Government of India Ministry of Road Transport & Highways (Highways Section) Transport Bhawan, 1, Parliament Street, New Delhi-110001.

Dated:23rd February, 2024

Office Memorandum

Subject: Minutes of the Inter-Ministerial Committee (IMC) meeting held on 08.01.2024 and 02.02.2024 under the Chairmanship of Secretary (RT&H) to discuss the changes in MCA (Capacity Augmentation) on BOT(Toll) and MCA for TOT.-Reg.

The undersigned is directed to refer to the subject cited above and to enclose herewith a copy of minutes of the Inter-Ministerial Committee (IMC) meeting held on 08.01.2024 and 02.02.2024 under the Chairmanship of Secretary (RT&H) to discuss the changes in MCA (Capacity Augmentation) on BOT(Toll). It is to inform that proposals put up before IMC for changes in respective MCAs and approved by IMC on consensus are summarized in Annexure-1 of the meeting minutes.

2. This is issued with the approval of the competent authority.

(Sanjay Kumar) Under Secretary to the Government of India E-mail: sanjay.kumar13@nic.in

Encls: as above

То

- 1. Secretary, DoEA
- 2. Secretary, DoFS
- 3. Secretary, DoLA
- 4. CEO, NITI Aayog

Copy to:

- 1. Chairman NHAI
- 2. DG(RD)&SS
- 3. MD, NHIDCL
- 4. Member (PPP), NHAI
- 5. Member (Finance), NHAI
- 6. CGM(CMD), NHAI

Copy for information to:

- 1. O/o Secretary(H), MoRTH
- 2. O/o JS(H), MoRTH
- 3. O/o DS(H), MoRTH

Minutes of Meeting of the Inter-Ministerial Committee (IMC) held on 08.01.2024 and 02.02.2024 under the Chairmanship of Secretary (RT&H) to discuss the changes in MCA (Capacity Augmentation) on BOT (Toll) and MCA for TOT.

The list of participants during subject meetings is enclosed.

2.To discuss and decide upon certain changes in MCA for Capacity Augmentation on BOT (Toll), an IMC Meeting was convened on 08.01.2024. The proposed changes were discussed in IMC Meeting held on 08.01.2024 and the finalization on amendments to said MCA was deferred for further deliberations with the stakeholders including bankers, concessioners etc.

Subsequently, NHAI organized a Conference on BOT (Toll) on 17.01.2024 which was attended by several stakeholders, viz. Banks/ Financial Institutions, Concessionaires, Investors, Consultants, etc. In this Conference, NHAI made a detailed presentation on the proposed changes in MCA and sought inputs which were examined and changes in proposals for amending certain clauses of present MCA were made after due diligence.

3.Later, on 02.02.2024, IMC discussion on revised proposals for changes was resumed. This IMC meeting also discussed the proposed modifications in the MCA for TOT projects. The amendments approved by IMC on consensus are enclosed herewith as **annexure 1** in tabular format.

4.It was recommended to incorporate the approved modifications in the respective MCAs.

5. The meeting ended with a vote of thanks to the Chair. ******

<u>Annex 1</u>

1. Agenda 1: Amendments in the provisions of MCA Toll for Capacity Augmentation issued vide MoRTH letter no. NH-35014/25/2017-H dated 09.12.2020

| S.no. | Clause | Existing provision | Approved modification |
|-------|--------|--------------------|--|
| 1. | | | During Construction Period, Authority shall |

| | | 6-lane) projects, COD is Appointed Date. Concessionaire collects toll @75% fee rates from AD/ COD. Premium is quoted as % of Realizable Fee starting from 2nd year after project completion to be increased by additional 1% every year. | 10 equal instalments linked to progress as "Construction Support". Further, the sum of Construction Support and Equity Support (Grant) shall be restricted to 40% of TPC. |
|----|----------------------------------|---|---|
| 2. | Article 48 | Provision: Debt due Definition of Debt Due on Transfer Date (Date of Termination). Principal of debt outstanding on Transfer Date excluding principal fallen due for repayment 2 years prior to the Transfer Date. | The principal amount of the debt, which shall be lower of the (i) actual outstanding principal amount of debt on Transfer Date moderated by a factor of (Total Project Cost divided by cost of the Project under the Financing Agreements) or (ii) outstanding principal amount of debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost one year prior to the Transfer Date or (iii) outstanding principal amount of debt one year prior to the Transfer Date as per Schedule X (the "principal") |
| 3. | Clause No. 29.2.3 & 29.2.4 | 64:1990) in comparison | PCU factors may be considered proportionate to the toll fee applicable to the group of vehicles, as given in the Fee Notification. As PCU definition cannot be changed, "Equivalent Vehicle Unit (EVU)" is coined which shall be proportionate to the toll fee applicable to the |

| | | | group of vehicles. |
|----|----------------------------|--|---|
| | | | The weighted average EVU shall be used to determine variation (increase or decrease) in Actual Traffic from Target Traffic and variation in Concession Period (decrease or |
| 4. | Clause 29.2.3 | Provision: Design capacity On reaching the design capacity in any Accounting Year, Project at the discretion of the Authority may be terminated under Indirect Political Event unless Concessionaire cures by Capacity Augmentation. | ff the design capacity exceeds in any 02 Accounting Years out of 03 years block, the Authority shall Buy Back the Project. |
| 5. | Clause 30 & Clause 35.4 | Provision: Modification in Concession Period on account of Competing Road & Additional Tollway Increase in Concession Period, from opening of the Additional Tollway till balance Concession period, if it causes enhancement in the Concession Period beyond 20% of the Concession period as provided in Clause 29.2.2. | construction of Additional Tollway or Competing Road, the Concessionaire shall be paid reduction in Average Daily |
| 6. | - | Nil | Provision: Buy Back (Design Capacity) Buy Back (Clause 37.2A) amount equal to the higher of 80% of the product of the average |

| | | | monthly Fee (total Realisible Fee less additional Concession Fee in the Accounting Year immediately preceding the Accounting Year in which the design capacity is breached divided by 12) and 75% of months of remaining concession period less cost of major maintenance, if any, as per original Financing Agreement. OR Termination Payment on Indirect Political |
|----|-------------|--|--|
| 7. | Clause 35.2 | Provision: Compensation for default by Authority and Extension of Concession Period: Direct Costs - interest payment on Debt; O&M Expenses; increase in Capital Costs (not to include loss of Fee Revenue or Debt Repayment) (information in financial package/ model to be relied upon to work out such costs). Cl. 35.3: In addition to payment of compensation under Cl. 35.2, extend the Concession Period. | Event Compensation may be worked out for delay period attributable to the Authority as under: a. During Construction Period: 7. escalation in cost of balance work linked to WPI Increase; 8. Prolongation Costs @ 8% on balance work * delay days ÷ construction period. 9. Loss of Fee Revenue for extended period by de-escalating actual toll revenues after completion. (b) During O&M Period: 7. Interest on Debt Due; |

| | | | 8. O&M Expenses as determined from Original Financing Agreements; and 9. Extension of Concession Period. |
|----|---------------------------|--|---|
| 8. | Clause No: 41.1 & 41.2 | Provision: Change in Law – Increase/ Reduction in Costs If as a result of Change in Law, there is increase in costs or reduction in net after- tax return or other financial burden more than a threshold value in any Accounting Year, the Concessionaire is to be placed in the same financial position as it would have enjoyed had there been no such Change in Law resulting in cost increase, reduction in return or other financial burden. | may opt for termination under Clause 34.4(a) [Political Force Majeure Event] |
| 9. | Clause 13.4 | Provision: Delays during Construction For any shortfall in achieving progress, IE may issue notice to the Concessionaire and Concessionaire shall submit reply/ details on steps to expedite progress. However, no further action is specified if rate of progress does not improve. | If monthly progress as per Time Schedule for completion submitted pursuant to Cl. 12.1(a) is not achieved for 3 months continuously, IE may issue notice & Concessionaire shall submit revised schedule to catch up (subject to rate of progress in any month not less than original schedule). If Concessionaire still fails to achieve 75% of progress as per revised |

| | | | schedule for 3 months continuously, termination may be invoked. |
|-----|---------------|--|---|
| 10. | Clause 16.2.2 | Provision: Change of Scope The COS is to be determined considering Cost of material & labor as per applicable SOR along with proposed premium/ discount. There is no clarity on Premium / Discount. | For determining COS, Rates shall be based on State PWD NH SOR prevailing on the date |
| 11. | Clause 16.6 | Provision: Reduction in the Scope of the Project. If any work is not completed on account of Force Majeure or for reasons solely attributable to the Authority, the Concessionaire shall pay 80% of the sum saved therefrom to the Authority. If such reduction causes a | In case of non- completion of any work on any account, the revenue shall be shared by Concessionaire in proportion of value of incomplete work. For any reduction in effective length of tolling due to incomplete work attributable to the Authority, the Concessionaire shall be entitled for receiving |

| | | reduction in net after- tax return of the Concessionaire, a full or partial waiver of the aforesaid payment of 80% has to be considered. | payment of the resulting loss of revenue. |
|-----|----------------------|--|---|
| 12. | Clause 4.1.3(f) | Package and the Financial Model duly | The Financial Package & the Financial Model shall be delivered along with information in a prescribed format format given at Schedule Y and shall be duly attested by a Director of the Concessionaire, along with soft copy in the form, which is acceptable to the Authority, containing projected financials of the Project as appraised and adopted by the Senior Lenders. |
| 13. | Clause 32.1 | good industry practice. Authority to be co- | The Concessionaire shall maintain Insurance during construction period for a value of the EPC cost and during operation period for replacement value. Coverage also to include 3rd party claims & force majeure events including non-Political Events (e.g. Covid, farmer's agitation, etc.) in line with HAM document. |
| 14. | Clause 34.7.2 (c) | Provision: Force Majeure Cost | The Force Majeure Cost shall include interest on Debt Due and O&M |

| | | On occurrence of Force majeure under Political Event, the Force Majeure Cost shall comprise of interest on debt; O&M expenses and any increase in cost of construction an all other costs directly attributable to the Force Majeure but shal not include loss of Fee Revenues or debt repayment. The Financial Agreement to be relied upon. Extension of Concession Period- As per Clause 34.6.2 | Financial Agreement). Further, the direct cost shall be worked out as under: (a) During Construction Period: - escalation in cost of balance work linked to WPI Increase; - Prolongation Costs @ 8% on balance work * delay days ÷ |
|-----|-----|---|---|
| 15. | Nil | - | Provision: Escrow Account New Clause 31.1.3: Authority to be facilitated with online viewing of Escrow Account |
| 16. | Nil | | Provision: Termination Payment before Project Completion on Concessionaire's Default New (cl 37.8): No payment if Physical progress is less than 40%. 40% of TPC shall |

| | | | be deducted from the expenditure reckoned for considering Termination payment. The termination payment shall be 90% of the amount so obtained. |
|-----|-------------------|---|---|
| 17. | CI 31.3, 31.4 | Provision: Escrow Account – Waterfall Provisions In Clause 31.3 Concession Fee and Premium has priority over Debt Servicing. However, in the same clause, Premium is mentioned to have priority after Debt servicing. In 31.4, Premium is not mentioned in waterfall of withdrawals upon termination. This is creating different interpretation. | Premium (Additional Concession Fee) shall hve priority over the Debt Service of the Lender. Necessary modifications also made in Schedule-s "Escrow Agreement" |
| 18. | Clause No. 48: | Provision: Definition of Senior Lender "Senior Lenders" does not include Non- banking financial companies. | Non-banking financial companies having a net worth of at least Rs.500 Cr. is also included in definition of Senior Lenders. |
| 19. | Clause 7.1 (k) | Provision: Minimum holding of Equity during Construction Period Minimum holding of Equity to be 26% during construction period and 1 year after | Minimum holding of Equity to be 26% (which shall not be less than 5%of TPC) during construction period and 1 year after the construction period. One year to be reckoned from completion of Punch list excluding incomplete Punch list on account of Authority. |

| 20. | Nil | | Provision: Concessionaire to undertake information in RFP New clause 7.1(q): all information provided by the {selected bidder/ Consortium Members} in response to the Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and |
|-----|---------------|--|---|
| 21. | Nil | - | Provision: Binding of obligations under RFP New cl 7.1(r): All undertakings and obligations of the Concessionaire arising from the Request for Proposals or otherwise shall be binding on the Concessionaire as if they form part of this Agreement. |
| 22. | Clause 7.1(h) | Provision: Concessionaire undertaking All information provided by it in response to the Request for Proposals, including amendments thereto or disclosures thereunder, in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects; | |

| 23. | Clause 13.1 | Provision: Monthly progress report Concessionaire to give Monthly progress Report to Authority. | Monthly Progress Report also to be given to Lender's Representative. Further, The Concessionaire also to submit along with monthly report the locations and movements of all construction vehicles by way of installing a |
|-----|-------------|---|---|
| 24. | Clause 13.2 | Provision: Inspection report Concessionaire to give Monthly progress Report to Authority. | Global Positioning System (GPS) in each <u>vehicle</u> Inspection report shall be shared to Lender's Representative on written request. |
| 25. | Schedule-E | Provision: Applicable Permits Concessionaire to obtain applicable permits | Applicable Permits shall be either in the name of Concessionaire or Party having a valid agreement with the Concessionaire. |
| 26. | Schedule-I | Provision: Test to be conducted Test to be conducted as per Schedule-I for compliance of Project highway with Specification and standard. | Provision also made for test on reflectivity of road markings, road sign and illumination of lighting. |
| 27. | Clause 37.6 | Provision: Limitation of Liability The aggregate liability of either Party, under or in connection with the Agreement other than those provided under Clause 37.3and 37.7of this Agreement, shall not exceed 100% of the | 37.7of this Agreement, shall not exceed 100% of the Total Project Cost, however liability under clause 37.3 shall |

| Total Project Cost. |
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Agenda item no. 2–Amendments to Model Bidding documents/Model Concession Agreement being used for Monetization of Public funded operational National Highway Projects under Tolling, Operation, Maintenance and Transfer (TOT) Model

| S.no. | Clause | Existing provision | Approved modification |
|-------|--------------|--|---|
| 1. | Clause 24.1: | Variation in Toll collection | Variation in Toll collection |
| | | The Authority and the Concessionaire acknowledge that the toll collections in the month of *** 2030 (the "Target Point 1") is estimated to be | The Authority and the Concessionaire acknowledge that the toll collections in the month of *** 2030 (the "Target Point 1") is estimated to be |
| | | | Stretch |
| | | Stretch | State |
| | | State | Start (km) |
| | | Start (km) | End (km) |
| | | End (km) | Length (km) |
| | | Length (km) Revenue at Target Point 1 | Revenue at Target Point 1 (Rs. Cr.) |
| | | (Rs. Cr.) | |
| | | Rs [] cr (Rupees only) (the "Target Fee 1") and the toll collections in the month of *** 2037 (the "Target Point 2") is estimated to be | Rs [] cr (Rupees only) (the "Target Fee 1") and the toll collections in the month of *** 2035 (the "Target Point 2") is estimated to be |
| | | | IL |
| | | Stretch | State |
| | | State | Start (km) End (km) |
| | | Start (km) | Length (km) |
| | | End (km) | Revenue at Target Point 2 |
| | | Length (km) | (Rs. Cr.) |
| | | Revenue at Target Point 2 | |

| (Rs. Cr.) | |
|---|---|
| Rs [] cr (Rupees only) (the "Target Fee 2") and hereby agree that for determining the | Rs [] cr (Rupees only) (the "Target Fee 2") [and the toll collections in the month of *** 2040 (the "Targe Point 3") is estimated to be |
| modifications to the Concession Period under this Clause, the monthly toll collection at Target Points 1 or 2, as the case may be, shall be derived from the average of the toll collection as determined using traffic | Stretch State Start (km) End (km) Length (km) Revenue at Target Point 3 |
| sampling to be undertaken, in accordance with Clause 19, in the month that falls one year prior to the Target Points 1 or 2 as the case may be, during the month of the Target Points 1 or 2 | (Rs. Cr.) Rs [] cr (Rupees only) (the "Target Point 3")]& and hereby agree that for |
| as the case may be, and on the first anniversary of the Target Points 1 or 2 as the case may be (the "Actual Fee 1" and the "Actual Fee 2"). For the avoidance of doubt, it is agreed that traffic sampling shall be undertaken in respect of any particular toll plaza for a continuous period of at | to the Concession Period under this Clause, the monthly toll collection at Target Points 1 or 2 [or 3]*, a the case may be, shall be derived from the average of the toll collection as determined using traffic sampling to be undertaken, ir |
| a continuous period of at least 7 (seven) days during the month specified herein and the average thereof shall be deemed to be the actual traffic. | accordance with Clause 19, i the month that falls one year prior to the Target Points 1 of 2 [or 3] as the case may be, during the month of the Target Points 1 or 2 [or 3] as the case may be, and on the first anniversary of the Targe Points 1 or 2 [or 3] as the case may be (the "Actual Fee 1", the "Actual Fee 2" and |
| | the "Actual Fee 3"). For the avoidance of doubt, it is agreed that traffic sampling shall be undertaken in respec of any particular toll plaza for |

| | | | a continuous period of at least 7 (seven) days during the month specified herein and the average thereof shall be deemed to be the actual traffic. |
|----|--------------|--|---|
| | | | & The Target Date to be specified here shall be every 5 years from the date of this Agreement |
| | | | *to be modified based on the number of Target Points applicable for the Concession Period |
| 2. | Clause 24.2. | Modification of Concession period due to variation in Target Fee 1 | Modification of Concession period due to decrease in Target Fee |
| | | Subject to the provisions of Clause 14, in the event that the Actual Fee 1 shall have fallen short of or exceeded the Target Fee 1 by more than 20% (twenty percent) thereof, the Concession Period shall be deemed to be modified in accordance with Clause 24.5.1. For the avoidance of doubt, in the event of any Dispute, the Dispute Resolution Procedure shall apply. | Clause 14, in the event that |
| 3. | Clause 24.3 | Modification of Concession period due to variation in Target Fee 2 | Modification of Concession period due to increase in Target Fee |
| | | the Actual Fee 2 shall have | Clause 14, in the event that |

| and by way of illustration, it is agreed that in the event the |
|--|
|--|

| | | as f | ollows: | | |
|----|---|---|---|---|---|
| | | | Point | Remaining Concession period | Target Fee (Rs. Cr.) |
| | | 1 | Target Fee 1 | 15 years | 100 |
| | | 2 | Fee 2 | 10 years | 150 |
| | | 2 | Target Fee 3 | 5 years | 200 |
| | | | | | |
| | | And in case the Actual Fee for Target Fee 1 is Rs. 87.5 Cr, then the remaining Concession Period shall be increased by 7.5% (seven and half percent) to 16.13 years and the subsequent Target Fee shall be revised to: | | | |
| | | S. No. 1 2 | Targe Point Targe Fee 2 Targe Fee 3 | Cr.) t 150*(1-7 138.75 t 185 | · |
| | | | | | |
| 5. | 3.1, in the event Actual Fee 2 shall have fallen short of or exceeded the Target Fee 2 by more than 30% (thirty percent), then for every 1% (one percent) shortfall or | Clau in th hav Fee perc (one com | use 24. the ever e excee by mo cent), the perce the perce | 3 and Claus it Actual Fee eded the Tar re than 5% (nen for every | e 3.1, shall rget five / 1% as t Fee, |

| Concession Period, subject to fulfilment of terms of this Agreement, shall be increased by 1.5% (one and a half percent) or decreased by 0.75% (point seven five percent) thereof; provided that such increase or decrease in Concession Period shall not in any case | Period, subject to fulfilment of terms of this Agreement, shall be decreased by 1% (one percent) thereof; provided that such increase or decrease in the remaining Concession Period shall not in any case exceed not more than limits specified in Clause 3.1. | | | |
|--|--|--|--|--|
| exceed not more than limits specified in Clause 3.1. For the avoidance of doubt, and by way of illustration, it is agreed that in the event of a shortfall or increase by 40% (forty percent) in Target Fee 2, the Concession Period shall be increased by 15% (fifteen | For increase in target fee in fraction of one percent or part thereof beyond 5% variation shall result in decrease in Concession period on pro- rata basis. | | | |
| percent) or decreased by 7.5% (seven and a half percent) thereof. | For the avoidance of doubt, and by way of illustration, it is agreed that in the event the overall Concession Period is 20 years and Target Fee is expected to be as follows: | | | |
| | S.Target Remaining Concession periodTarget Fee (Rs. Cr.)1Target 15 years Fee 2100 Fee 22Target 10 years Fee 3150 Fee 3 | | | |
| | And in case the Actual Fee for Target Point 2 is Rs. 112.50 Cr, then the remaining Concession Period shall be decreased by 7.5% (seven and half percent) to 13.88 years and the subsequent Target Fee shall be revised | | | |

| to | 0: | | |
|--------|-----------|-----------------|-------------------------|
| S N | S. No. | Target Point | Target Fee (Rs. Cr.) |
| 2 | 2 | Target Fee 3 | 161.25 |
| | | | |

Annex - 2

Minutes of the Meeting of the Inter-Ministerial Committee (IMC) held on 08.01.2024 under the Chairmanship of Secretary(RT&H) to discuss the changes in MCA of BOT(Toll) Mode of Contract

List of Participants :

- 1. Sh. Anurag Jain, Secretary(RTH) in the Chair
- 2. Sh. Vinay Kumar, Joint Secretary(Highways), MoRTH

3. Sh. Baldeo Purushartha, Joint Secretary, Department of Economic Affairs, Ministry of Finance

- 4. Sh. Partha Sarathi Reddy Chevuru, Advisor, NITI Aayog
- 5. Sh. K Venkata Ramana, Member(PPP), NHAI
- 6. Sh. NRVVMK Rajendra Kumar, Member(Finance), NHAI
- 7. Sh. Pawan Kumar, CGM(CMD), NHAI
- 8. Sh. B.M. Rao, CGM(Finance), NHAI
- 9. Sh. Mayur Govekar, Deputy Secretary(Highways), MoRTH
- 10. Sh. Rajender Kumar, GM(CMD), NHAI
- 11. Ms. Neha Chauhan, Deputy Director, Department of Financial Services
- 12. Dr. K.M. Arya, Deputy Legal Advisor, Department of Legal Affairs

13. Sh. Tushar Aggarwal, Dy. Manager (CMD), NHAI

Minutes of the Meeting of the Inter-Ministerial Committee (IMC) held on 02.02.2024 under the Chairmanship of Secretary(RT&H) to discuss the changes in MCA of BOT(Toll) Mode of Contract

List of Participants :

- 1. Sh. Anurag Jain, Secretary(RTH) in the Chair
- 2. Sh. Vinay Kumar, Joint Secretary(Highways), MoRTH
- 3.Sh. Bhushan Kumar Sinha, Joint secretary, DFS
- 4.Sh. Partha Sarathi Reddy Chevuru, Advisor, NITI Aayog
- 5. Sh. K Venkata Ramana, Member(PPP), NHAI
- 6. Sh. NRVVMK Rajendra Kumar, Member(Finance), NHAI
- 7. Sh. Pawan Kumar, CGM(CMD), NHAI
- 8. Sh. B.M. Rao, CGM(Finance), NHAI
- 9. Sh. Mayur Govekar, Deputy Secretary(Highways), MoRTH

10. Sh. Rajender Kumar, GM(CMD), NHAI

11. Ms. Arya Balan Kumari, Joint Director, ISD Division, Department of Economic Affiars

12. Sh. Subhash Chandra Amin, Under Secretary, Department of Financial Services