

National Highways Authority of India

Plot No. G 5&6, Sector 10, Dwarka, New Delhi - 110075

No. NHAI/CGM(L)/Conciliation/2017-18

Dated, the 2nd June, 2017

Subject: Establishment of a Conciliation & Settlement Mechanism for Contractual Disputes under the contract agreements with the Contractors/ Concessionaires/ Consultants in NHAI – Panel of Independent Experts and Constitution of Conciliation Committees – reg.

Dear All,

As all of us are aware, a large number of contractual issues have been emerging from time to time in relation to the concessions/ contracts executed between the NHAI on the one hand and the concessionaires/ contractors/ consultants on the other. Even though efforts are made to reach conciliation of these contractual disputes at the level of the organisation as per its laid down procedures and provisions in the contracts, it has been observed that a larger number of these culminate into references to the arbitral tribunals and the courts post-announcement of the arbitral awards. Be that as it may, the litigation between the parties, whether at the level of Arbitral Tribunals or before the Courts, is not only time consuming but often leads to delays in execution of road infrastructure projects in the country. As a matter of fact, the construction sector has been perceived to be under financial stress for some time, partly due to pendency of contractual disputes.

2. The Government has viewed this position with serious concern and has also taken certain decisions/ measures, as approved by the Cabinet Committee on Economic Affairs in its meeting held on 31/08/2016. Following the decisions taken by the CCEA in the said meeting, the NHAI put in place a transparent system for processing of claims and release of funds to the extent of 75% of the arbitral award amounts in terms of the decision of the CCEA. The NHAI has received a total of 64 claims, of which Bank Guarantees and Escrow Account details have been received only in respect of 17 claims so far. The NHAI has released an amount of Rs. 982/- crores in all such cases where the requisite amount of bank Guarantees have been furnished. The status in this behalf is kept updated on the NHAI website in this behalf. While the aforesaid measures would help in infusing liquidity for the construction sector, it is a fact that full potential of the Scheme remains to be fully tapped on account of non-submission of Bank Guarantees and opening of Escrow Accounts by the claimant firms.

3. Keeping the aforesaid in view and in furtherance of the decision taken by the CCEA, as also keeping in view the provisions available in the Arbitral and Conciliation (Amendment) Act, 2015, the NHAI has set up a mechanism for conciliation and settlement of the contractual disputes and have come out with a Policy in this behalf. It has been decided to put in place a conciliatory mechanism through these guidelines which are placed on the website of NHAI. The Conciliation Committees constituted for the purpose also have reputed persons from the industry. The SoP, detailing the process and methodology to be followed by the CCIEs, shall be published on the website as soon as the same is finalised by the Panel Members. It is hoped that a majority of the stakeholders would like to avail of this opportunity of conciliation and settlement of the contractual disputes pending either before the arbitral tribunals or before the Courts. We look forward to your active participation in this initiative with your response to **Annexure-IV** of the policy guidelines.

Yours sincerely,

Y. S. Malik
Chairman, NHAI

To

All the Concessionaires/ Contractors/
Consultants working with the NHAI