

NITI Aayog File



No. 5/3/2016-P&P

भारत सरकार

Government of India

विद्युत मंत्रालय

Ministry of Power

Shram Shakti Bhawan, Rafi Marg, New Delhi – 110001

Dated: 13.12.2019

To,

1. CMD, NTPC / NHPC / PGCIL / SJVNL / THDC / NEEPCO
2. Chairman, DVC

Sub: Initiatives to revive the Construction Sector- Implementation of CCEA decision dated 31st August 2016- regarding.

Sir,

I am directed to refer to this Ministry's letter of even number dated 24.11.2016 forwarding therewith (i) Standard Operating Procedure (SOP) for release of payment to the contractor, (ii) Template for Bank Guarantee (BG) and SOP for Escrow Mechanism for payment of arbitral award and (iii) Prescribed format for providing action taken report to this Ministry, in pursuant to the decision dated 31 August, 2016 of the Cabinet Committee on Economic Affairs on 'Measures to revive the Construction Sector'.

2. In this background, please find attached herewith a copy of NITI Aayog's communication No. N-14070/14/2016-PPPAU dated 28.11.2019 on the above mentioned subject for compliance and necessary action on the subject matter expeditiously.

Encl.: As above.

Yours faithfully,

(Sucheta Sharma)

Assistant Director(P&P)

Tel: 23766531

Email: planning-mop@gov.in

निदेशक (कार्मिक) सचिवालय
विद्युत मंत्रालय, नई दिल्ली
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Office Memorandum

Subject: Initiatives to revive the Construction Sector - Implementation of CCEA decision dated 31 August 2016 - regarding

The Cabinet Committee on Economic Affairs ("CCEA") had, pursuant to a proposal put forward by NITI Aayog, on 31 August 2016 approved various short-term and long-term measures for relieving liquidity constraints in the construction sector. The approved measures *inter alia* include partial (75%) interim payment of challenged arbitral awards by Government Entities to contractors / concessionaires against a bank guarantee. Follow-up instructions to the said CCEA decision were issued vide NITI Aayog O.M. of even number, dated 5 September 2016, and D.O. Letter of even number dated 16 November 2016.

2. Implementation of the CCEA decision has, however, been impeded by insistence on bank guarantee for the interest component on the aforementioned 75%. Resultant of which, the sector continues to be marred by financial stress with ripple effect throughout the financial ecosystem and the broader economy. In view of the above, NITI Aayog placed a proposal before the CCEA for its consideration, suggesting certain measures for the effective implementation of CCEA's decision of 31 August 2016.

3. The CCEA considered the proposal of NITI Aayog in its meeting held on 20 November 2019, and approved the following:

- (i) With respect to arbitral awards decided in favour of the contractors / concessionaires, the concerned Government Entity will take the decision to initiate proceedings for setting aside of the arbitral award, and any appeal(s) thereto, with the opinion of a Law Officer - Attorney-General for India / the Solicitor-General for India / the Additional Solicitor-General for India - in consultation with the Department of Legal Affairs ("DOLA") at the Ministry of Law & Justice as per the procedure laid down in this respect. DOLA is to ensure that the aforementioned process of soliciting and communicating the opinion of Law Officer to the concerned Government Entity is completed within 30 (thirty) days of the receipt of request.
- (ii) In cases where the Government Entity has challenged the arbitral award, and, as a result, the amount of the arbitral award has not been paid, 75% of such award will be paid by the Government Entity to the contractor / concessionaire against a bank guarantee only for the said 75% and not for its interest component. With respect to the interest payable to the Government Entity, should the subsequent court order require refund of the said 75%, payment of the same will be as per the court order, non-compliance of which by the contractor / concessionaire would be

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a contempt of court. And, the concerned Government Entity will have the right to recover the said interest by way of legal/ judicial remedies. In cases where bank guarantee for the interest component has already been submitted by the contractor/ concessionaire, the same will be returned by the concerned Government Entity. Should the court order prescribe a rate of interest, the same will prevail.

(iii) The concerned Ministries shall issue instructions to the respective Government Entities for taking necessary action on the aforesaid measure expeditiously.

4. This is applicable to Government Entities i.e. all Public Sector Undertakings (PSUs) of the Central Government / Autonomous Organisations of the Central Government/ Special Purpose Vehicles (SPV) where 50% (fifty per cent) or more of the paid-up share capital is held by the Central Government / Central Government Departments.

5. The CCEA approved measures as contained in para 3 hereinabove are in continuation of and for the effective implementation of the CCEA decision dated 31 August 2016. NITI Aayog communications in relation thereto (as mentioned in para 1) shall stand modified to the above extent.



(Niraj Singh)
Under Secretary (PAMD)
Ph: 23096766

To:

1. Secretaries of all the Ministries / Departments of Government of India.
2. Shri Anoop Kumar Mendiratta, Secretary, Department of Legal Affairs, Ministry of Law and Justice, Shastri Bhawan, New Delhi 110001.
3. Ms. Rachna Shah, Additional Secretary, Cabinet Secretariat, Rashtrapati Bhawan, New Delhi 110001.
4. Shri Arvind Shrivastava, Joint Secretary, PMO, South Block, New Delhi 110001.

Copy for information to:

1. PS to Vice Chairman / PS to MoS(I/C) / PS to all Members.
2. Sr. PPS to CEO / PPS to Special Secretary.