

July- September 2023

This JSA Highways & Logistics Newsletter focuses on key developments undertaken in the Indian roadways and logistics sector between July- September 2023.

MoRTH amends the User Fee notification in place for National Highways

The Ministry of Road Transport and Highways (“**MoRTH**”) on October 6, 2023, issued a notification amending Rule 6 (6) (b) of the National Highways Fee (Determination of Rates and Collection) Rules, 2008, as amended from time to time (“**NHAI Fee Rules**”).

As per the existing Rule 6 (6) (b) during the period of concession under a concession agreement the user fee will be levied as notified under the concession agreement and after the concession period is over, the fee is collected by the Government of India or its executing authority at a reduced rate of 40% of the fee being levied under the concession. The reduced fee is applicable from the date of transfer of national highway, bridge, tunnel or bypass, as the case may be, from the concessionaire to the government.

However, as per the notification, after the concession period is over, the fee which will be collected by the Government of India or its executing authority will be as per the fee prescribed under the NHAI Fee Rules and there will be no automatic reduction of the user fees to 40% of the fee being levied under the concession.

The same will be applicable for a publicly funded project where previously the position for such publicly funded projects was that after the recovery of capital cost through realized user fee, the fee leviable would be reduced to 40% of the notified user fee for such section of national highways, bridge, tunnel or bypass as the case may be.

Source: [**Notification dated October 6, 2023**](#)

MoRTH issues circular clarifying process to be followed for determination, levying and collecting user fee

On July 6, 2023, the MoRTH issued a circular clarifying that as per an earlier guideline issued on November 2, 2018, wherein it had stated that fee plazas must be established and located in accordance with Rules 8 (1) and 8 (2) of the NHAI Fee Rules.

The circular states that it had come to the notice of the MoRTH that in majority of fee notification proposals received by it, relaxation from distance criteria prescribed under the NHAI Fee Rules is being proposed with ex-post facto approval by Head of Executing Authority i.e., Chairman for National Highways Authority of India (“**NHAI**”), Director General (RD) & SS for Road Wing.

MoRTH has come down on this practice strongly and has stated that any deviation from the norms prescribed under Rules 8 (1) and 8 (2) under NHAI Fee Rules from the competent authority solely at time of detailed project report (DPR) acceptance/land acquisition stage itself especially for projects at planning/to be bid stage.

Source: [Circular dated July 6, 2023](#)

NHAI subsidiary signs Agreement to Develop Multi Modal Logistics Park at Bengaluru

NHAI, the wholly owned subsidiary of National Highways Logistics Management Limited (“NHLML”) have executed a concession agreement for the development of a Multi Modal Logistics Park (“MMLP”) in Bengaluru on a public private partnership basis mode under the Design Build Finance Operate Transfer (“DBFOT”) model. The concession is granted for a period of 45 (forty five) years. The concession agreement has been signed by the executing special purpose vehicle (“SPV”) of the Government of India, namely Bengaluru MMLP Private Limited and the concessionaire named PATH Bengaluru Logistics Park Private Limited on September 18, 2023. The government SPV is owned jointly by NHLML, Rail Vikas Nigam Limited and Karnataka Industrial Area Development Board (“KIADB”).

The MMLP is proposed to be developed at an estimated cost of INR 1,770 crore (Indian Rupees one thousand seven hundred and seventy crore) and is advantageously situated adjacent to the upcoming KIADB industrial area on East side, abutting the NH 648, Dabbaspet to Hosur as well as Satellite Town Ring Road on North side and Bengaluru – Hubli – Mumbai rail line on South side. The MMLP is located at a distance of 58 (fifty eight) km from Bengaluru Airport and 48 (forty eight) km from Bengaluru city railway station.

The MMLP is proposed to be developed in three phases with Phase 1 proposed to be completed in the next 2 (two) years. This MMLP will be able to handle 30 (thirty) million metric tonnes of cargo by the end of the concession period and is the first MMLP which will be developed under the aegis of the PM Gati Shakti Master Plan.

Source: [PIB](#)

NHAI issues SOPs for implementation of Government’s Vivad se Vishwas II (Contractual Disputes) Scheme

The Department of Expenditure, Ministry of Finance, Government of India on May 29, 2023, launched the Vivad se Vishwas II – (Contractual Disputes) Scheme (“Scheme”). Under this scheme, depending on the category of contractual disputes and the stage of the dispute which has arisen between government entities and the private contractor, the government will pay a one time settlement amount to the private contractor on the fulfillment of certain conditions and as per the procedure prescribed under the scheme.

On July 4, 2023, the NHAI issued standard operating procedures (“SOPs”) for implementation of this scheme in the roads sector. As per the SOPs, the following have to be complied with:

1. Registered contractors of NHAI will submit the eligible disputes on the Government e-Marketplace (“GeM”) portal. GeM will notify NHAI of the contractor's submission.
2. Disputes where the award by the court or arbitral tribunal is solely for monetary value will be eligible for settlement under the Scheme. In case the award stipulates specific performance of contract (either fully or partially); such awards will not be eligible for settlement under the Scheme.
3. Where the claimed amount by the Contractor is up to INR 500,00,00,000 (Indian Rupees five hundred crores), technical division of NHAI will evaluate the settlement amount within 1 (one) week and the same will be forwarded to the general manager (Finance) for concurrence. The general manager (Finance) will examine the evaluation by technical division, including interest and taxes and forward the same to the concerned member through member (Finance) within 3 (three) days and the settlement amount will be determined by Member (Finance).
4. In case the claimed amount exceeds INR 500,00,00,000 (Indian Rupees five hundred crore), technical division will have an option to accept/ reject the settlement request of the contractor, only with the approval of Executive Committee, NHAI.

5. Contractor will accept or otherwise, the offer within 30 (thirty) days of the offer being uploaded by NHAI on GeM. Immediately upon acceptance of the offer by the contractor, an acknowledgement through email will be automatically generated and sent to both the parties from GeM. Once the offer is accepted by the contractor and the e-mail is generated, NHAI cannot amend or withdraw the offer. If the contractor does not accept the offer, the ongoing litigation may continue.
6. Thereafter, post acceptance of offer, depending upon the person who has filed the case, either NHAI or the contractor will make an application and withdraw ongoing court case or litigation, if any.
7. The contractor will submit the court document indicating permission to withdraw the case within 45 (forty-five) days of generation of e-mail from GeM. On submission of the same settlement agreement will be signed within 30 (thirty) days. The format of the settlement agreement is annexed with the SOP.

Source: **SOP issued by NHAI dated July 4, 2023**

NHAI issues circular descopeing the construction of wayside amenities from scope of work of a road contractor

NHAI issued a circular dated July 5, 2023, declaring that the construction of wayside amenities is not to be included in scope of road contractor (EPC/HAM/BOT¹ projects) for Greenfield Expressways and Brownfield National Highway Projects. The construction of boundary wall, approach road, levelling/filling will only be included in the scope of the road contractor.

The circular also issues certain standard operating procedures in this regard:

1. No construction will be included in the scope of road contractor across Greenfield Expressways and Brownfield National Highways for wayside amenities except construction of boundary wall, approach road and levelling/filling.
2. In case, construction of wayside amenities is in scope of road contractor and development work is not started and at initial stage, the same will be de-scoped from the contract.
3. The work of wayside amenities will be stopped immediately for sites where work is started. In these cases, committee is constituted to visit the site and assess the site condition in next 30 days and assess the feasibility of de-scoping and amount of work already carried out by road contractor or continuation as per the scope of the road contractor, in case deletion is inevitable.

Source: **NHAI Circular dated July 5, 2023**

NHAI enters into MoU with GAIL in relation to right of way for gas pipelines on national highways

NHAI has entered into a Memorandum Of Understanding (“MoU”) with GAIL India Limited (“GAIL”) on August 3, 2023. Under the MoU both NHAI as well as GAIL have recorded certain obligations in relation to existing gas pipelines as well as new pipelines which are proposed to be laid down and established on national highways.

Some of NHAI’s key obligations under the MoU include:

1. In case the alignment of a National Highway crosses an already laid hydrocarbon pipeline, NHAI will construct portal structures over the existing pipeline or cause shifting of such operating pipelines at NHAI's cost under supervision of GAIL, if such lines obstruct the construction of the National Highway.

¹ Please provide the full form.

2. In case of new pipelines, NHAI will issue a no objection certificate (“**NOC**”) to lay down hydrocarbon pipelines within 60 (sixty) days from the formal application by GAIL. Beyond this period of 60 (sixty) days, the NOC will stand issued.
3. NHAI will not levy any charges from GAIL and its agencies for laying new gas/petroleum pipeline(s) along or across National Highways in national highways land.
4. NHAI will obtain performance security from GAIL before issuance of permission for laying natural gas/ LPG/ hydrocarbon pipelines along and across national highways on national highways land.

Some of the key obligations of GAIL under the MoU are as follows:

- a) Wherever, the alignment of a national highway crosses an already laid hydrocarbon pipeline GAIL will allow NHAI to either construct portal structures over the existing pipeline or cause shifting of such operating pipelines at NHAI's cost under supervision of GAIL.
- b) GAIL will not levy any charges on NHAI for constructing national highways over their already laid hydrocarbon pipelines.
- c) GAIL will obtain insurance cover from NHAI before permitting construction of national highways over existing hydrocarbon pipelines.
- d) GAIL will issue NOC to NHAI whenever under construction National Highway crosses over an already laid hydrocarbon pipeline(s) within 60 (sixty) days from the date of formal application by NHAI. Beyond this period of 60 (sixty) days, it is understood that the NOC stands issued unless and until any communication is not established by GAIL or any document submission as per GAIL's requirement is not pending from NHAI.
- e) GAIL will bear all cost for laying of new pipeline along or across existing national highway land.
- f) GAIL will inform NHAI regarding crossing of GAIL's pipeline on national highways during the land acquisition stage to expedite the crossing related formalities.

Source: [**MoU executed between NHAI and GAIL dated August 3, 2023**](#)

MoRTH extends date for mandatory testing of Transport Vehicles through Automated Testing Stations

The Ministry of Road Transport and Highways (“**MoRTH**”) on September 12, 2023, issued a notification providing for an extension of the date of mandatory testing of transport vehicles through Automated Testing Stations which have been registered under Rule 175 of the Central Motor Vehicle Rules, 1989, with the new date of mandatory testing solely through Automated Testing Stations now being October 1, 2024.

Initially, MoRTH had notified that the date for mandatory testing through automated testing stations: (i) for heavy goods vehicles/heavy passenger motor vehicles would be effective from April 1, 2023; and (ii) for medium goods vehicles/medium passenger motor vehicles and light motor vehicles (Transport) would be effective from June 1, 2024.

Source: [**Notification dated September 12, 2023**](#)

Clarification related to levy of fee/passenger tax/border tax from tourist vehicles

The MoRTH has issued a clarification *vide* circular dated August 4, 2023, whereby it has been clarified that states and union territories should refrain from levying additional taxes in the form of passenger tax/border tax/check post tax from tourist vehicles which are plying with a registration under All India Tourist Vehicles (Permit) Rules, 2023.

The MoRTH has stated that All India Tourist Vehicles (Permit) Rules, 2023 were made with the objective of seamless and hassle-free movements of tourist vehicles, registered under the aforesaid rules, across the country on the strength

of permit issued after making the payment of fee prescribed under the All India Tourist Vehicles (Permit) Rules, 2023. Therefore, apart from the fees prescribed under the rules, no additional border tax/ check post tax should not be imposed by states and union territories.

Source: [Circular dated August 4, 2023](#)

MoRTH issues guidelines for provision of signages on national highways and expressways

The MoRTH on July 20, 2023 issued guidelines for provision of signages on both national highways and the expressways.

As per the guidelines the road signages on national highways will have to follow Indian Road Congress (“IRC”): 67 Code of practice for road signs, IRC: 35 Code of Practice for Road Markings and Clause 800: traffic signs, markings and other appurtenances in MoRTH - Specifications for road and bridge works. The guidelines also contain certain provisions for better visibility and understanding of the road users on national highways which superseding all codal provisions/guidelines issued till date and it has been mandated that the guidelines must be followed in addition to all other provisions of IRC: 67, IRC: 35 and Clause 800 etc.

The guidelines categorize signages into 3 (three) categories namely mandatory/ regulatory signs, cautionary/warning signs and informatory/guide signs. The guidelines specify the types of signs to be installed mandatorily in national highways under each of these categories as well as the size and dimensions to be followed while installing each such sign. Illustrations of the same have also been provided under the Guidelines and the same may be viewed in the link below.

Source: [Guidelines for provision of signages dated July 20, 2023](#)

NHAI Launches ‘Rajmargyatra’ app

NHAI on August 3, 2023, has launched the *Rajmargyatra* mobile application which will provide travelers with comprehensive information on Indian National Highways while also offering an efficient complaint redressal system.

The key features of the mobile application will include:

1. One-stop repository of essential information including real-time weather conditions, timely broadcast notifications and access to details about nearby toll plazas, petrol pumps, hospitals, hotels, and other essential services that ensure a seamless and safe journey on the National Highways.
2. Over speeding notifications and voice-assistance to encourage responsible and safe driving.
3. The mobile application will integrate its services with various bank portals, allowing users to recharge their FASTags, avail monthly passes, and access other FASTag-related banking services.
4. Users of the mobile application will be able to report and complain about highway-related issues by attaching geo-tagged videos or photos for better clarity. The registered complaints will be handled in a time-bound manner, with system-generated escalations to higher authorities in case of any delays. Users can also track the status of their grievances for complete transparency.

Source: [PIB](#)

MoRTH issues guidelines for the grant of permission for construction of access to fuel stations, wayside amenities.

The MoRTH on August 21, 2023, issued clarification-cum-amendment to the Guidelines / Norms for grant of permission for construction of access to fuel stations, wayside amenities, connecting roads, other properties, rest area

complexes and such other facilities which were originally issued on June 20, 2020, and amended from time to time (“**Wayside Amenities Guidelines**”).

As per the clarification/ amendment issued, the following are the key clarifications to the Wayside Amenities Guidelines:

1. It has been clarified that any changes in internal configuration of the fuel outlet such as number of fuel dispensing units, installation of electric vehicle charging stations/CNG/LNG/Biofuel etc. filling units will not lead to relaxation of norms which were laid down in the Wayside Amenities Guidelines and will also not require approval of Highway administration.
2. As per the Wayside Amenities Guidelines, after payment of a prescribed fee for provisional permission to establish fuel stations, wayside amenities, etc., the applicant has to submit an online application along with certain supporting documents to the prescribed authority. It has now been clarified that documents/clarifications/comments will be sought by the prescribed authority and highway administration from the applicants only once and seeking documents/clarifications/ comments multiple times must be done away with.
3. As per the Wayside Amenities Guidelines, in case any relaxation is required in the Wayside Amenities Guidelines, the same may be granted with the approval of MoRTH. The amendment streamlines the process with the following:
 - a) Permission for access to proposed retail outlets and other commercial establishments will be processed by concerned PIU/NH Division and sent to Regional Officer of MoRTH/NHAI/ National Highways & Infrastructure Development Corporation Limited (“**NHIDCL**”). The Regional Office will process the case and send it to the concerned Chief Engineer/ Chief General Manager/ Executive Director for recommending to Additional Director General, MoRTH/Member (NHAI)/Director (T), NHIDCL.
 - b) Proposals of relaxation cases recommended by the Regional Office will be supported with Road Safety Audit 1 (one) km on either side of the highway. The proposal will also include (1) remedial measures for mitigating the road safety issues; (2) undertakings for meeting the related cost; and (3) all supporting drawings. The proposals submitted by the Regional Office will be examined for road safety issues by concerned Chief Engineer/ Chief General Manager/ Executive Director and recommend to concerned Additional Director General, MoRTH/Member (NHAI)/ Director (T), NHIDCL for approval.
 - c) The proposal recommended at the level of Additional Director General, MoRTH/ Member (NHAI)/ Director (T), NHIDCL will be submitted to Highway Administration Cell of MoRTH for seeking permission from the competent authority
 - d) In cases involving the NHAI/ NHIDCL, the proposal seeking relaxation to the Wayside Amenities Guidelines will be routed through AS (H)/Joint Secretary (NHIDCL) in MoRTH dealing with the matters of NHAI or NHIDCL, as the case may be. In case of State Public Works Departments the proposal will be routed to Highway Administration Cell through Chief Engineer of the concerned zone.
 - e) The clarification also makes it clear that a request for relaxation from the Wayside amenities Guidelines will not be considered in the following cases will not be considered unless separate service road is constructed and related costs such as land acquisition, service road and properly designed junction improvement, as per IRC standards, is borne by the applicant: (1) Distance of any intersection with any category of road and median gap is less than 300 (three hundred) meters in rural stretch and 100 (one hundred) meters in urban/mountainous stretches; and (2) Distance of outlet from barriers/toll plaza and railway level crossing is less than 1000 (one thousand) meters in rural and urban/mountainous stretches

The remaining clarifications and amendments may be perused in the link provided below.

Source: [**Clarification/ Amendment issued by MoRTH dated August 21, 2023**](#)

ADB and India sign loan agreement to upgrade highways in Bihar

On July 27, 2023, the Government of India and the Asian Development Bank (“ADB”) signed a loan of value of \$295,000,000 (US Dollars two hundred and ninety five million) to upgrade approximately 265 (two hundred and sixty five) kilometer state highway stretch in Bihar and make such highways climate and disaster resilient design, and include road safety elements.

The ADB’s financial assistance will also be used to strengthen Bihar State Road Development Corporation’s (“BSRDC”) capacity as well as enhancing systems for road planning and safety in the state of Bihar.

Among the measures to strengthen BSRDC, development of a road asset management system will be looked into, and this will include providing climate change and disaster risk information. There will also be a plan to establish research laboratories in the Bihar Road Research Institute to enable the use of reusable and sustainable materials. The financing will also be used for creation of guidelines for gender-inclusive practices in road safety measures.

Source: [PIB](#)

MoRTH issues circular on usage of fly ash for highway construction

MoRTH *vide* circular dated September 26, 2023 has interpreted notifications from time to time issued by the Ministry of Environment, Forests and Climate Change (“MoEFCC”), regarding the mandatory usage of fly ash from for construction of embankments and approaches of National Highways. Basis the interpretation provided by MoRTH, usage of fly ash in constructing embankments and approaches of National Highways, in case of thermal power plants located in a 300 (three hundred) kilometer radius from the highway project, will not be mandatory only in the following cases:

1. A ‘No Availability Certificate’ is obtained from the thermal power plants situated within a 300 (three hundred) kilometer radius; or
2. The Chief Engineer (Design) or Engineer-in-Chief, i.e., Highest Technical officer of NHAI/MoRTH/NHIDCL/ Public Works Departments/ Border Roads Organization (“**Authority**”) approves a deviation from usage of fly ash.

In case of (2) above:

1. The contractors of the Authority will make arrangements for alternate material for embankment construction; and
2. The contractors to carry out due diligence at bid stage regarding availability of fly ash from the nearby thermal power plants and will take into consideration that in case of non-availability of fly ash from thermal power plants, the Authority will permit use of alternate material such as soil, sand, etc. which has to be arranged solely by the bidder/contractor for construction of embankment and/or approaches to the structures with the Authority not bearing the cost of such alternate material.
3. The non-availability of fly ash to the projects or inadequate supply of fly ash to the project will be considered as non-political event under force majeure clause of the contract between the contractor and the Authority and both parties will not have any claim on each other on this account.

Source: [Circular dated September 26, 2023](#)

MoRTH issues guidelines for improving mountainous road infrastructure

MoRTH with the assistance of Japan International Cooperation Agency , has developed 5 (five) guidelines aimed at enhancing mountainous road infrastructure. The guidelines were published by the Indian Road Congress on July 7, 2023, and they provide technical specifications and best practices to be followed in the below domains:

1. Planning of Hilly Roads

2. Slope Protection and Embankment with Advanced Technology
3. Tunnel on Arterial Roads in Hilly Area
4. Mountain Bridge with Advance Technology
5. Operation and Maintenance of Mountainous Highways

Source: [PIB](#)

MoRTH issues guidelines for improving mountainous road infrastructure

On June 28, 2023, a draft notification had been issued by MoRTH proposing a new Rule 126-E in the Central Motor Vehicles Rules, 1989 facilitating the implementation of the Bharat New Car Assessment Programme (“**BNCAP**”) on type approved vehicles of category M1 from October 1, 2023. These would be vehicles used for the carriage of passengers, comprising not more than eight seats, in addition to driver’s seat. MoRTH had also issued the Draft Procedure for Regulating Bharat New Car Assessment Programme and the Draft AIS 197.

Pursuant to the above, the Union Minister for Road Transport and Highways formally launched the BNCAP on August 22, 2023, with BNCAP becoming effective from October 1, 2023. As part of the announcement, the Minister expressed confidence that BNCAP will ensure safety and quality of the vehicles in India, while simultaneously promoting competition among original equipment manufacturers to manufacture safer vehicles.

The BNCAP programme will be based on Automotive Industry Standard (AIS) 197.

Source: [PIB](#)

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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