



October- December 2022

This JSA Highways & Logistics Newsletter focuses on key developments undertaken in the Indian roadways and logistics sector for the period between October – December 2022.

## **Ministry of Road Transport and Highways (“MoRTH”) extends relief measures to contractors on account of COVID**

MoRTH issued a circular dated December 1, 2022 extending certain relief measures, available to the contractors/developers of hybrid annuity model/engineering, procurement and construction (“HAM/EPC”) projects in the road sector, until March 31, 2023.

The relief measures which have been made available to the contractors/ developers until March 31, 2023 include:

1. The conditions specified in Schedule G/H of the relevant HAM/ EPC contracts, which specifies the release of portion of contract price for different stages of construction, will continue to remain relaxed and payments will be released to the contractor/ developer on a monthly basis for the work completed in the relevant month as per specifications.
2. Direct payments to the approved subcontractors by the competent departmental authority will continue to be made for the works completed by such subcontractors and wherever the competent authority is of the view that such direct payments are required for the early completion of works.
3. Performance security will remain reduced from 5-10% to 3% of the value of the contract for all existing contracts (excluding the contracts under dispute wherein arbitration/court proceedings have already been started or are completed). All tenders /contracts issued/ concluded till March 31, 2023 will have a reduced performance security value. However, as per the circular, to ensure quality of work being executed, the project executing agencies have been advised to ensure that in case of abnormally low bids, additional performance security is realized as per the latest guidelines provided by Department of Expenditure, Ministry of Finance.

The circular clarifies that retention money is a part of the Performance Security till construction period. Hence, release of retention money may be continued in proportion to the work already executed and no reduction of retention money may be made from the bills raised by the Contractor till March 31, 2023. The circular states that for HAM/BOT contracts, performance guarantee may be released on pro-rata basis, as provided in the contract, if concessionaire is not in breach of the contract.

## **Launch of the first-ever 'Surety Bond Insurance' for infrastructure projects**

On December 19, 2022, the Union Minister for Road Transport and Highways, Shri Nitin Gadkari launched India's first ever surety bond insurance. The insurance proposes to insulate the contractor as well as the principal. The surety bond insurance will act as a risk transfer tool for the principal and shields the principal from the losses that may arise in case the contractor fails to perform their contractual obligation. In case the contractor doesn't fulfil the contractual terms, the principal can raise a claim on the surety bond and recover the losses they have incurred. Unlike a bank guarantee, the surety bond insurance will not require a large collateral from the contractor thus freeing up significant funds for the contractor which will also help in reducing the contractors' debts to a large extent thus addressing their financial worries.

## **NHAI commences acceptance of electronic bank guarantees**

On November 2, 2022, it was announced that the National Highways Authority of India ("NHAI") would be accepting Electronic Bank Guarantees (E-BGs) and has also digitalized all its existing Bank Guarantees. NHAI is utilizing the E-BG services of National e-Governance Services Limited (NeSL), which facilitates reduction in physical paper movement, elimination of physical storage needs and easy access for Bank Guarantee life cycle events like invocation, renewal and closure. It was announced by MoRTH that few E-BGs have already been issued by the banks in favour of NHAI.

## **First Multi Modal Logistics Park (MMLP) awarded to private player**

On November 12, 2022, the first Multi Modal Logistics Park ("MMLP"), located in Chennai, was awarded to Reliance Industries Limited. MMLPs are being developed by MoRTH on public private partnership ("PPP") mode and forms an integral part of the PM Gati Shakti National Master Plan ("NMP") which is aimed at improving multi-modal connectivity and providing last mile connectivity across India. The estimated project cost for the Chennai MMLP is INR 1,424,00,00,000 (Indian Rupees one thousand four hundred and twenty four crores) and the total concession period is 45 (forty five) years.

The Chennai MMLP will be developed in 3 (three) phases with investment of INR 783,00,00,000 (Indian Rupees seven hundred and eighty three crore) during Phase-1 development targeted within 2 (two) years i.e., by 2025 leading to commercial operations. MMLP at Chennai will be strategically located at approximately 52 (fifty two) km from Chennai Port, 80 (eighty) mm from Ennore Port, 87 (eighty seven) km from Katupalli Airport and will be a focal point of logistics in the southern region.

The Government of India seeks to build 15 (fifteen) MMLPs within the next 2 (two) years. Under the National Logistics Policy (NLP) and NMP, the government wants to bring down logistics costs to under 10% of the GDP in a bid to make exports competitive and supply chains more efficient.

Presently, the nodal agency of MoRTH, National Highways Logistics Management Limited, which is responsible for awarding the construction of MMLPs to private players on PPP mode, has issued tenders for the development, operation and maintenance of MMLPs at Bangalore, Indore and Nagpur.

## **Funding Support for structuring quality PPP Projects under IIPDF Scheme**

The Department of Economic Affairs, Government of India, on November 3, 2022, notified the India Infrastructure Project Development Fund ("IIPDF") whereby financial support will be provided by Government of India to project sponsoring authorities who are looking to implement PPP projects. The IIPDF has been created with the initial corpus of INR 100,00,00,000 (Indian Rupees one hundred crores) and will be in addition to the already operational IIPDF Scheme for Financial Support to PPPs in Infrastructure (VGF Scheme).

The IIPDF Scheme will look to cover certain costs associated with PPP projects, such as cost of consultancy and transaction advisors, being appointed by the project sponsoring authority

## **Electric Vehicle Charging Stations on National Highways**

On December 14, 2022, the Minister of Road Transport and Highways, Mr. Nitin Gadkari, in a written reply before the Rajya Sabha, provided an update that the Government of India has provisioned for and approved 137 (one hundred and thirty seven) electric vehicle (EV) charging stations to be installed at wayside facilities on national highway stretches.

This follows the announcement in February 2021, that all wayside amenities sites developed along national highways would mandatorily have to provide for EV charging facilities. As per the Government of India, as on December 2022, there are 7 (seven) operational wayside amenity facilities which are equipped with EV charging stations.

## **First Pilot Project for Flexi-Fuel Strong Hybrid Electric Vehicles (FFV-SHEV)**

The Minister of Road Transport and Highways, Mr. Nitin Gadkari, had in December 2021 advocated for automobile OEMs to start manufacturing Flex Fuel Vehicles ("FFV") and Flex Fuel Strong Hybrid Electric Vehicles ("FFV-SHEV") complying with BS-6 Norms. Mr. Gadkari had sought the manufacture of FFVs and FFV-SHEVs in a time bound manner within a period of 6 (six) months. FFVs are those vehicles which can run on a combination of 100% petrol or 100% bioethanol and their blends. According to Mr. Gadkari, adopting FFVs and FFV-SHEVs will enable India to reduce import of petroleum as fuel and also boost the agriculture sector as farmers can be incentivized to produce surplus foodgrain and sugar which can be converted to ethanol.

On October 11, 2022, the first of its kind pilot project on Flexi-Fuel Strong Hybrid Electric Vehicles (FFV-SHEV) in India was launched by Toyota in the presence of Mr. Gadkari. Under the pilot project, the vehicles produced would be capable of running on 100% petrol as well as 20 to 100% blended ethanol and electric power. At the launch, Mr. Gadkari reiterated that going forward there would have to be a 6 to 8% increase in agricultural growth rate so as to ensure that there would be surplus foodgrain and sugar which can then be converted into ethanol.

### **Highways & Logistics Practice**

In the highways sector, JSA provides end to end assistance to its clients in all aspects of development and operations including but not limited to setting up of green field projects and documentation in respect thereof such as joint venture agreements, shareholders agreements, foreign direct investment approvals, project financing, EPC contracts, O&M contracts, vetting of tender documents including review of concession agreements and regulatory issues including competition, licensing and tariff matters before various regulatory fora.

JSA advises clients on across the spectrum of contractual, commercial, policy, regulatory and legal issues at all stages of the value chain in the logistics sector – infrastructure such as roads, railways, inland waterways, aviation, ports, and logistics parks, as well as services such as transportation, cold chain facilities, and warehousing. JSA has been regularly engaged in: advising project developers, investors, suppliers and contractors on commercial/ transactional issues, advising financial institutions and borrowers in relation to financing transactions and dispute resolution (including arbitration, litigation and representation before various judicial fora).

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