

No.F.1/7/2022-PPD(III)
Government of India
Ministry of Finance
Department of Expenditure
Procurement Policy Division

264-C, North Block, New Delhi
05.01.2024

To

Shri Santosh Kumar Yadav
Chairman,
National Highways Authority of India,
NHAI Headquarters
G 5&6, Sector-10, Dwarka, New Delhi-110 075
Email: chairman@nhai.org

Subject: Vivad Se Vishwas II (Contractual Disputes) – Clarification reg.

Sir,

I am directed to refer National Highways Authority of India (NHAI) vide letter No. NHAI/ Legal&Arb/ VivadSeVishwasTak-II (ContractualDisp) /2023/ 4/ 02 dated 01.01.2024 requesting clarification on calculation of settlement amount in a specific claim under VSV-II Scheme.

2. The reference has been examined and as per the facts provided by NHAI, the contractor is entitled for:

- (a) 85 % of the net amount awarded, in terms of para 10 (a) of the scheme. Net award amount shall be the award amount calculated as on the date of last court award. In this case, as the court has not interfered with the arbitral award, the net award amount as on date of last court award shall be equal to arbitral award amount + pre award interest as indicated in the arbitral award + post award interest indicated in the arbitral award upto the date of last court award.
 - (b) Pre award interest upto the date of last court award (award of the competent court approached under Section 37 of the Arbitration and Conciliation Act, 1996.) shall be as per the court award. In this case, as the court has not interfered with the arbitral award. Hence, the interest upto date of last court award shall be as per the pre and post award interest indicated in the arbitral award.
 - (c) Simple Interest at the rate of 9% from date of court award till date of acknowledgement email, as per scheme.
3. The above clarification have been explained in the following illustration:

Arbitral award dated 01.01.2020.	Rs. 100 crore + pre award interest @ 10% per annum from 01.01.2016 + post award interest @ 15% per annum from 01.03.2020 till the date of payment. Challenged under section 34 of the Act.
Court Award under section 34, of the Arbitration and Conciliation Act (refer to as Act), dated 01.10.2020	Court refused to interfere in the arbitral award. Challenged under section 37 of the Act.
Court Award under section 37, of the Act, dated 01.12.2021	Court refused to interfere in the arbitral award. Challenged before the Supreme Court.
Calculation of settlement amount as per the scheme	
Relevant award for the scheme	Court Award under section 37, of the Act, dated 01.12.2021. Hence, the case is covered under 10 (a) of the scheme and is eligible for 85% of the net award amount.
Relevant date for calculating net award amount	Date of Court Award under section 37, of the Act, i.e. 01.12.2021
Net Award amount as on 01.12.2021 (D)	Since, the arbitral award has not been interfered by the court the amount shall be calculated as per the arbitral award. A = Arbitral award amount = Rs. 100 crore B = Pre arbitral award interest = 10% per annum from 01.01.2016 to 01.01.2020 (date of arbitral award) C = Post arbitral award interest = 15% per annum from 01.03.2020 to 01.12.2021 (date of last court award). D = A+B+C
Settlement amount as per the scheme	85% of (D) + interest @ 9% on (D) as per scheme. In case court indicates the timeframe for release of payment, calculation of 9% interest shall be as per the so ordered timeframe. If the court has not indicated any timeframe for release of payment 9% interest shall be calculated from 30 days after the date of last court award, as per the scheme.

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6/1/2024

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