

## **Standard Operating Procedure/ Methodology for Conciliation**

(Reference Para-4.5 of the Policy Guidelines No. 2.1.23/2017 dated 02.06.2017)

The Panel of Conciliators held its meeting on 12.06.2017 at the NHAI Hq. and decided on the Standard Operating Procedure (SoP) to be followed by the Conciliation Committee in carrying its work forward. The SoP delineated and approved by the members of the panel is as follows:

- 1. The procedure for conciliation shall be as prescribed in Sections 61 to 81 of the Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter referred to as ‘the Act’) with the following further clarifications:**
  - 1.1 Application and Scope** (in furtherance to the provisions contained in Section 61 of the Act): Application and Scope of Conciliation shall be before, during or after the arbitral process, as contained in the Policy Guidelines No. 2.1.23/2017 dated 02.06.2017 with subsequent amendments. The NHAI on the one hand, and the Concessionaire/ Contractor/ Consulting Agency on the other, shall be deemed to have consented to opt for conciliation under the Act ibid by giving their consent for conciliation as per these policy guidelines. The consent of the parties shall also be deemed to be their consent for the procedure prescribed herein.
  - 1.2 Commencement of Conciliation Proceedings in terms of Section 62 of the Act:** Conciliation Proceedings shall commence when the parties submit the following to the Conciliation Committee:
    - (i) A letter, jointly signed, consenting to conciliation, which may also indicate the option for either of the two committees constituted under the NHAI Policy Guidelines;
    - (ii) Brief statements of the issues/ dispute(s) to be taken up for conciliation;
    - (iii) Inform, in writing, the Conciliators and the other party of the name, address and contact details of the person(s) who will represent them. The person(s) representing the NHAI shall be duly authorized by the competent authority (Chairman or Member concerned, as the case may be). The person representing the Concessionaire/ Contractor/ Consulting Agency shall be a Senior Executive and a regular employee of the company, supported by a Board Resolution and a Power of Attorney, duly authorized to enter into a Conciliation Agreement. The parties will not be permitted to bring professional lawyers for conciliation; and
    - (iv) Copy of joint application filed before the Arbitral Tribunal/ Court to keep the proceedings on hold for a minimum of 180 days, if applicable.
  - 1.3 Number of Conciliators and Appointment of Conciliators (in terms of Sections 63 & 64 of the Act):** The consent of parties to proceed with conciliation and settlement of dispute(s) through the Conciliation Committees

constituted under the Policy Guidelines of NHAI shall be deemed to fulfill the conditions prescribed under Section 63 and Section 64 of the Act.

2. **Administrative Assistance (in furtherance of Section-68 of the Act):** The Conciliation Committee shall be assisted by such expert technical and secretarial assistance as it may require for efficient discharge of its functions. The NHAI shall make arrangements for the same to the satisfaction of the Committees.
3. **Costs of Conciliation and Deposits:**
  - 3.1 In terms of Sections 78 and 79 of the Act, the NHAI shall, in the first instance, incur all expenditure on the conciliation proceedings including payment of fees to the conciliators, provision of office space, expenditure on dedicated expert and secretarial assistance and other incidental expenses. The other party (Concessionaire/ Contractor/ Consulting Agency) shall also deposit an advance amount in the form of a Demand Draft for Rs. 5.0 Lakh, drawn in favour of NHAI, to commence the conciliation proceedings.
  - 3.2 The NHAI shall maintain the accounts of expenditure incurred on the conciliation proceedings on behalf of the Conciliation Committee. Upon termination of conciliation proceedings, the NHAI shall render an account of the cost of conciliation, which shall finally be decided/ apportioned between/ among the parties as per the directions of the Conciliation Committee.
4. **Residuary matters:** The panel of Conciliators may decide on the procedures to be followed in respect of any residuary matters, including the review of this SoP from time to time, based on the experience gained in the process.