Authorized Representative

SEW Krishnagar-Baharampore Highways Ltd.

95/1, M.G. Road, Near District Judge Bungalow

P.O. Krishnagar, Dist. Nadia, PIN - 741101

Sub: Four-laning of Krishnagar-Baharampore section of NH-34 from Km 115.000 to Km. 193.000 in the State of West Bengal under NHDP Phase-III on DBFOT (Annuity) Basis (Package No. NHDP-III/BOT/WB/02) -- Invoice for Third Annuity payment along with missed annuities- reg.

Ref:

1. Agreement Signed on: 16.06.2011
2. Appointment Date: 10.01.2012
3. Completion Period: 910 days
4. Tripartite Agreement: 21.10.2016
5. PCOD for 65.018 Km achieved on 10.02.2020
6. IE letter no: YEFIPL/20/Krishnagar/IE-4312 dated 21.07.2020
7. NHAI Letter no: 21593/NHAI/PIU-Krishnagar/W-39 & W-49 dated 04.01.2021
8. Concessionaire Letter no: SKBHL/NHAI/1328 dated 02.06.2021
9. NHAI Letter no: 22626/NHAI/PIU-Krishnagar/W-39&W-49dated 03.06.2021
10. NHAI Letter no: 22652/NHAI/PIU-Krishnagar/W-39 & W-49 dated 10.06.2021
11. IE Letter no: YEFIPL/21/Krishnagar/IE- 4813 dated 25.06.2021
12. NHAI Letter no. 22734/NHAI/PIU-Krishnagar/W-39 & W-49 dated 29.06.2021
13. IE Letter No : YEFIPL/21/Krishnagar/IE- 4840 dated 03.07.2021
14. Concessionaire letter no :SKBHL/NHAI/1332 Dated 05.07.2021

Sir,

This is in reference to the NHAI letter u/r (9), vide which this office has requested the Independent Engineer to submit comments/Views/recommendation on the submission made by the Concessionaire vide its letter u/r (8). NHAI further sent letter u/r (12) above vide which it was requested to consider the request from the Bank cited in letter u/r (10) above along with the release of OTFIS Tranche of Rs. 15.0 Cr . The Concessionaire vide its letter u/r (8) has submitted the Third Annuity Invoice for release of full annuity payment towards the 3rd invoice along with a request to release 1.66 annuities recommended earlier by IE and 10% amount withheld from the restored annuities, 1st annuity and the 2nd annuity. IE's observation and recommendation are as under:

Concessionaire's request for release of full annuity amount (100%): The Provisional Completion Certificate has been issued by the Independent Engineer vide letter no. YJFISPL/20/Krishnagar/IE-4072 dated 17.02.2020 with effect from 10.02.2020. Since the

Completion Certificate has not been issued as per Clause 14.2 of the CA, the Concessionaire is entitled to get payment as per clause 27.1.2 only, wherein it is specified that "In case the Concessionaire achieved CoD pursuant to Provision of the Clause 14.3.2 of this agreement, then it would be entitled to 90% of the Annuity payable till the Completion Certificate is issued as per provision of the Clause 14.2 of this agreement". Hence, the request for release of the full annuity amount is not acceptable.

As per the CA, Annuity payment shall be done as per Schedule-M which has been modified as per the actual appointed date and was submitted along IE letter u/r (6). As per the updated schedule-M, the Concessionaire is to receive 3rd annuity payment on 04.07.2021.

In view of the above, the amount of 3rd annuity payable to the Concessionaire shall be as under:
Annuity payable on 04.07.2021 = Rs. 61,20,00,000.00

As per clause 27.1.2 of CA, 90% of annuity is payable until completion certificate is issue.
Therefore, Total payable mount= $(61,20,00,000 \times 0.90)$ = Rs. 55,08,00,000.00

1.66 annuities recommended earlier by IE: NHAI is yet to approve 1.66 annuities recommended by the IE. Until the approval is received, these annuities cannot be considered for release.

As per the waterfall mechanism under Clause 6 (h) (iii) of the Tripartite Agreement, O&M expenses shall be released from the annuity amount, subject to the ceiling set forth if any in the Financing Agreements. The Concessionaire in its letter u/r (8) had requested release of O&M expense for 23 months from 10.02.2020 to 04.01.2022 amounting to Rs 22.18 Cr.

The Concessionaire vide its letter no SKBHL/NHAI/1326 dt.11.05.2021 had informed that the estimate for carrying out O&M activities for 12 month is Rs. 9,31,19,556.00. with respect to the Concessionaire's letter the per month expenditure for O&M activity is Rs. 77,59,963.00, therefore for O&M activities for 23 months the expenditure should be Rs 17,84,79,149.00.

NHAI as per its letter u/r (7) has already released Rs. 5,16,03,756.00 against O&M activity during 2nd Annuity Payment. Therefore, for carrying out O&M activities an amount of Rs. $(17,84,79,149 - 5,16,03,756)$ = Rs. 12,68,75,393.00 is released to the Concessionaire from the 3rd annuity invoice.

As per 3.1 (d) of tripartite agreement, till the principal amount 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 amount 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 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 so paid/payable, such amount shall be recovered over and above the applicable interest liability to NHAI.

The calculation as per the IE for the 1st and 2nd Annuity payments as per the Tripartite Agreement is as follows -

1st Annuity Payment



S.No	Particulars	Amount (INR), rounded off	Remarks
	Total OTFIS	2,98,53,69,071	
	Annuity Amount	48,75,82,417	Based on pro-rate basis
	Restored Annuity	2,39,90,40,000	
	Total Payable (2+3)	2,88,66,22,417	
	90% of S.No. 4 above	2,59,79,60,175.30	
	TDS@ 1.5%	3,89,69,403	
	Net Paid to Escrow Account (As per IE) (5-6)	2,55,89,90,773	
	Waterfall for payments as per Cl. 6(h) of tripartite agreement		
	6 (h) (i) : Taxes	-	Considered at 6 above
	6 (h) (ii): Payments related to construction of highway	0	
	6 (h) (iii): O&M Expenses	0	
	6 (h) (iv): O&M Expenses borne by Authority	41,26,79,604	O&M expenses of the Authority, (1) 35,55,86,115 - O&M expenses of the Authority (2).5,70,93,489 - IE fee recoverable from the Concessionaire
	6 (h) (v): Concession Fee	0	
	6 (h) (vi): Interest on OTFIS Facility till PCOD from restored annuities	45,44,66,746	
	6 (h) (vii): Principal payment of NHAI to the extent of restored annuities	1,70,46,69,254	Actual Restored Annuity, 2,15,91,36,000 (90% of amount) - Interest of OTFIS till PCOD, 45,44,66,746
	Sub Total (Sr. 8 to 14)	2,57,18,15,604	
	Remaining Amount (7-15)	-1,28,24,831.33	Total amount remaining after making payments as per waterfall mechanism upto clause 6(h) vii of tripartite agreement. The unrecovered amount is to be adjusted with 2nd Annuity Payment
	6 (h) (viii): Interest accrued on OTFIS facility till next annuity payment	13,61,42,291	Total interest on OTFIS facility to be recovered before payment of interest on Senior Debt, 1% of Principal of Senior Debt, and remaining OTFIS
a	Interest from PCOD till Payment of 1stannuity	8,83,66,924	

S.No	Particulars	Amount (INR), rounded off	Remarks
b	Interest from 1st Annuity to Second annuity	4,77,75,366	
	Total Unrecovered Interest (17 - 16)	13,61,42,291	No amount left for Interest recovery
	Amount remaining with Concessionaire (16-17)	0	No amount remaining for making payments further as per Tripartite Agreement.

From the above, as per the IE, from the amount released to the Concessionaire under the 1st Annuity payment (and restored annuity), there is no amount left for full recovery of dues payable to the Authority as per 6 (h) (iv) of the Tripartite agreement onwards. Subsequently, since dues towards the Authority as per 6 (h) (iv) and interest as per clause 6 (h) (viii) was not recovered, the same is to be recovered from the payment of 2nd annuity.

2nd Annuity Payment

S.No	Particulars	Amount (INR), rounded off	Remarks
	Total OTFIS remaining after 1st annuity payment	1,28,06,99,817	2,98,53,69,071 - 1,70,46,69,254, refer table above
	Annuity Amount	61,20,00,000	As per CA
	90% of S.No. 2 above	55,08,00,000	As per CA provisions
	TDS@ 1.5%	82,62,000.00	
	Net Paid to Escrow Account (As per IE)	54,25,38,000.00	
	Waterfall for payments as per Cl. 6(h) of tripartite agreement		
	6 (h) (i) : Taxes	-	Considered at 4 above
	6 (h) (ii): Payments related to construction of highway	0	
	6 (h) (iii): O&M Expenses	5,16,03,756	As considered by Authority in payment of 2nd Annuity
	6 (h) (iv): O&M Expenses borne by Authority	1,28,24,831	Unrecovered amount from the 1st Annuity payment
	6 (h) (v): Concession Fee	0	
	6 (h) (vi): Interest on OTFIS Facility till PCOD from restored annuities	0	Paid during 1st Annuity payment
	6 (h) (vii): Principal payment of NHAI to the extent of restored annuities	0	Paid during 1st Annuity payment
	Sub Total (Sr. 6 to 12)	6,44,28,587	
	Remaining Amount (5-13)	47,81,09,413	Total amount remaining after making payments as per waterfall mechanism upto clause 6(h)vii of tripartite agreement

S.No	Particulars	Amount (INR), rounded off	Remarks
	6 (h) (viii): Interest accrued on OTFIS facility till next annuity payment	18,82,17,378	Total interest on OTFIS facility to be recovered before payment of interest on Senior Debt, 1% of Principal of Senior Debt, and remaining OTFIS
a	Compounded Interest of unrecovered interest amount from 1st Annuity	14,12,20,958	
b	Interest from 2nd Annuity to 3rd annuity	4,69,96,420	
	Amount remaining with Concessionaire (14-15)	28,98,92,035	This amount is to be used to make payment of interest on Senior Debt, 1% Principle, remaining OTFIS (in the same order)
	6 (h) (ix): Monthly proportionate provision of servicing interest due on Senior Debt Facility till payment of next annuity	72,15,27,847	
(a)	Unrecovered interest of the 1st Annuity Period	30,92,45,997	As per SBI letter dated 09.06.21. IE cannot verify the amount as no financing documents are available with IE.
(b)	Interest from 2nd annuity to 3rd annuity	41,22,81,850	
	Final Amount remaining with Concessionaire (16-17)	-43,16,35,812	As amount is not sufficient to recover payment as per 6 (h) (ix); only partial payment of Rs. 28.99 cr out of total due of Rs. 72.15 cr can be made.

From the above, as per the IE, from the amount released to the Concessionaire under the 2nd Annuity payment, the amount of Rs. 28.99 crore (at sr. 16 of the table) is to be used to make payment of interest due on senior debt from PCOD to 1st Annuity, 1st Annuity to 2nd Annuity and 2nd Annuity to 3rd Annuity period (only partial payment is possible considering amount remaining).

Further to IE's recommendation on 1st and 2nd annuities, the Authority after making necessary recovery NHAI has informed vide its letter u/r (7), that an outstanding OTFIS facility of Rs. 102,46,49,001.00 is yet to be recovered and then after infusion of further tranche of Rs. 15,00,00,000, the total balance outstanding was 117,46,49,001.00.

The Senior Lender SBI vide its letter no SARG/INFRA-IIAMT-3/20-21/88 dated 25.09.2020 has informed that during the release of 1st and 2nd annuity amount along with missed annuity, the Authority had not adhered to the waterfall mechanism as per clause 6(h) of the Tripartite agreement and had not considered

- i) Monthly Proportionate provision of servicing interest due on the Senior Debt Facility till payment of next annuity.
- ii) Payment of 1% of the principal amount of the senior debt facility after PCOD/COD

8/2/21

The Authority vide its letter u/r (10) has forwarded the SBI letter no SARG/INFRA-II/AMT-3/20-21/13 dated 09.06.2021 vide which the senior lender has stated that with respect to clause 6 (h).IX of the Tripartite Agreement, the senior lenders are entitled to 1% on the principal amounting to Rs. 17,51,98,119.20 for 1st, 2nd and 3rd Annuity. Hence, in view of the Para 6 above, it kindly informed while considering the applicable priority as per waterfall mechanism, there is no amount left for release of Senior Lender's interest and principal in the 1st Annuity payment; however considering the amount left from 2nd annuity, interest on Senior Debt may be serviced from 2nd annuity payment. However, IE does not have the information to validate the calculations of the Senior Lender interest due, which is to be serviced from the remaining amount of the second annuity and the same needs to be verified by NHAI.

Concerning all the above, the summary of annuity to be released and to be recovered from the 3rd annuity invoice is as below as per IE recommendations are as under with due regard to the waterfall mechanism:

S.No	Particulars	Amount (INR), rounded off	Remarks
	Total OTFIS remaining after 1st annuity payment	1,43,06,99,817	2,98,53,69,071 - 1,70,46,69,254, (refer 1st Annuity table at para 5 above) + 15,00,00,000 (additional amount released on 08.01.2021)
	Annuity Amount	61,20,00,000	As per CA
	90% of S.No. 2 above	55,08,00,000	As per CA provisions
	TDS@ 1.5%	82,62,000.00	
	Net Paid to Escrow Account (As per IE) (3-4)	54,25,38,000.00	
	Waterfall for payments as per Cl. 6(h) of tripartite agreement		
	6 (h) (i) : Taxes	-	Considered at 4 above
	6 (h) (ii): Payments related to construction of highway	0	
	6 (h) (iii): O&M Expenses	12,68,75,393	As per IE recommendation
	6 (h) (iv): O&M Expenses borne by Authority	0	O&M expenses of the Authority
	6 (h) (v): Concession Fee	0	
	6 (h) (vi): Interest on OTFIS Facility till PCOD from restored annuities	0	Paid during 1st Annuity payment
	6 (h) (vii): Principal payment of NHAI to the extent of restored annuities	0	Paid during 1st Annuity payment
	Sub Total (Sr. 6 to 12)	12,68,75,393	
	Remaining Amount (5-13)	41,56,62,607.00	Total amount remaining after making payments as per waterfall mechanism up to clause 6(h)vii of Tripartite Agreement
	6 (h) (viii): Interest accrued on OTFIS	5,23,79,160	Total interest on OTFIS



S.No	Particulars	Amount (INR), rounded off	Remarks
	facility till next annuity payment		facility to be recovered before payment of interest on Senior Debt, 1% of Principal of Senior Debt, and remaining OTFIS
a	Unrecovered interest from 2nd annuity	0	Paid from 2nd annuity
b	Interest from 2ndAnnuity to 3rdannuity	5,23,79,160	
	Amount remaining with Concessionaire (14-15)	36,32,83,447	This amount is to be used to make payment of interest on Senior Debt, remaining Principal Amount of OTFIS, Principal Amount of Senior Debt, subject to a ceiling of 1% (in the same order)
	6 (h) (ix): Monthly proportionate provision of servicing interest due on Senior Debt Facility till payment of next annuity	87,48,30,040	
(a)	Unrecovered interest of the PCOD to 1st Annuity Period	1,93,53,962	(Ref S.r 17a of 2nd Annuity Table) 30,92,45,997 - 28,98,92,035 (Ref S.r 16 of 2nd Annuity Table), unrecovered amount from 2nd annuity payment.
(b)	Unrecovered Interest from 2nd Annuity to 3rd Annuity	41,22,81,850	As per SBI letter dated 09.06.21. IE cannot verify the amount as no financing documents are available with IE.(copy enclosed)
(c)	Interest from 3rd Annuity to 4th Annuity	44,31,94,228	
	Final Amount remaining with Concessionaire (16-17)	-51,15,46,593	As amount is not sufficient to recover payment as per 6 (h) (ix); only partial payment of Rs. 36.32 cr. out of total due under 6(h) ix of Rs. 87.48 cr can be made.

Based on these, as there is considerable changes in the figures of outstanding OTFIS Of 117.41 Cr as against 143.06 Cr after adjustment as per IE recommendation as per tripartite and also the date of payment was very near ,so keeping a meeting in near future to sort out the matter .The payment was made as per the table below as also done in the earlier instances after application of clause 33.4 of the Concession Agreement in the interest of the all stakeholders .

IE also under para 7 has shown some confusion regarding the interest and Concessionaire vide letter u/r (14) has objected the same .Therefore the payment is made as under after the recommendation and due approval of RO .

Summary of amount recovery propose and release of payment to the Concessionaire as per 33.4 clause of the CA for which Competent Authority accorded approval vide Computer no. 91808 Note no#14:

Sl. No.	Particular	Amount (Rs)
1.	Principal Amount of 3rd Annuity Payment	61,20,00,000.00
2.	As per Clause 27.1.2 of CA, 90% of Annuity against 3rd Annuity payment is payable until completion certificate	55,08,00,000.00
3.	Interest Accrued on OTFIS	5,23,79,160.00
4.	Amount to be released for O & M Expenses to the Concessionaire in ESCROW account	12,68,75,393.00
5.	TDS @2% on S No 3 and 4 above	35,85,091.06
6.	Amount available for recovery against OTFIS=2-3-4-5	36,79,60,355.94
7.	Principal Amount of OTFIS outstanding after 2nd annuity	117,46,49,001.00
8.	Total outstanding OTFIS after 3rd Annuity (7-6)	80,66,88,645.06

Approval is hereby accorded for release the O & M expenditure of Rs 12,68,75,393/- into the Escrow Account as mentioned in the above said table after deduction of applicable TDS as the Maintenance of Highways is of utmost importance during this Monsoon Season. The amount has been credited on 16th July 2021 to following bank details:

(a) Account Name: SEW KRISHNAGAR BAHARAMPORE HIGHWAYS LTD - ESCROW A/C

(b) Account Number: 31677977859

(c) Bank Name with Address: State Bank of India, Commercial Client Group Branch, Door No 8-2-684/2/A, Anand Banjara Colony, Road no. 12, Branch Code: 13039, Branch Phone: 23421427, IFSC Code : SBIN0013039

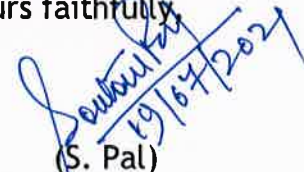
(b) Address of Company: 6-3-871, Snehalata Greenlands Road, Begumpet, Hyderabad - 500016

(e) PAN No of the Company: AAPCS5143Q

This is for your information and necessary action please.

Thanking you,

Yours faithfully,


(S. Pal)

Project Director

Copy to:

The CGM (Tech.) & RO-Kolkata, NHAI - for kind information

The Independent Engineer, M/s Yongma Engineering Private Limited in JV with M/s Feedback Infra Private Limited - for information and necessary action.

~~Sarg Infra /State Bank of India Senior Lenders For information & necessary action~~