

In the matter of Disputes between

M/S. Rohan Rajdeep Tollways Ltd.

... (Claimant)

VERSUS

Govt. of Punjab through PWD (B&R) Department & Anr ... (Respondent)

Name of Work: Upgradation, Operation and Maintenance of Dakha-Raikot-Barnala on BOT basis.

AWARD

PART-1

Parties

1. M/S. Rohan Rajdeep Toll ways Limited incorporated under the Companies Act, 1956, having registered office at The Reverie, 1st Floor, 805, Bhandarkar Institute Road, Pune-411004 hereinafter referred as "**Concessionaire/Claimant**".
2. Governor of Punjab through Secretary, Public Works Department (B&R), Govt. of Punjab PWD (B&R), hereinafter referred to as "**GoP**". GoP is responsible for the development and maintenance of the state highways and roads within Punjab.

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Punjab Infrastructure Development Board incorporated under the Companies Act, 2002, acting through its Managing Director, herein referred as "**PIDB**". PIDB on behalf of GoP invited BIDS for the development, construction, up-gradation, strengthening, operation and maintenance of Dakha-Raikot-Barnala Road.

Above two parties are collectively referred as "**Respondent**".

PRESENT:

For Claimant

This concession agreement includes –

Investigate, study, develop, design, construct, upgrade, strengthen, including preparation and execution of detailed design and engineering works, operate and maintain the Project Assets/Project Facility and execute the Scope of Work in accordance with the provisions of this Agreement, Good Industry Practice, terms applicable to Permits and Applicable Laws, finance the Project, comply its obligations in respect of making financing arrangement. Comply with its obligations in respect of making financing arrangements and of achieving Financial Close and;

Exercise and/or enjoy the rights, powers, privileges, authorisations and entitlements as set forth in this Agreement, including but not limited to the right to charge, recover and appropriate Fee from mechanical vehicles and Persons (user of the Project Facility) liable to payment of Fee for using the Project Facility or any part thereof (collectively the "Concession").

PART V

Dispute resolution

1. Article 19 dealing with dispute resolution is reproduced below –

Article 19: Dispute Resolution

19.1 Amicable resolution

- (a) Save where expressly stated otherwise in this agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement between the Concessionaire and the GoP and so notified in writing by either party to the other, with a copy endorsed to the Steering Group and IQCC, (the "Dispute"), shall, in the first instance, be attempted to be resolved amicably by a senior representative of GoP and the Concessionaire available at Chandigarh and familiar with the Project within 30(thirty) days of receiving such notice. In the event the Dispute is not so resolved, as evidenced by the signing of the written terms of settlement, within 30(thirty) days of such notice, or such longer period as may be mutually agreed by the Concessionaire and the GoP in writing, then the provisions of sub-clause (b) shall apply.*
- (b) The GoP and the Concessionaire shall refer the Dispute to the Steering Group for amicable resolution, whereupon the Steering Group shall meet to discuss and resolve the Dispute no later than 7(seven) working days of the date of such*

Total amount awarded against this claim works out to Rs.(2,53,69,446 +66,76,170) = Rs.3,20,45,616 (Rupees three crores, twenty lakhs, forty five thousand, six hundred and sixteen).

- 3.7 The respondent in its defence statement has stated that the State Government is considering COVID 19 period for the purpose of granting some relief to the concessionaire as per Concession Agreement. In case such relief is granted by the State Government or some other source/agency; the same shall be adjusted in the amount of this award.

PART VIII

Extract of Award

Claim No.	Description	Amount Claimed	Amount Awarded
1	Withdrawal of wrongly imposed Liquidated damages	Rs.3,17,17,000.	Nil
2(i)	Delay in start of the project and achieving the Commercial Operation Date for Road Portion.	Rs.52,99,71,022.	Nil
2(ii)	Delay in start and achieving the Commercial Operation Date for ROBs only.	Rs.27,00,14,000.	Rs.11,33,30,290/-
2(iii)	Loss in Toll Collection due to evasion of traffic.	Rs.57,52,66,953.	Nil
2(iv)	Loss in Toll Collection due to revision of toll rates for provisional WPI.	Rs.6,46,163.	Withdrawn
2(v)	Additional work of diversion road for Mullanpur and service road at Barnala.	Rs.2,30,25,299.	Rs.1,80,25,000.
2(vi)	Loss in toll collection due to mining ban.	Rs.1,90,36,354.	Nil
2(vii)	Loss in toll collection for interpretation in calculation of toll rates.	Rs.40,48,71,104.	Nil
3(i)	Additional cost implication due to abnormal increase in cost of basic materials.	Rs.2,11,22,720.	Withdrawn
3(ii)	Compensation of toll loss incurred during the period of demonetisation.	Rs.2,68,85,494.	Rs. 1,34,24,902
3(iii)	Claim due to approval of lower toll rates for WPI.	Rs.1,06,82,626.	Nil
3(iv)	Claim due to loss in toll collection due to revision in Safe Axle Weights for Transport Vehicles.	Rs.1,41,05,441.	Rs.1,41,05,441
4.	Force Majeure claim on account of COVID-19.	Rs.55,31,886 + 81 days extra Concession Period.	Rs.3,20,45,616
		Total Award Amount.	Rs.19,09,31,249/-

PART IX

Interest

- 1.0 The Tribunal is of the view that interest is required to be awarded at such rate, which is provided in the relevant Clause of the Contract between the parties. As per Clause 11.3A(a) of the Contract, interest is to be awarded @SBI PLR per annum. Clause 11.3A(a) provides as under:

“(a) In the event the Realizable Fee in an Accounting Year shall fall short of the Subsistence Revenue due to an Indirect Political Event, a Political Event or GoP Event of Default, as the case may be, as certified by the Engineer, the PIDB agrees to provide to the Concessionaire for and on behalf of the GoP such shortfall support by way of a loan (the “Revenue Shortfall Loan”) with interest thereon at the rate of SBI PLR Per annum.”

- 1.1 Consequently, the award of interest @SBI PLR per annum as pendente lite interest would meet the ends of justice. It is directed accordingly.

PART X

Award

- 1.0 The claimant is entitled to the total award of Rs.19,09,31,249/-.
- 1.1 The Respondent is allowed time of 3 months from the date of award for payment of award amount. Failing the payment by the Respondent to the Claimant within a period of three months from the date of Award, the awarded amount shall carry interest @SBI PLR per annum from the date of Award till payment.
- 1.2 The respondent failed to pay its full share of fees and expenses as per Order of the Arbitral Tribunal dated 13.09.2022. Balance amount has been deposited by the claimant on behalf of the respondent in accordance with the provisions of Section 38 of the Arbitration & Conciliation Act, 1996. This amount shall carry interest at 9% from the date of payment till the date of realisation by the claimant.

PART XI
Miscellaneous

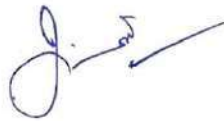
- 1.0 The award has been drawn up in six copies simultaneously. The first copy scribed on stamp paper of Rs.1000/- is being retained by the Presiding Arbitrator. The second and third copies respectively are handed over to the Claimant and the Respondent. The remaining three copies are being retained on the records of members of the Arbitral Tribunal. The shortfall in stamp duty, if any, is to be met by the claimant.
- 1.1 The seat of arbitration is Chandigarh, as per terms of the contract between the parties and shall remain so.
- 1.2 Before parting, the Arbitral Tribunal has the pleasure of placing on record its appreciation of the courtesy and co-operation extended to the Tribunal by both parties and their Ld. Councils throughout the proceedings.

Dated: 09/08/2024



(Justice Kailash Gambhir)

Co-Arbitrator



(Justice J.D. Kapoor)

Presiding Arbitrator



(Er G.S. Mann)

Co-Arbitrator