

**GOVERNMENT OF INDIA  
ROAD TRANSPORT AND HIGHWAYS  
LOK SABHA**

STARRED QUESTION NO:11

ANSWERED ON:05.08.2013

PENAL PROVISIONS IN NATIONAL HIGHWAY PROJECTS .

Owaisi Shri Asaduddin

**Will the Minister of ROAD TRANSPORT AND HIGHWAYS be pleased to state:**

(a) whether the National Highways Authority of India (NHAI) proposes to pay per-day penalty to private developers in Build, Operate and Transfer projects in case it fails to get statutory clearances and approvals in the scheduled time-frame;

(b) if so, the details thereof;

(c) whether this move would place greater accountability on NHAI in the Public-Private Partnership road projects and if so, the details thereof;

(d) whether any penalty clause has also been imposed on private developers which fail to achieve the target set by NHAI; and

(e) if so, the details thereof and the extent to which these changes are likely to encourage private developers in road infrastructure and speedy construction of Highways?

**Answer**

THE MINISTER OF ROAD TRANSPORT AND HIGHWAYS (SHRI OSCAR FERNANDES)

(a) to (e) A statement is laid on the table of the House.

STATEMENT REFERRED TO IN REPLY TO PARTS (a) TO (e) OF THE LOK SABHA STARRED QUESTION NO. 11 ANSWERED ON 05TH AUGUST, 2013 ASKED BY SHRI ASADUDDIN OWAIISI REGARDING 'PENAL PROVISIONS IN NATIONAL HIGHWAY PROJECTS'

(a) and (b) There is no such proposal of the National Highways Authority of India (NHAI) for such penalty clauses afresh. The time frame for satisfaction of Condition Precedents by NHAI and the Concessionaires prior to appointed date is already well defined in the Model Concession Agreement (MCA). In case of non-fulfillment of the Condition Precedent within the specified time frame, damages to be paid by either party are also defined in MCA. In case, NHAI does not fulfill any or all of the Conditions Precedent set forth in MCA within the specified period and if the delay has not occurred as a result of breach of the Agreement by the Concessionaire or due to Force Majeure, the NHAI has to pay to the Concessionaire damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfillment of such Condition Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security. In case, the Concessionaire does not fulfill any or all of the Conditions Precedent set forth in MCA within a period of 180 (one hundred and eighty) days from the date of the Agreement, and if the delay has not occurred as a result of failure to fulfill the obligations or other breach of the Agreement by the NHAI, or due to Force Majeure, the Concessionaire shall pay to the NHAI damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfillment of such Condition Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security.

(c) Does not arise.

(d) and (e) In case of delay in achieving milestones as already defined in MCA, provision of penalty is already inbuilt therein. The Concessionaire is responsible for construction of the National Highway in accordance with the Project Completion Schedule set forth in MCA. In case the Concessionaire fails to achieve any Project Milestone within a period of 90 (ninety) days from the date set forth for such Milestone, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the NHAI, the Concessionaire shall pay damages to the NHAI in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such Milestone is achieved; provided that if any or all Project Milestones or the Scheduled [Four-Laning] Date are extended in accordance with the provisions of the Agreement, the dates set forth in the Agreement shall be deemed to be modified accordingly and the provisions of the Agreement shall apply as amended; provided further that in the event Project Completion Date is achieved on or before the Scheduled [Four-Laning] Date, the damages paid under the relevant clause of MCA shall be refunded by the NHAI to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of damages shall be without prejudice to the rights of the NHAI under the Agreement, including the right of Termination thereof.