

GOVERNMENT OF INDIA
MINISTRY OF PLANNING

LOK SABHA
UNSTARRED QUESTION NO. 462
TO BE ANSWERED ON 01.12.2021

NEW CCEA POLICY

462. SHRI SUSHIL KUMAR SINGH:

Will the Minister of PLANNING be pleased to state:

- (a) whether it is a fact that as per the new CCEA policy, in order to challenge the arbitration awards given by the courts, the Government Entities like GOI Deptts/ PSUs/SPVs will only take the decision to initiate proceedings for setting aside of the arbitral award with the opinion of the Law Officer in consultation with Department of Legal Affairs;
- (b) if so, the details thereof;
- (c) whether it is also a fact that, where a Government Entity has challenged an arbitral award, shall immediately pay as per the court order, an interim payment of 75% to the contractor /concessionaire against a bank guarantee; and
- (d) if so, the details thereof and the number of cases wherein interim payment of 75% were made during the last two years?

ANSWER

MINISTER OF STATE (INDEPENDENT CHARGE) OF THE MINISTRY OF STATISTICS & PROGRAMME IMPLEMENTATION; MINISTER OF STATE (INDEPENDENT CHARGE) OF THE MINISTRY OF PLANNING AND MINISTER OF STATE IN THE MINISTRY OF CORPORATE AFFAIRS

(RAO INDERJIT SINGH)

- (a) & (b): The Cabinet Committee on Economic Affairs (CCEA) in its meeting held on 20 November 2019 approved the following:

“With respect to arbitral awards decided in favour of the contractors / concessionaires, the concerned Government Entity will take the decision to initiate proceedings for setting aside of the arbitral award, and any appeal(s) thereto, with the opinion of a Law Officer - Attorney-General for India / the Solicitor-General for India / the Additional Solicitor-General for India – in consultation with the Department of Legal Affairs (“DOLA”) at the Ministry of Law & Justice as per the procedure laid down in this respect. DOLA is to ensure that the aforementioned process of soliciting and communicating the opinion of Law Officer to the concerned Government Entity is completed within 30 (thirty) days of the receipt of request.”

(c): The CCEA in its meeting held on 31 August 2016 approved the following:

“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 the lead banker and the Department/PSU.”

The CCEA in its meeting held on 20 November 2019 approved the following:

“In cases where the Government Entity has challenged the arbitral award, and, as a result, the amount of the arbitral award has not been paid, 75% of such award will be paid by the Government Entity to the contractor / concessionaire against a bank guarantee only for the said 75% and not for its interest component. With respect to the interest payable to the Government Entity, should the subsequent court order require refund of the said 75%, payment of the same will be as per the court order, non-compliance of which by the contractor / concessionaire would be a contempt of court. And, the concerned Government Entity will have the right to recover the said interest by way of legal/judicial remedies. In cases where bank guarantee for the interest component has already been submitted by the contractor / concessionaire, the same will be returned by the concerned Government Entity. Should the court order prescribe a rate of interest, the same will prevail.”

(d):

Sl. No.	Ministry	Number of cases wherein interim payment of 75% were given during the last two years
1.	Ministry of Railways	5
2.	Ministry of Road Transport & Highways	1
3.	Ministry of Petroleum & Natural Gas	5
4.	Ministry of Housing & Urban Affairs	3
5.	Ministry of Steel	NIL
6.	Ministry of Civil Aviation	NIL
7.	Ministry of Port, Shipping & Waterways	NIL
8.	Ministry of Mines	NIL
9.	Department of Commerce	NIL
10.	Department of Telecommunications	NIL
