



# भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(सड़क परिवहन और राजमार्ग मंत्रालय, भारत सरकार)

## National Highways Authority of India

(Ministry of Road Transport and Highways, Government of India)

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दूरभाष/Phone : 91-11-25074100 / 25074200



### NHAI/ Policy Guidelines/ Standard Documents/ 2025 Policy Circular No.11.69 /2025 dated 07<sup>th</sup> August, 2025

{Decision taken on E-Office File No. NHAI/CMD/Misc./CIL/2018 (Computer No. 6169)}

**Sub: Non-deduction of Threshold Amount from the additional cost incurred by Concessionaire on Change-in-Law Claims under Clause-41.1 of MCA for BOT (Toll) for 4 laning dt. 24.08.2020, MCA for Capacity Augmentation under BOT (Toll) dt.09.12.2020 and Clause-35.1 of MCA for HAM Projects dt. 10.11.2020 and corresponding-reg.**

This is in reference to Para 4 (iv) of Policy Circular No. 2.5.11/2019 dated 17.05.2019 of NHAI (attached at Annexure-1) which states:

“In case of BOT/DBFOT/PPP Projects (Toll/ Annuity/ HAM), Concessionaire can notify such Claims only if it exceeds the threshold Parameters prescribed in the Concession Agreements. Further, the threshold amount is to be reduced from the Claimed Amount for Payment by the Authority, as the Concessionaire was supposed to absorb the increase in cost to the threshold amount.”

2. Reference is invited to Article 35.1 of MCA for HAM Projects dt. 10.11.2020 & Article 41.1 of MCA for BOT (Toll) for 4 laning dt. 24.08.2020 & MCA for Capacity Augmentation under BOT (Toll) dt.09.12.2020. In case of GST related Claims under Change-in-Law, MoRTH vide letter No. NH-24028/22/2020-H-Part (2) (E-212639) dated 18.04.2023 (copy enclosed at Annexure-2), clarified that as per the relevant Clause of the Concession Agreement, the threshold limit shall not be deducted as the Concessionaire has to be placed in the same Financial Position. The letter dated 18.04.2023 of MoRTH was circulated vide Policy Circular No. 3.3.29/2023 dated 27.04.2023 of NHAI.

3. In view of above, the provisions of Policy Circular dated 17.05.2019 were reviewed in 672<sup>nd</sup> & 675<sup>th</sup> meetings of EC held on 03.07.2025 (Agenda Item No. 672.02) and 28.07.2025 (Agenda Item No. 675.22) respectively. EC has decided that the threshold limit shall not be deducted from Change-in-Law Claims and this decision will be effective from 18.04.2023, i.e. date of MoRTH clarification on GST Claims. Accordingly, Para 4 (iv) of NHAI's Policy Circular No. 2.5.11/2019 dated 17.05.2019 stands modified as under:

Contd...2/-

“In case of BOT/DBFOT/PPP Projects (Toll/ Annuity/ HAM), Concessionaire can notify such Claims only if it exceeds the threshold Parameters prescribed in the Concession Agreements. However, as per the relevant Clause of the Concession Agreement, this threshold limit shall not be deducted as the Concessionaire has to be placed in the same Financial Position.”

4. This issue with the approval of Competent Authority.

Encl.: As stated above.

  
(CS. Sanjay Kumar Patel)  
I/c Chief General Manager (Coord.)

To:

All Officers of NHAI HQ/ ROs/ PIUs/ CMUs/ Site Offices

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(सड़क परिवहन और राजमार्ग मंत्रालय)

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### Annexure-1

NHAI/Policy Guidelines/ EPC & DBFOT Contracts//2019  
No.2.5.11/2019 Dated the 7<sup>th</sup> May, 2019

[Decision taken on file no.NHAI/CMD/Misc./CIL/2018-Vol.II]

**Sub: SOP/Guidelines on Reimbursement for increase/recovery for decrease in Royalty rates of minor minerals under Change in Law in EPC/DBFOT projects.**

The matter regarding reimbursement of increase in royalty charges on Minor Minerals etc. due to subsequent legislation in Item Rate Contracts was decided by Hon'ble Supreme Court vide judgement dated 24.04.2015 and subsequently the review petitions filed against this judgement were also dismissed by Hon'ble Supreme Court vide order dated 13.10.2015. Accordingly NHAI vide Policy Circular Policy Matter-Technical(185/2015) dated 27.11.2015 (Annex-1) has decided to allow reimbursement of increase in Royalty charges on Minor Mineral etc. due to subsequent legislation in Item Rate Contracts.

2. An opinion dated 17.07.2018 (Annex-2) for applicability of above decision in respect of DBFOT (Toll/Annuity/Hybrid Annuity) & EPC contracts has been obtained from Ld. Additional Solicitor General of India and based on the same, Executive Committee of NHAI in its 360<sup>th</sup> and 365<sup>th</sup> meetings held on 12.09.2018 and 31.10.2018 agreed in principle to accept the claims received from the Contractors/Concessionaires on account of Change in the Rates of Royalty for Minor Minerals subject to issue of a detailed SOP/Guidelines in this regard.

3. In view of the above, following SOP/Guidelines are being issued after approval of Competent Authority:

#### 3.1 Pre-conditions for validity of claim in respect of DBFOT/ EPC Projects:

(i) Change in royalty rate should be covered under the definition of Change in law and Taxes as provided in the respective Agreement/Contract and should have a direct effect on the Project. The change in royalty rate should have come into force post the Base Date in EPC Projects and post the bid due date in case of DBFOT projects.

(ii) In EPC Projects, the contractor should notify the Authority within 15 days of it becoming 'reasonably aware' of the additional cost due to Change in Law and within 30 days in respect of DBFOT projects by the Concessionaire, along with valid proof that they have suffered an increase in cost with a copy to AE/IE. As per Clause 19.17 of EPC Contract, the additional/reduction cost suffered by the Contractor due to Change in Law shall be examined and certified by the Authority's Engineer within 15 days from the receipt of notice from the Contractor. In respect of DBFOT projects, the increase in cost suffered by the Concessionaire due to Change



in Law (Change in Royalty Rates of Minor Minerals) shall be examined and certified by Independent Engineer, after the Statutory Auditor of the Concessionaire certified the claim and its supporting documents.

**3.2. Documentary requirements/evidences for quantifying claim in DBFOT/EPC Projects:**

- (i) Concessionaire/Contractor has to submit valid proof for change of royalty rates post bid due date (DBFOT)/base date (EPC), i.e.:
  - a) Copy of notification effective on bid due date/base date,
  - b) Revised notification issued post Bid due date/base date citing change in regulation along with the list of minor minerals covered, and
  - c) Proof of payment (like challans in Original) containing the name of the project.
- (ii) In case of DBFOT projects certain threshold parameters are prescribed in the Concession Agreements which reads as under:
  - (a) In case of BOT (Toll), if as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore) and 0.5% (zero point five percent) of the Realisable Fee in any Accounting Year.
  - (b) In case of BOT (Annuity), if as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore) and 2% (two percent) of total annuity payments in any Accounting Year.
  - (c) In case of HAM, if as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore) or 2% (two per cent) of the total Annuity Payments in any Accounting Year (this amount may, in the discretion of the Authority, be suitably increased but in no case exceeding an amount of Rs. 1 Crore for every Rs. 500 Cr. of Estimated Project cost). A similar modification should also be made in clause 35.2 pertaining to reduction in costs.
- (iii) Concessionaire/Contractor will not be entitled to any claim on account of "Price Adjustment" on that portion of claim on which compensation has been sought under Change in law. RO/PD/Authority Engineer/IE shall ensure that there is no duplication of payment of amount on account of increase in rates of minor minerals.

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- (iv) In case of Toll projects where provisional / final Commercial Operations Date has not been announced and the Concessionaire has not started collection of User Fee, the Realisable fee becomes zero and therefore, Rs. 1 Crore (Rupees one crore) in any accounting year shall be used as the threshold parameter for establishing increase in cost. No documentary evidence needs to be produced on the amount of user fee collected.
- (v) In the event of Change in Law in Toll Projects where provisional / final Commercial Operations Date (COD) has been announced and the Concessionaire has started collection of User Fee, the higher of Rs. 1 crore (Rupees one crore) and 0.5% (zero point five percent) of the Realisable Fee in any Accounting Year shall be used as the threshold parameter for establishing increase in cost for which a documentary evidence as per Schedule M has to be provided.
- (vi) To determine the quantities of minor minerals used in executing the Project for which Royalty was paid, the quantities of affected Minor Minerals certified by the IE/AE based on As-built drawings of the Project shall be submitted. In case the concessionaire/contractor has a common quarry for their projects or they supply minor mineral to market/ other projects, then such concessionaire/ contractor shall map the quantities despatched from the quarry site to various projects/market confirming the quantities for project under consideration duly certified by IE/AE.
- (vii) To determine the quantities of work executed Pre and Post issuance of the Notification, change in the rates of Royalty, the actual Construction Schedule of the Project highlighting the quantities, duly certified by Independent Engineer/Authority's Engineer, of affected minerals consumed shall be submitted.
- (viii) The onus of submission of the above details shall lie on the claimant Concessionaire/Contractor so as to ensure that any exaggerated/ misleading claims are not admitted on account of increase in the rates of royalty.
- 3.3 As the royalty is to be deposited with the State Mining Department, PD by providing copies of documents supplied by the concessionaire/contractor (in particular those at Para-3.2 (i) above) get verified from the concerned department on the additional royalty claimed/paid.
- 3.4 After certification of the claim by IE/AE, PD shall examine and take the approval of RO for making payment to the Concessionaire/Contractor.
- 3.5 Hon'ble Supreme Court has framed Nine judges bench for considering the issues risen out from conflicts of Hon'ble Supreme Court's decisions in the matters of India Cement Ltd. v/s. State of Tamil Nadu reported in (1990) and State of West Bengal vs Kesoram Industries Ltd. And Ors(2004) with respect to



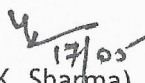
nature of Royalty as a tax or cost of land. Decision in this matter is not yet announced by the Nine Judges Bench of Hon'ble Supreme Court of India and therefore in order to protect the interest of NHAI, pending decision an unconditional Indemnity Bond in favour of NHAI shall be obtained from the Concessionaire/Contractor as security against the amounts of payments made. It is clarified that the amounts so paid shall be finally governed in accordance with the final decision to be delivered by the Hon'ble Supreme Court.

- 3.6 If the project is delayed due to the reason attributable to concessionaire/contractor and the royalty increases during the delayed period of project implementation, then the increased cost is to be borne by the Concessionaire/Contractor.
- 3.7 In case of Contracts with provision(s), different than those mentioned above, the claim for reimbursement of increased costs due to Change in Royalty Rates under Change in Law shall be assessed on a case-to-case basis.

**4. Applicability:** These Policy Guidelines shall be applicable:

- (i) In case of Item rate/EPC Contracts, where final bill is not yet settled & paid and the Contractor is not released from performance under the contracts.
- (ii) In case of BOT/DBFOT/PPP projects (Toll/Annuity/HAM), PCOD/COD is not declared & project has not started generating the revenues;
- (iii) In case of BOT/DBFOT/PPP projects (Toll/Annuity/HAM), where claims have been raised by the Concessionaires before PCOD/COD and these are under consideration of Authority or under litigation (Arbitration/Courts);
- (iv) In case of BOT/DBFOT/PPP projects (Toll/Annuity/HAM), Concessionaire can notify such claims only if it exceeds the threshold parameters prescribed in the Concession Agreements. Further, the threshold amount is to be reduced from the claimed amount for payment by the Authority, as the concessionaire was supposed to absorb the increase in cost to the threshold amount.

5. The Policy circular dated 27.11.2015 (Tech 185/2015) stands modified to the above extent.

  
(V.K. Sharma)  
CGM (Coord& Parl.)

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## Annexure-2

No. NH-24028/22/2020-H -Part (2) (E-212639)

Government of India

Ministry of Road Transport & Highways

(Highways Section)

Transport Bhawan, 1, Parliament Street, New Delhi-110001.

Dated 18<sup>th</sup> April, 2023

To,

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

[Kind Attention: Sh. B.M. Rao, CGM (Finance)]

**Subject: Issues pertaining to Change in Law due to GST and clarification - reg.**

Sir,

Please refer to the NHAI's letter no. NHAI/F&A/GST-2021-22/SM-Vol.-IV(E-92140) dated 02.08.2022 vide which clarification has been sought regarding applicability of threshold limit deduction from notified claim amount.

2. The matter has been examined in the Ministry and it is hereby clarified that as per the relevant clause of the Concession Agreement, the threshold limit shall not be deducted as the Concessionaire has to be placed in the same financial position.
3. This issues with the approval of Secretary (RT&H).

Yours faithfully,



(Sangita Toppo)

Under Secretary to the Government of India

Telephone No. 011-2373907

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Copy to: Sr. PPS to AS (H&LA)/PPS to DS(H)



