No.2016/CE-I/CT/ARB/3(NITI Aayog)/Pt. New Delhi, Dt. 08.11.16

To,
As per list attached.

Sub: - Measures to revive the Construction Sector.

Ref. : - NITI Aayog's OM No. N-14070/14/2016-PPPAU dt. 05.0916

Vide their above referred Office Memorandum, NITI Aayog has conveyed the decision taken by the Cabinet Committee on Economic Affairs (CCEA) regarding the 'Measures to revive the Construction Sector'. These measures include provisions related to arbitration and arbitration award such as:

(a) Switching over to the provisions of amended Arbitration Act in old arbitration cases processed under the pre-amended Act and yet to conclude, with the consent of the parties;

(b) Release of 75% of the Arbitral Amount immediately after declaration of Arbitration award against a suitable Bank Guarantee bond.

The matter has been examined in Board's office and Board has approved for implementing the same over Indian Railways. A copy of the above mentioned OM is enclosed for necessary action please.

DA: As above

(As aforesaid)

[Phone:+91-9717647611, e-mail address: dceorb@gmail.com]
LIST FOR DISTRIBUTION

1. General Managers, All Indian Railways & Production Units.
1a. General Manager (Con), N.F. Railway, Guwahati.
1b. General Manager /CORE, Allahabad.
2. Principal Chief Engineers, All Indian Railways.
3. Chief Administrative Officers (Con), All Indian Railways (Except N.F. Railway)
4. FA&CAOs/ All Indian Railways.
5. Chief Vigilance Officers, All Indian Railways.

Copy to:

(A)
1. CAO/CAO(R), COFMOW, Tilak Bridge, New Delhi.
2. CAO/CAO(R), Diesel Locomotive Works, Patiala (Punjab).
3. CAO, Rail Coach Factory/Rae Bareli Project, Kishanganj, Delhi -110007.

(B)
1. Director General, RDSO, Manak Nagar, Lucknow.
2. Director General, Railway Staff College, Vadoada
3. Director, IRTCEN, Rail Path, Pune - 411 001 (Maharashtra).
4. Chief Commissioner of Railway Safety, Ashoka Road, Lucknow.

(C)
1. MD, DMRC, Metro Bhawan, 13, Fire Bridge Lane, Barakhamba Road, New Delhi- 110 001,
2. MD, CONCOR, Concor Bhawan, C-3, Mathura Road, Opp. Apollo Hospital, New Delhi- 110076.
3. IRCON International Limited, C-4, District Centre, Saket, New Delhi- 110017
4. MD, RITES Ltd., RITES Bhawan, Plot No.1, Sector-29, Gurgaon.
5. MD, RVNL, August Kranti Bhawan, Plot No.25, 1st Floor, Bhikaji Cama Place, New Delhi.
6. MD, MRVC Ltd., Churchgate Station Bldg, Mumbai- 400020
7. MD, KONKAN Railway Corporation Ltd, Rail Bhawan, New Delhi-110001.
8. MD, DFCCIL, 5th Floor, Pragati Maidan Metro Station Building Complex, New Delhi-110001
9. MD, RLDA, Near Safdarjung Railway Station, Moti Bagh, Phase-I, New Delhi- 110021
10. MD, CRIS, Chanakyapur, New Delhi.
11. CMD, RailTel Corporation of India Ltd, Plot No. 143, Institutional Area, Sector-44, Gurgaon - 122003.
12. RCF, Rae Bareilly, Kishan Ganj, Delhi-110007.
13. CME, IROAF, 12th Floor, Core-1, Scope Minar, Distt. Centre, Laxmi Nagar, Delhi- 110092
14. CAO (Workshop Projects), Chamber Bhawan, Judge’s Court Road, Anta Ghat, Patna-800001, Bihar.

Copy to:
ME, M(Tr.), M(RS), FC, DG(S&T), DG(RS), AM(CE), AM(Works), AM(B), AM(Elec.), AM(RS), Adv(Projects), Adv.(L&A), Adv(Bridges), EDC(E), EDC(E), EDTK(M), EDTK(MC), EDTK(P), EDC(E&PS)-I, EDC(E&PS)-II, EDF(X)-I, EDF(X)-II, ED(Works), ED(W(P)), ED/Project(Mon.), ED(L&A)-I, ED(L&A)-II, ED(L&A)-III, ED(PSU).
Office Memorandum

Subject: Measures to revive the Construction Sector – reg.

The construction sector has been facing a number of problems, mainly arising from the liquidity constraints caused on account of their payments not being released by the Government Departments/ Public Sector Undertakings (PSUs) pursuant to the arbitral awards. To discuss the problems of the construction sector, detailed deliberations/ consultations were held with the representatives of the construction industry, banks, major government PSUs and concerned Ministries/ Departments. Based on the above deliberations/ consultations, the NITI Aayog placed a proposal before the Cabinet Committee on Economic Affairs (CCEA) for its consideration suggesting various short-term and long-term measures required for addressing the issues ailing the construction sector. The CCEA, chaired by the Hon’ble Prime Minister, has considered the proposals of NITI Aayog in its meeting held on 31st August 2016 and approved the same for the revival of construction sector.

2. Accordingly, following instructions are hereby issued for compliance and necessary action by all concerned i.e. the Government Departments/ Ministries/ Public Sector Undertakings awarding the public contracts/ implementing various projects involving construction activities:

2.1 In case of contracts/ concessions where the process of arbitration was initiated under the pre-amended Arbitration Act, the PSUs/ Departments may seek the consent of the contractors/ concessionaires to transfer the pending cases under the amended Arbitration Act, wherever possible. The shift to amended Arbitration Act is expected to make the arbitration process more cost effective and help in settlement of the disputes in a timely manner;

2.2 In case of claims where the PSU/ Department has challenged the Arbitral Award already announced, 75% of the award may be paid by the PSU/ Department to the contractor/ concessionaire against Bank Guarantee without prejudice to the final order of the Court in the matter under challenge. The payment may be made into a designated Escrow Account with the stipulation that the amount so released will be used, first, for payment of lenders’ dues, second, for completion of the project and then for completion of other projects of the same PSU/ Department, as mutually agreed/ decided. Any balance remaining in the escrow account subsequent to settlement of lenders’ dues and completion of projects of the PSU/ Department may be allowed to be used by the contractor/ concessionaire with the prior approval of
2.3 In case the subsequent court order requires refund of the money paid by a PSU/Department against a Bank Guarantee, the amount shall be refunded by the contractor/concessionaire along with appropriate interest. The rate of interest on such refund amount may be decided by the PSU/Department keeping in view the cost of capital to the PSU/Department or the rate of interest provided for in the Contract Agreement or the rate of interest awarded under the Arbitral Award under challenge.

Notes:

(i) For Departments, cost of capital shall be taken as Weighted Average Coupon rate of outstanding stock of Central Government securities for the period ending in the preceding quarter, or Weighted Average Coupon rate of Central Government securities issued during the preceding quarter (whichever is higher);

(ii) PSUs shall either calculate their own cost of capital or take State Bank of India’s One Year Marginal Cost of fund-based Lending Rate plus 2%;

(iii) The appropriate interest rate on such refund shall be decided at the time of releasing funds to the Escrow Account;

(iv) If otherwise eligible and subject to contractual provisions, retention money and other amounts withheld may also be released against bank guarantee as per the laid down criteria.

3. All the concerned Ministries/Departments shall also issue instructions to their respective PSUs for taking necessary action accordingly.

(A. Muthuvezhappan)
Director (PPPAU)

To

1. Secretaries of all the Ministries/Departments of Government of India.
2. Chairpersons/ CMDs/ MDs of all the Central Government PSUs.
3. Chairpersons/ CMDs/MDs/CEOs of all the Scheduled Commercial Banks.
5. Shri Alok Tandon, Additional Secretary, Cabinet Secretariat, Rashtrapati Bhavan, New Delhi – 110001.
6. Dr. T. V. Somanathan, Joint Secretary, PMO, South Block, New Delhi – 110001.

Copy for information to:

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