



PMC Cell-MM

Oil and Natural Gas Corporation Ltd Corporate Materials Management

2nd Floor, Tower-A, Pandit Deendayal Upadhyaya Urja Bhawan,
5, Nelson Mandela Marg, Vasant Kunj, New Delhi -110 070
Tel – (011)26752004 Fax – (011) 26129091

No: MAT/PMC/10(03)/2017 Dated: 23.03.2017
From : ED-Chief MM, Corp MM, 2 nd Floor, Green Building, Vasant Kunj, Delhi -70
To : Key Executives (as per distribution)

Sub: NITI Aayog's initiatives for revival of the Construction Sector.

Board in its 289th Meeting held on 31.01.2017 deliberated the decision taken by Cabinet Committee on Economic Affairs (CCEA) for issuance of suitable guidelines in respect of NITI Aayog's initiatives for revival of the Construction Sector as conveyed by OM No. 14070/14/2016-PPPAU dtd. 05.09.2016 (**Annexure-1**). Considering these directives and the Standard Operating Procedure (SOP) provided by MoPNG, the following guidelines as approved by the Board are conveyed.

A. Process:

i) Arbitration proceeding are under process:

- i) In the on-going Arbitration cases which were invoked prior to 23.10.2015 relating to construction sector (As per list enclosed at **Annexure-2**) the Contractor would be requested to give consent for conducting the arbitration proceedings under the amended Arbitration Act. Format of letter is enclosed as **Annexure-3**.

[Note: As can be seen from the note at **Annexure-2** for only 15 cases at Sl 2 to 7, 12,13,14,16,18,19,20,24 & 25 consent is to be sought]

- ii) Where the contractor gives his consent, matter should be taken up with arbitral tribunal by filling an application for switching over and conduct of arbitration proceedings under the amended Arbitration Act.
- iii) On submitting to the Arbitral Tribunal or Arbitrator if Arbitral Tribunal/ Arbitrator insist for continuing as per old Act, the ONGC shall not compel the Tribunal or Arbitrator to have proceeding under New/ Amended Act. In such cases, matter will be informed by the Key Executive to Chief Legal Services for compilation and shall be provided to ED-Chief MM for onward submission to MoPNG/NITI Aayog, as not agreed by the Tribunal or Arbitrator.
- iv) If the Tribunal or Arbitrator insists for fees under the New /Amended Act, ONGC has to agree if other party agrees for the same.
- v) If contractor does not respond to such communication within the specified time or declines to give their consent, a list of such parties shall be maintained and sent to this office for reporting onward submission to MoPNG/NITI Aayog.

- vi) Weekly reports on the status to be provided for onward submission to MoPNG/NITI Aayog in the format at **Annexure-4**.

II) Arbitration Award is passed against ONGC and in favour of Contractor:

ONGC is liable to pay 75% of the awarded amount and interest on such amount till the date of payment which shall constitute the total eligible pay-out against the BG to be provided by the contractor of the equivalent amount. (List of such cases is enclosed as **Annexure-5**).

[Note: The interest portion however should be calculated by the work center as per illustration at **Annexure-6**]

Details of SOP as provided by the MoP&NG for implementing the above are as under:

a) Steps required for release of 75% of the total eligible Payout amount:

A communication (under acknowledgement) to be sent to the eligible Contractor informing him about the details of the total payout obligation in terms of the CCEA decision, and requiring him to open an Escrow account and furnish a Bank Guarantee for the purpose within a period specified in such communication. Since completion of these formalities may take some time, the Contractors may be initially given time of 30 days to do the needful, which may be considered for extension based on requests/ merits of each case.

b) Arbitral Award Escrow Account:

- (i) A separate designated Escrow Account (hereinafter referred to as the **Arbitral Award Escrow Account**), shall be opened and established by the Contractor in accordance with Arbitral Award Escrow Account Agreement.
- (ii) Arbitral Award Escrow Account Agreement shall include 4 (four) parties viz. (a) the Contractor, (b) Works Executing Agency (the Ministry/ Department/ PSU), (c) Arbitral Award Escrow Bank, and (d) Lenders' Representative.
- (iii) The Contractor shall bear all expenses on establishment of the Arbitral Award Escrow Account with respect to opening and operation of the said Account.

c) Bank Guarantee:

- (i) Arbitral Award amount is the amount for which the Award has been announced by the Arbitral Tribunal. In case the Tribunal has also awarded payment of interest on such amount till the date of payment, such interest amount together with the Award amount shall constitute the total eligible 'payout'.

ONGC is liable to pay 75% of such 'Payout amount' against the Bank Guarantee of the equivalent amount. (Format for Bank Guarantee at **Annexure-7**)

- (ii) ONGC shall require the Contractor to furnish the Bank Guarantee for the 75% of the payout amount and appropriate interest amount on such amount for a period of one year. This Bank Guarantee shall roll over annually and renewed on annual basis.
- (iii) ONGC shall release and credit an amount equivalent to 75% of the Arbitral Award Payout amount to the designated Escrow Account opened by the Contractor against the Bank Guarantee furnished by the Contractor for the amount mentioned under (ii) above;
- (iv) The process for renewal of the Bank Guarantee shall be initiated by ONGC 90 days prior to the validity and shall be done by the Contractor 60 days prior to the validity of the Bank Guarantee. In case the settlement of the legal challenge to the Arbitral Award before the Court is not resolved within the validity period of the Bank Guarantee, such Guarantee shall be renewed for a further period of one year and so on and so forth. While renewing the Bank Guarantee for the Second Year, the amount of Guarantee shall be calculated based on: (a) 75% amount paid out plus the appropriate interest on such amount for one year, and (b) appropriate interest on (a) for the second year and so on and so forth. (Refer illustration at **Annexure-6**)
- (v) In cases where the appeal of ONGC is allowed by the Court, ONGC would be entitled to recover such amount together with appropriate interest (as specified in the OM dated 05.09.2016) on the amount paid to the Contractor. The Contractor will have to confirm its unqualified acceptance of this condition obtained at the time of release of the amount. This would be in addition to any order of the Hon'ble Court in the appeal proceedings.
- (vi) Failure of the Contractor to extend the validity of the Bank Guarantee 60 days prior to the expiry of the Guarantee may lead to encashment and appropriation of the Guarantee.
- (vii) In case the Court allows the appeal of ONGC against the Arbitral Award, ONGC shall be entitled to encash the Bank Guarantee furnished by the Contractor of the amount equivalent to 75% of the paid out amount along with appropriate interest till the date of such encashment.

d) Deposits and withdrawal of funds from Escrow Account:

- (i) After opening of the designated 'Arbitral Award Escrow Account' and receipt of the Bank Guarantee, ONGC shall deposit 75% of the payout amount in the Escrow Account within a period of no more than 7 working days.
- (ii) The Arbitral Award Escrow Bank shall withdraw and appropriate the amounts from the Arbitral Award Escrow Account strictly in accordance with the instructions issued by ONGC to the Contractor, as mutually agreed/decided by ONGC, Lenders' Representative and the Contractor; provided that such amounts shall be appropriated in the following order:
 - (a) Debt Service Payments;
 - (b) All payments relating to construction/completion of the Project;
 - (c) All payments relating to construction of other projects of ONGC under execution by the Contractor; and
 - (d) Balance, if any, in accordance with the instructions of the Contractor after receiving the prior written approval of the Lenders' Representative and ONGC.

e) Debt Service Payments:

- (i) The Contractor shall provide ONGC with the details of Lender/s and their dues specific to the Project.
- (ii) After withdrawal and payment of Lender's dues, the Contractor shall provide ONGC, with a copy to the escrow banker, the acknowledgement receipts of payment of dues from all the applicable, lenders.

f) All payments relating to construction of the Project:

- (i) The Contractor shall provide ONGC with the following details:
 - 1) The amounts due for payment to the suppliers/sub-contractors in respect of the work already completed;
 - 2) The remaining works in the Project along with the estimated costs of the respective works and the schedule for completion of such remaining works.
 - 3) The monthly/ bi-annual/ annual or any other periodic schedule of funds, (as agreed with ONGC's Technical division), required to complete the remaining works.
- (ii) The Independent Engineer (IE) or equivalent authority for the project and ONGC shall verify the genuineness in respect of the above overdue payments/remaining works, the associated costs, the schedule and the (periodic) requirement of funds.

- (iii) On approval of ONGC and subject to availability of funds in the designated Escrow Account, the total requirement of funds shall be earmarked for payment of the outstanding dues and completion of the remaining works of the Projects.
- (iv) The Contractor shall then be allowed to withdraw the funds required to meet his obligations in the order mentioned under (i) above for completion of the project.
- (v) Balance amounts in the Arbitral Award Escrow Account, if available, shall be earmarked and concurrently used for the completion of other projects of ONGC, as per conditions set forth in this SOP keeping the physical progress work in view.

g) All payments relating to construction of other projects of ONGC

- (i) Shall be applicable to other projects of ONGC being executed by the Contractor.
- (ii) For each of the other projects, provisions applicable to the main project shall be applicable.

h) Post the debt service payments, completion of the Project and completion of other projects of ONGC, and subject to availability of funds in the Arbitral Award Escrow Account, balance funds shall be appropriated in accordance with the instructions of the Contractor in terms of the Agreement executed among the parties in terms of para (b) above.

i) Events of Arbitral Award Escrow Default

Following events shall constitute an 'event of default' by the Contractor unless such event of default has occurred as a result of Force Majeure or any act or omission of ONGC or the Lender's Representative:

- (1) The Contractor causes the Arbitral Award Escrow Bank to transfer funds to any account of the Contractor in breach of the terms of Arbitral Award Escrow Account Agreement;
- (2) The Contractor fails to make any refund due to the Authority in breach of the terms of Arbitral Award Escrow Account Agreement within 5 (five) business days of such refund becoming due;
- (3) The Contractor commits or causes any other breach of the provisions of Arbitral Award Escrow Account Agreement and fails to cure the same within a Cure Period of 5 (five) business days; or
- (4) The Contractor does not extend the validity of Bank Guarantee submitted to ONGC as security for the principal as well as for interest thereon, in cases where such extension is required.

j) Upon occurrence of an Arbitral Award Escrow Default, ONGC shall be entitled to encash and appropriate the relevant amounts from the Bank Guarantee as Damages for such Arbitral Award Escrow Default.

k) Termination of Arbitral Award Escrow Account Agreement

(1) Arbitral Award Escrow Agreement shall remain in full force and effect so long as the Court decides the Appeal and a certified copy of the decision of the Court has been submitted to the Arbitral Award Escrow Bank.

(2) In case the Court's decision is in favour of ONGC, ONGC shall suo motu encash the Bank Guarantee against refunds from the Contractor of an amount equivalent to 75% of the Arbitral Award amount along with appropriate interest till the date of such decision of the Court.

l) Closure of Arbitral Award Escrow Account

The Arbitral Award Escrow Bank shall close the Arbitral Award Escrow Account at the request made by the Contractor and ONGC after the decision of the Appeal by the Court and pay any amount standing to the credit thereof to the Contractor.

B. Monitoring Mechanism:

- i) Concerned Work centers to establish Monitoring Mechanism for each such Escrow Account relating to the Project, consisting of Project Manager as Nodal Officer and I/c associated Finance.
- ii) The Key Executive will have power to sanction and approve, irrespective of the value of Payout Amount, the disbursement from the Escrow Account opened with the bank on recommendation of Project Manager, concerned L-2 officer of the project and concurred by I/c Finance.
- iii) Since the revival of the sector envisages completion of projects in hand by these contractors, the concerned key executive shall monitor the effective utilization of the funds by the contractors as well.
- iv) A weekly report shall be provided by the workcentres covering the steps indicated in the SOP for each project as per format at **Annexure-8**. The weekly report submitted by the Work Centers will be compiled by the office of ED-Chief Legal and will be provided to ED-Chief MM for onward transmission to MoP&NG/NITI Aayog.
- v) Once the disbursement of the amounts in the Escrow account is made, a monthly report indicating the improvement in the progress of the projects under execution by the contractors shall be provided. As regards monthly report, the same shall be provided by Work Centers through ED-CCF to ED – Chief MM for submission to MoP&NG/NITI Aayog.

- vi) The first report as required under A.I.(vi) as per format at **Annexure-4** and as per B.(iv) as per format at **Annexure-8** shall be provided to Chief Legal by 28.03.2017. Concerned work centers have to ensure compliance and give weekly report every Wednesday.

Since the CCEA decisions are monitored by NITI Aayog, Key Executives are requested to identify a nodal officer for liaising and providing of the various reports. Further, contact details of such Nodal officer may please be forwarded on priority for return message to the office of Chief Legal and Chief MM.

Nagia
23/3/2017.
(Ashwini Nagia)
ED-Chief MM

Encl: As above

Copy to:

1. EO to CMD, ONGC, New Delhi.
2. CEA to Director (T&FS) / Director (Offshore) / Director (HR) / Director (Exploration) / Director (Onshore) / Director (Finance), ONGC, New Delhi
3. ED-Chief Legal, ONGC, New Delhi.
4. ED-CCF, ONGC, New Delhi

No. N-14070/14/2016-PPPAU
Government of India
National Institution for Transforming India (NITI Aayog)

NITI Bhawan, New Delhi
September 05, 2016

Office Memorandum

Subject: Measures to revive the Construction Sector - reg.

The construction sector has been facing a number of problems, mainly arising from the liquidity constraints caused on account of their payments not being released by the Government Departments/ Public Sector Undertakings (PSUs) pursuant to the arbitral awards. To discuss the problems of the construction sector, detailed deliberations/ consultations were held with the representatives of the construction industry, banks, major government PSUs and concerned Ministries/ Departments. Based on the above deliberations/ consultations, the NITI Aayog placed a proposal before the Cabinet Committee on Economic Affairs (CCEA) for its consideration suggesting various short-term and long-term measures required for addressing the issues ailing the construction sector. The CCEA, chaired by the Hon'ble Prime Minister, has considered the proposals of NITI Aayog in its meeting held on 31st August 2016 and approved the same for the revival of construction sector.

2. Accordingly, following instructions are hereby issued for compliance and necessary action by all concerned i.e. the Government Departments/ Ministries/ Public Sector Undertakings awarding the public contracts/ implementing various projects involving construction activities:

2.1 In case of contracts/ concessions where the process of arbitration was initiated under the pre-amended Arbitration Act, the PSUs/ Departments may seek the consent of the contractors/ concessionaires to transfer the pending cases under the amended Arbitration Act, wherever possible. The shift to amended Arbitration Act is expected to make the arbitration process more cost effective and help in settlement of the disputes in a timely manner:

2.2 In case of claims where the PSU/ Department has challenged the Arbitral Award already announced, 75% of the award may be paid by the PSU/ Department to the contractor/ concessionaire against Bank Guarantee without prejudice to the final order of the Court in the matter under challenge. The payment may be made into a designated Escrow Account with the stipulation that the amount so released will be used, first, for payment of lenders' dues, second, for completion of the project and then for completion of other projects of the same PSU/ Department, as mutually agreed/ decided. Any balance remaining in the escrow account subsequent to settlement of lenders' dues and completion of projects of the PSU/ Department may be allowed to be used by the contractor/ concessionaire with the prior approval of

PR. Pundit

9/9/2016
Sh. K. K.

29.9.2016

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6/9/16

D. S. (G)

18/9/2016

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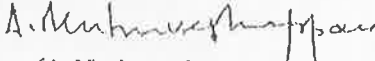


the lead banker and the Department/PSU.

- 2.3 In case the subsequent court order requires refund of the money paid by a PSU/ Department against a Bank Guarantee, the amount shall be refunded by the contractor/ concessionaire along with appropriate interest. The rate of interest on such refund amount may be decided by the PSU/ Department keeping in view the cost of capital to the PSU/ Department or the rate of interest provided for in the Contract Agreement or the rate of interest awarded under the Arbitral Award under challenge.

Notes:

- (i) For Departments, cost of capital shall be taken as Weighted Average Coupon rate of outstanding stock of Central Government securities for the period ending in the preceding quarter, or Weighted Average Coupon rate of Central Government securities issued during the preceding quarter (whichever is higher);
 - (ii) PSUs shall either calculate their own cost of capital or take State Bank of India's One Year Marginal Cost of fund-based Lending Rate plus 2%;
 - (iii) The appropriate interest rate on such refund shall be decided at the time of releasing funds to the Escrow Account;
 - (iv) If otherwise eligible and subject to contractual provisions, retention money and other amounts withheld may also be released against bank guarantee as per the laid down criteria.
3. All the concerned Ministries/ Departments shall also issue instructions to their respective PSUs for taking necessary action accordingly.


(A. Muthuvezhappan)
Director (PPPAU)

To

1. Secretaries of all the Ministries/Departments of Government of India.
2. Chairpersons/ CMDs/ MDs of all the Central Government PSUs.
3. Chairpersons/ CMDs/MDs/CEOs of all the Scheduled Commercial Banks.
4. Chief Executive, Indian Banks Association, Mumbai.
5. Shri Alok Tandon, Additional Secretary, Cabinet Secretariat, Rashtrapati Bhavan, New Delhi - 110001.
6. Dr. T. V. Somanathan, Joint Secretary, PMO, South Block, New Delhi - 110001.

Copy for information to:

1. PS to Vice Chairman/ PS to MoS/ PS to all Members
2. Sr. PPS to CEO/ PPS to Special Secretary

Information about Pending Arbitration (Construction Sector) (06.01.2017)

Sl No	Arbitration Parties	Claim	Counter Claim	Project	Location
1.	Hindustan Shipyard Ltd and ONGC before PMA	Rs 35.38 Cr	Rs 84.88 Cr	Well platform – IE, IL, BH-22, BH-55, P-BDE	Mumbai
2.	Hyundai Heavy Industries Co. Ltd. & ONGC	USD 26.85 million	USD 1.23 million	BPA complex	Mumbai
3.	Arbitration between M/s Punj Lloyd and ONGC	INR 584.65 Cr. + USD 211.76 M	INR 1217.38 Crore + USD 4.78 million	Modification of 6 numbers of existing platform – HRP	Mumbai
4.	Arbitration between M/s Sarku Engineering Services, Malaysia and ONGC	Rs 97.75 crore + USD 123.85 million	Nil	26 Well Head Platform	Mumbai
5.	M/s. Afcons-Gunanusa JV Mumbai (AGJC) and ONGC	USD 117.02 million + INR 0.84 crores	Rs 9.11 Crores	ICPR Project	Mumbai
6.	M/s Swiber Offshore Construction Pvt Ltd and ONGC	USD 55.57 million	Nil	MHNRD Project	Mumbai
7.	M/s Sime Darby – Swiber Consortium and ONGC	USD 98 millions	Nil	B-193 Project	Mumbai
8.	M/s Leighton India Contractors Pvt Ltd. and ONGC (Amended Act)	Rs 345 Cr	Yet to be filed	Pipeline Replacement -Project 2	Mumbai
9.	M/s Leighton India Contractors Pvt Ltd. and ONGC (Amended Act)	Rs 375 Cr	Yet to be filed	PRP 3	Mumbai
10.	M/s Leighton India Contractors Pvt Ltd. and ONGC (Amended Act)	USD 33.81 million + Rs 30.12 crore + Euro 16,582	Yet to be filed	Additional Pipeline Project	Mumbai
11.	M/s Leighton India Contractors Pvt. Ltd. and ONGC (Amended Act)	USD 41.51 million Euro 2.54 million INR 23.16 crore	Yet to be filed	Heera Redevelopment Project	Mumbai
12.	M/s UEM and ONGC	Rs 154.66 Cr	Rs 249 Cr	WIP, Assam Asset	Delhi
13.	M/s Tolani Projects Pvt Ltd and ONGC	Rs 30.96 Cr	Rs 3.40 Cr	Ramnad Gas Pipeline	Delhi
14.	M/s Tolani Projects Pvt Ltd and ONGC	Rs. 13.24 crores	Rs. 1.15 crores	4.5 Trunk Pipeline Project	Delhi
15.	M/s Sai Rama Engineering Enterprises, M/s Megha Engineering Enterprises and ONGC (Amended Act)	Rs 830 Cr	Yet to be filed	ARP Project	Delhi

16.	M/s V A Tech WABAG Ltd v. ONGC	Rs 11.12 crore	Rs 5.13 crore	ETP – South Kadi	Ahmedabad
17.	M/s David Parker Construction Co. vs. ONGC, Vadodara (Amended Act)	Rs. 0.31 crore	Not yet filed	Office Block of ONGC, Vadodara	Vadodara
18.	Simplex Infrastructures Ltd. and ONGC	Rs.5.11crore	Nil	Construction of piles for Green Building at Kolkata	Kolkata
19.	M/s Arun Kumar Dey and ONGC	Rs. 0.21 crore	Nil	Renovation of ONGC Batchlor hostel at colony	Agartala
20.	M/s Lloyd Steel Industries Ltd. (LSIL) and ONGC	Rs. 3.55 crore	Nil	Setting up GGS-VI Denwa Gandhar	Ankleshwar
21.	Engineering Projects India Ltd, New Delhi vs. ONGC under PMA (2012)	Rs. 9.90 Crore	Nil	Construction Gas Collecting Station at Kovilkalappal	Karaikal
22.	Paramount Limited, Vadopdara and ONGC, Cauvery Asset, Karaikal (Amended Act)	Rs.12,20,35,456	Nil	Construction of EPS at GGS, Narimanam	Karaikal
23.	Consortium of M/s Sai Rama Engineering Enterprises & M/s Megha Engineering Enterprises and ONGC (Amended Act)	Rs.33.13 crores	Not yet filed	Constuction Desautler Vessel at Nawagam, Ahemdabad	Delhi
24.	Punj Llyod and ONGC	Rs. 97.7 crores	Not yet filed	Laying of Naphtha feed pipeline from Hazira to Dahej	Hazira
25.	M/s Dayanand Ramkumar Jangir- Stonecraft V/s ONGC	Rs. 2 crores approx..	Not yet filed	Establishing Computer Center And Conference Hall	Mumbai

Note: Out of 25 cases, 2 cases (Sl. No. 1 and 21) are before PMA and 8 cases (8, 9, 10, 11, 15, 17, 22 and 23) have been invoked under the amended Arbitration and Conciliation Act, 1996.

Letter for Switching over to provisions of amended Arbitration & Conciliation Act, 1996

DRAFT [on the letter head]

Date: _____

To,

Subject: Request for conducting the Arbitration in Contract No. _____ under the amended Arbitration & Conciliation Act, 1996

Madam / Sir,

Kind attention is drawn to the Arbitration going on between ONGC and _____
(name of Contractor) before Arbitral Tribunal comprising of Hon'ble _____
_____, Hon'ble _____ and Hon'ble _____
in the Contract No. _____ for _____.

Niti Aayog vide Office Memorandum dated 05.09.2016 have issued instructions to conduct the arbitrations related to Construction Sector as per the Arbitration and Conciliation Act, 1996 as amended by Arbitration and Conciliation (Amendment) Act, 2015 ("Amended Arbitration Act").

Since, the aforesaid Contract is in the nature of Construction Sector, ONGC seeks your consent to conduct the aforesaid Arbitration under the provisions of Amended Arbitration Act.

Kindly convey your acceptance and consent of the same within 3 days so that a joint application can be made before the Arbitral Tribunal to conduct the Arbitration under the Amended Arbitration Act.

Regards,

Yours Faithfully,

(_____)
L1 / Key Executive

Arbitration Award Challenged - Information

Sl. No	Arbitration Parties	Awarded Amount	Total Amount (Award + Interest+Cost)	Project	Location
1.	ONGC and JSIW	Rs 6.64 cr + Interest @ 12% pa on principal amount w.e.f. 02.05.2011	Rs. 11,09,19,007.81/-	2PLRP - MHN-AMD and 2PLP-ANK	Delhi
2.	ONGC v/s. M/s. Great Eastern Shipping Co. Ltd	USD 1,134,500 + interest therein @ 9% p.a. from the date of Award (15.10.2012) and cost of Rs. 10 lacs	USD 1,557,746/- + Rs. 10 lacs	NG Flare	Mumbai
3.	ONGC v/s. Essar Oil	Rs 50,02,14,750/- + interest @ 12 % p.a. will be paid from the date of Award till payment	Rs. 86,03,69,370/-	BHMP	Mumbai
4.	ONGC Ltd. vs Nippon Steel Corporation Ltd	JY 95, 287, 240 (Rs 2.36 Cr. approx.) with interest @ 16% p.a from 8.11.1988 till the date of payment - ONGC deposited the amount Rs 2.36 Cr. with High Court vide banker's cheque bearing no. 750229 dated 17/7/1997	Rs. 3,64,17,728/- (interest calculation from 08.11.88 to 17.07.97)	Installation of fabricated structure of South Bassein Central Facility Complex	Mumbai
5.	ONGC Vs. M/s Stone Craft (India)	Rs. 34,42,388.17/- with future interest @12% p.a. + cost of arbitration at Rs. 10,00,000/-	Rs 46,14,507.33/-	Civil related construction	Mumbai
6.	ONGC Vs. M/s Stone Craft (India)	Rs. 71,06,857.50/- with future interest @12% p.a.+ cost of arbitration at Rs. 30,00,000/-	Rs 1,30,68,048.13/-	Civil related construction	Mumbai
7.	ONGC vs. Kirloskar AFF Ltd.	Rs.82,74,995.00 + 8% interest w.e.f. 04.10.2008	Rs.1,55,78,218.00	Construction of ETP-II at Lakwa	Nazira
8.	ONGC and M/s. IB Patel & Co.	Rs.22,12,736.00 + interest @ 9% p.a from 16.4.1992 +Rs. 4 Lakh cost.	Rs 75,25,110/-	Construction of B- type quarters	Hazira
9.	ML Dalmiya vs. ONGC	Rs 39,00,180.12 + 8% p.a. w.e.f. 1991	1,17,70,637.16/-	Construction of colony	Kolkata
10.	M/s Nirmal Enterprises Bombay vs. ONGC	Nil Award	-	Related to work of partition and built-in furniture for the office	Mehsana

				complex at Mehsana	
11.	ONGC vs. Super Creative Ltd. Mehsana	Nil Award	-	Related to drilling of new tubewell, near civil maintenance office at Mehsana	Mehsana
12.	M/s Blue Star and ONGC	Rs. 6.4 crore. (Rs. 6.4 crore deposited with Gujarat High Court)	-	Turnkey Execution of Pilot Insitu – combuston project	Mehsana
13.	M/s Paramount vs. ONGC	Rs. 5,98,10,160.00	Rs. 6,31,03,815/-	For turnkey execution of construction of 600 M3/day capacity ETP	Ankleshwar
14.	M/s Aireff De tox vs. ONGC	Rs. 1,74,86,366/-	Rs. 1,82,21,104/-	For revamping of ETP at CPF, Gandhar	Ankleshwar
15.	Paramount Ltd. vs. ONGC	Rs. 1,02,05,636 with interest 18% from the date of award (29.08.2014)	Rs. 1,44,23,439.95	LSTK-EPS	Ahmedabad
16.	M/s NICCO Corporation and ONGC	Rs.24,92,18,514 with interest @10% from 30.03.2010	Rs. 36,17,48,386/- (inclusive of USD component calculated at 1USD = Rs 67)	Construction of Mini Refinery Phase –II at Tatipaka , Rajahmundry Asset	RJY
	Total	Rs. 99.74 crore + USD 1,134,500/- + JY 95, 287, 240	Rs. 151.83		
	Already Deposited	JY 95, 287, 240 + Rs. 6.4 crore			

Illustration on realisation of appropriate interest

Suppose the Award amount given by the Arbitral Tribunal as on 01.01.2015 is Rs. 100 crore. It is also awarded that if the Award amount is not paid within 60 days, it shall be payable along with 15% interest from the date of Award.

Now, assuming the cost of Capital for the PSU is 12%
Rate of Interest awarded by the arbitrator: 15%
Hence, the appropriate interest will be calculated @ 15%

1. The total payout in terms of above Award as on 01.09.2016 is: Rs. 100 cr. + Rs. 26.25 crore (on account of Interest) = **Rs. 126.25 crore**

2. **Bank Guarantee for Year 1:**

Bank Guarantee to be taken for the amount = 75% of 126.25 crore = Rs. 94.69 cr. (P) + Interest @ 15% on this amount for a period of one year = 14.20 cr (P¹). Total amount of bank Guarantee for Year 1 = **Rs. 108.89 crore (P²)**

3. **Bank Guarantee for Year 2:**

P¹+P² becomes 'P' now i.e. Rs. 108.89 cr;
Interest @ 15% on P for one year = Rs. 16.33 cr
Total amount for which bank Guarantee is to be taken for year 2 = Rs. 108.89 + 16.33 = **Rs. 125.22 cr. (P³)**

4. **Bank Guarantee for Year 3:**

P³ becomes P here = Rs. 125.22 cr.
Add Interest @ 15% for one year = Rs. 18.78 cr.
Total amount of Bank Guarantee for Year 3 = Rs. 125.22 + Rs. 18.78 = **Rs. 144.00 cr.**

Standard Template for Bank Guarantee for Payment of Arbitral Award Amount

~~The Authority~~ KEY EXECUTIVE

WHEREAS:

- (A) [name and address of contractor] (hereinafter called the "Contractor") has executed a contract (hereinafter called the "Contract") with the [name and address of the Govt. Department/PSU], (hereinafter called the "Employer") for the execution of the ***** project/ work, subject to and in accordance with the provisions of the Contract.
- (B) In accordance with Clause ----- of the Contract, the Contractor/ Employer referred a dispute with the Employer/ Contractor to the arbitration and the arbitration have made and arbitral award dated ----- for an amount of Rs. ----- in favour of the Contractor.
- (C) The Employer has challenged the aforesaid arbitral award in a court of law. However, the Employer has to pay 75% of this arbitral award amount, along with the interest amount, to the Contractor against a Bank Guarantee without prejudice to the final order of the court in the matter under challenge in terms of NITI Aayog O.M No. N-14070/14/2016-PPPAU dated Sept 5, 2016.
- (D) In consideration of the above, the Contractor has approached the Bank with a request to issue a guarantee in favour of the employer and We, _____ through our branch at _____ (the "Bank ") have agreed to furnish this bank guarantee (herein after called the "Guarantee") for an amount of Rs. _____ (the "Guarantee Amount"), which is 75% of the arbitral award along with the interest amount.

NOW, THEREFORE, the Bank hereby unconditionally and irrevocably guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably undertakes to pay to the Employer, upon its first written demands, and without any demur, reservation, recourse, contest or protest or any dispute/litigation between the Contractor and the employer, and without any reference to the Contractor, such sum or sums up to an aggregate sum not exceeding Guarantee Amount as the Employer shall claim.
2. A written demand shall be a letter from the Authority, under the hand of an officer not below the rank of _____, stating that the arbitral award dated _____ has been set aside/modified by the court or has been decided at an amount less than 75% of the arbitral award inclusive of interest shall be conclusive, final and binding on the Bank.

3. Any change in the constitution of the Contractor and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under the Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Employer to proceed against the Contractor before presenting to the Bank its demand under this Guarantee.
5. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 6 below and unless a demand or claim in writing is made by the Employer on the Bank and received by the Bank within the validity of this Guarantee, all rights of the Employer under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
6. The Guarantee shall cease to be in force and effect after _____ irrespective of the fact whether the Bank Guarantee is returned or not by the Employer.
7. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Employer in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
8. This Guarantee shall come into force with immediate effect and shall remain in force and effect for up the end _____ month in the year _____ or until it is released earlier by the Employer pursuant to the provisions of the Contract.
9. Notwithstanding anything contained herein,
 - i. Bank's liability under the Bank Guarantee shall not exceed Rs. _____ (Rupees _____ only).
 - ii. The Bank Guarantee shall be valid upto _____.
 - iii. The Bank is liable to pay the guarantee amount or any part thereof under this Bank Guarantee only and only on compliance of Para no. 2 above and also if a written claim or demand from the Employer is served upon and received by the Bank on or before _____ (Expiry date of Bank Guarantee).

Signed and sealed this _____ day of _____, 20____ at _____

SIGNED, SEALED AND DELIVERED

For and on behalf of the Bank by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- i. The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- ii. The address, telephone number and other details of the head office of the Bank as well as of the issuing branch should be mentioned on the covering letter of issuing branch.
- iii. In case of a Concession Agreement for a Public Private Partnership (PPP) project, the words "Contract", "Contractor" and "Employer" may be substituted by "Agreement", "Concessionaire" and "Authority" respectively.

