

# **AGENDA**

**FOR**

**19<sup>th</sup> Meeting**

**OF**

**BOARD OF DIRECTORS**

**SCHEDULED FOR**

<b>DAY</b>	<b>:TUESDAY</b>
<b>DATE</b>	<b>:08.02.2005</b>
<b>TIME</b>	<b>:12.30 P.M.</b>

**PLACE**

**COMMITTEE ROOM OF CHIEF SECRETARY,  
HARYANA, 4<sup>TH</sup> FLOOR, CIVIL SECRETARIAT,  
HARYANA.**

**HARYANA STATE ROADS & BRIDGES  
DEVELOPMENT CORPORATION LTD.**

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**AGENDA ITEM NO.19.01**

**LEAVE OF ABSENCE**

Leave of absence may be granted to the Directors who have shown their inability to attend the meeting.

<b>S No.</b>	<b>Name</b>	<b>Designation</b>	<b>Present / Absent</b>
1.	Mr. Sunil Ahuja, IAS	Chairman	
2.	Mr. Bhaskar Chatterjee, IAS	Director	
3.	Mr. S.C.Choudhary, IAS	Director	
4.	Mr. R.R. Sheoran	Director	
5.	Mr. H.S.Chahal	Managing Director	

**DA ITEM NO. 02**

**TO CONSIDER AND APPROVE THE PAYMENT TO BE MADE TO THE CONTRACTOR M/S WAZIR SINGH & CO. AS PER THE AWARDS ANNOUNCED BY THE ARBITRATOR FOR THE CONTRACT NOS.HSRDC/T-10, T-11 & T-14 AND DELEGATION OF AUTHORITY TO THE MANAGING DIRECTOR FOR RELEASE OF PAYMENT**

1. An Agreement for the work of toll collection at following toll points was signed on 19<sup>th</sup> February, 2003 between HSRDC and M/s Wazir Singh & Co. (Agent Entrepreneur) for a period of two years:-

- i) Near Punjab Border on Budhlada-Ratia-Fatehabad road (Contract No.HSRDC Toll-10)
- ii) Near Himachal Pradesh Border on Jagadhari-Chhachhrauli-Poanta road (Contract No.HSRDC Toll-11)
- iii) Near Uttar Pradesh Border on UP Border-Sonipat-Gohana road (Contract No.HSRDC Toll-14)

*8 Clauses  
2- award  
6 Rejected*

2. Consequent to issue of Letter of Acceptance dated 7.2.2003 for the above mentioned contracts, the Entrepreneur deposited Bank Guarantee of Rs.15.01.200/-, Rs.17.82.200 and Rs.2.18.70.000/- as security deposit respectively and an amount of Rs.4.17,000/-, Rs.4.95.000/- and Rs.60.75.000/- respectively in the form of Bank Drafts as first instalment. The agreements were signed on 19.2.2003. The remaining 23 instalments of were required to be deposited upto 15<sup>th</sup> of every calendar month as per agreement.

*15% of Contract Amt.*

3. As per provision of Clause 2 of the Agreement, the M/s Wazir Singh & Co. was to deposit remaining 23 instalments upto 15<sup>th</sup> of each calendar month and on default to pay an instalment by the due date, the same was to be paid along with interest calculated @ 15% per day of delay within 30 days counted from the due date.

4. M/s Wazir Singh & Co. had deposited first instalment on 19.2.2003 and the 2<sup>nd</sup> instalment was to be deposited upto 15<sup>th</sup> of March, 2003 without interest and upto 14.4.2003 alongwith interest. But M/s Wazir Singh & Co. did not submit the 2<sup>nd</sup> advance instalment due upto 15.3.2003. Therefore, MD, HSRDC in communication to M/s Wazir Singh & Co. vide memo dated

10.4.2003 intimated that the next instalment falls due on 15.3.2003 and they were advised to deposit the instalment. It was also made clear that in case instalment alongwith interest is not paid within 30 days counted from the due date then the contract agreement will be terminated without further notice and the security deposit will be forfeited. However, the agency informed the Managing Director HSRDC vide letter dated 12.4.2003 and 15.4.2003 that payment of next instalment falls due on 15.4.2003 without interest and upto 15.5.2003 alongwith interest as they had deposited first instalment on 19.2.2003 which was for the period from 20.2.2003 to 19.3.2003. In response to this letter of the agency, MD, HSRDC further directed them vide letter dated 22.4.2003 to deposit the 2<sup>nd</sup> instalment due to be paid upto 15.3.2003 alongwith interest immediately but not later than 30.4.2003. It was clarified to the agency that the remaining 23 instalments were to be deposited by 15<sup>th</sup> of every calendar month and as the agreement was executed on 19.2.2003, the 2<sup>nd</sup> instalment became due to be paid in the next calendar month i.e. by 15<sup>th</sup> March, 2003 and not by 15<sup>th</sup> April, 2003 as stated by them. It was also made clear that if the instalment is not deposited by them upto 30.4.2003, the agreement executed with them would be terminated and security deposit shall be forfeited.

5. However, M/s Wazir Singh & Co. again intimated the MD, Haryana State Roads & Bridges Development Corporation Ltd. vide letter dated 29.4.2003 that the interpretation of calculating the due date for depositing the 2<sup>nd</sup> instalment by him is totally contrary to the provisions of the agreement because no where it is mentioned in the agreement that the 2<sup>nd</sup> instalment is to be deposited in the next month of the execution of agreement.
6. As the agency failed to deposit the 2<sup>nd</sup> instalment due to be paid upto 15.3.03 (to be paid with interest upto 14.4.03), MD, HSRDC forfeited the security deposit of agency amounting to Rs.15,01,200 - , Rs.17,82,200 - and Rs.2,18,70,000 - vide letters dated 9.5.2003 for contract No T-10, T-11 and T-14 respectively and got the same encashed from the Bank on 10.5.2003. Also the Letters of Authorization for the collection of toll issued to M/s Wazir Singh & Co. vide memo dated 19.2.2003 were also withdrawn and cancelled vide memos dated 9.5.2003. Consequently Haryana State Roads & Bridges

Development Corporation Ltd. also took over the possession of all the three toll points on 10.5.2003 and started the collection of toll departmentally w.e.f. 10.5.2003.

7. M/s Wazir Singh & Co. intimated to the MD, HSRDC vide letter dated 5.6.03 that the action of the forfeiture of security deposit and withdrawal of authorisation letter for the collection of toll on 9.5.2003 is illegal because they had contended that the due date for depositing the 2<sup>nd</sup> instalment alongwith interest falls on 15.5.2003 whereas the MD, HSRDC considered the due date for depositing the 2<sup>nd</sup> instalment alongwith interest as 14.4.2003. Furthermore M/s Wazir Singh & Co. observed that the MD, HSRDC had forfeited their security deposit on terminating the agreement which is contrary to the provisions of the agreement and, therefore, they sought arbitration for the adjudication of their disputes.
8. On the request of the agency and the Corporation, E-in-C, Haryana PWD B&R appointed firstly Sh.K.K.Gupta, the then, CE, Housing Board, Haryana as Arbitrator and then consequent upon his posting as MD, HSRDC, appointed Sh.R.C.Mehndiratta, the then CE (NH) as Arbitrator in exercise of the powers conferred upon him under the agreement. Sh.R.C.Mehndiratta conducted proceedings of arbitration. He was subsequently appointed as substituted Arbitrator after his retirement from the post of CE (NH) and continued the proceedings. Sh.R.C.Mehndiratta, Arbitrator fell seriously ill and intimated the Engineer-in-Chief, Haryana PWD B&R that he was unable to continue as Arbitrator. Eventually, with the consent of both the parties to the dispute, E-in-C, Haryana PWD B&R appointed Sh.R.P.Bansal, Chief Engineer (Roads), Haryana PWD B&R as Sole Substituted Arbitrator.
9. Sh.R.P.Bansal, Arbitrator announced his award on 11.10.2004. Copy of Award for three contracts are enclosed herewith as Annexure-I, II and III.
10. The case was sent to LR vide U.O. dated 7.12.2004 seeking legal advice considered opinion as to whether it was a fit case for filing objections under Section 34 of the Arbitration and Conciliation Act, 1996. The opinion of LR was received on 24.12.2004 wherein it was opined that the cases were not fit for filing application u/s 34 of the Arbitration and Conciliation Act.

1996 for setting aside the arbitral award and further that if the administrative department, so desired opinion of AG, Haryana may be obtained. Consequently, the case was sent to AG, Haryana for necessary opinion vide U.O. dated 24.12.2004. It was advised by AG, Haryana that there was nothing to disagree with the opinion of LR and so it was not a fit case for filing appeal under Section 34 of Arbitration and Conciliation Act, 1996. (Copy of cases sent to LR and AG containing their opinions are enclosed herewith as Annexures-4, 5 and 6).

11. The award given by the Arbitrator is mentioned below:-

a) Contract No.HSRDC Toll/T-10:

A sum of Rs.8.01.196/- awarded to the claimant i.e. M/s Wazir Singh & Co. to be paid by the Respondent i.e. MD, HSRDC. Claimant is further entitled for simple interest @ 10% per annum on Rs.8.01.196/- (amount of award) from the date of forfeiture of security deposit i.e. from 10.5.2003 upto the date of announcement of award i.e. upto 11.10.2004 which comes to Rs.1,14,142/-. Claimant is further entitled to simple interest @ 10% per annum on Rs.8.01.196/- (principal amount only) from 12.10.2004 till the date of actual payment of award to the claimant.

b) Contract No.HSRDC /Toll/T-11

A sum of Rs.9.51.260/- awarded to the claimant i.e. M/s Wazir Singh & Co. to be paid by the Respondent i.e. MD, HSRDC. Claimant is further entitled for simple interest @ 10% per annum on Rs.9.51.260 - (amount of award) from the date of forfeiture of security deposit i.e. from 10.5.2003 upto the date of announcement of award i.e. upto 11.10.2004 which comes to Rs.1,35,521/-. Claimant is further entitled to simple interest @ 10% per annum on Rs.9.51.260 - (principal amount only) from 12.10.2004 till the date of actual payment of award to the claimant.

c) Contract No.HSRDC Toll/T-14

A sum of Rs.1.16.72.100/- awarded to the claimant i.e. M/s Wazir Singh & Co. to be paid by the Respondent i.e. MD. HSRDC. Claimant is further entitled for simple interest @ 10% per annum on Rs.1.16.72.100 - (amount of award) from the date of forfeiture of security deposit i.e. from 10.5.2003 upto the date of announcement of award i.e. upto 11.10.2004 which comes to Rs.16.62.874 -. Claimant is further entitled to simple interest @ 10% per annum on Rs.1.16.72.100 - (principal amount only) from 12.10.2004 till the date of actual payment of award to the claimant.

12. In view of the position explained above, the members of the Board may consider and approve the payment of award amount to M/s Wazir Singh & Co. in respect of above mentioned three contracts and accordingly pass the following resolution:-

**“Resolved that payment of amount awarded by the Arbitrator in respect of three toll contracts namely HSRDC /T-10, T-11 and T-14 alongwith interest as awarded by the Arbitrator be and is hereby approved.**

**Further resolved that Managing Director of the Corporation be and is hereby authorised to release the said payment to M/s Wazir Singh & Co.”**

**AGENDA ITEM NO. 19.03**

**TO CONSIDER AND APPROVE THE PAYMENT TO BE MADE TO SH. RAJIV SINGLA AND THE RELEASE OF SECURITY DEPOSIT BANK GUARANTEE AS PER THE AWARD ANNOUNCED BY THE ARBITRATOR FOR THE CONTRACT NO. HSRDC/T-02 AND DELEGATION OF AUTHORITY TO THE MANAGING DIRECTOR FOR RELEASE OF PAYMENT.**

1. Haryana Government vide notification No. 9/106/2001-3-B&R(Works) (Toll-2) dated 02.01.2003 in exercise of the powers conferred by clause (f) of section 2 of the Haryana Mechanical Vehicles (Levy of Tolls) Act 1996 (Haryana Act 9 of 1996) notified the section of Gurgaon-Pataudi-Rewari Road (State Highway No. 26) to be "toll facility" for the purpose of the said Act. Further in exercise of the powers conferred by section 4 of the said Act, the Governor of Haryana had authorized Haryana State Roads and Bridges Development Corporation Limited to demand, collect and retain tolls from the said toll facility at toll point in Km. 2.4 near Gurgaon on Gurgaon-Pataudi-Rewari Road.
2. Managing Director Haryana State Roads & Bridges Development Corporation Limited invited bids for the collection of toll at this toll facility vide Bid Notice No. HSRDC/02 dated 8.10.2002. Bids were received on 08.11.2002 and Sh. Rajiv Singla had quoted the highest bid price of Rs. 8,54,40,000/- for two years to be deposited in 24 equal monthly installments.
3. The Managing Director, Haryana State Roads & Bridges Development Corporation Ltd., awarded this work to Sh. Rajiv Singla and issued Letter of Acceptance Sh. Rajiv Singla vide his memo No. HSRDC/610 dated 27.12.2002 contract price of Rs. 8,54,40,000/- for period of two years and directed Sh. Rajiv Singla to deposit security Deposit of Rs. 1,28,16,000/- (Rupees one Crore twenty eight lacs sixteen thousand only) in the form of Bank Guarantee as stipulated in clause 15. with in 15 days from the date of issue of letter of Acceptance and was also directed to deposit 1<sup>st</sup> installment amounting to Rs. 35,60,000/- in advance within 15 days from the date of issue of Letter of Acceptance in the form of Bank draft as stipulated in clause 16, and signing of the Agreement as stipulated in clause 17 of instructions of Bidders.
4. Sh. Rajiv Singla deposited security Deposit amounting to Rs 1,28,16,000/- (Rupees One Crore twenty eight lacs sixteen thousand only) vide B.G. no . 23/02-03 dated 09.01.2003 of State Bank of Patiala. Hisar on 09.01.2003 and also deposited advance first installment with HSRDC amounting to Rs. 35,60,000/- through Bank draft in

6 claim  
2 awarded



favour of the Managing Director Haryana State Roads & Bridges Development Corporation Limited payable at Chandigarh.

5. An agreement was executed between Sh. Rajiv Singla and the Managing Director on 10.01.2003 vide Agreement No. HSRDC/Toll/2 for a contract price of Rs. 8,54,40,000/- to be deposited in 24 monthly installment of Rs. 35,60,000/- each and accordingly Sh. Rajiv Singla was issued Letter of Authorization by the Managing Director vide his memo No. HSRDC/28 dated 10.01.2003 authorizing Sh. Rajiv Singla for collection toll from the toll point in K.M. 2.40 on Gurgaon Pataudi Rewari Road for period of 2 years at the rates specified in the Schedule.
6. As per provisions of Clause-2 of the Agreement, Sh. Rajiv Singla had agreed to deposit remaining 23 installment of Rs. 35,60,000/- each upto 15<sup>th</sup> of every calendar month and on default to pay any installment by the due date, the same will be paid along with the interest calculated @ 0.05% per day of the delay within 30 days from the due date. Sh. Rajiv Singla had deposited the first installment before entering into Agreement on 10.01.2003 and remaining 23 installments were to be deposited upto 15<sup>th</sup> of every calendar month. Sh. Rajiv Singla had deposited first installment on 10.01.2003 and the 2<sup>nd</sup> instalment was to be deposited upto 15<sup>th</sup> of every calendar month failing in the period of instalment with out any interest. Therefore, second installment amounting to Rs. 35,60,000/- was paid by the Sh. Rajiv Singla to the Managing Director on 15.2.2003, thereby fulfilling the terms and conditions of the Agreement by Sh. Rajiv Singla.
7. As per Agreement Sh. Rajiv Singla was authorized to collect toll at Toll point at Km. 2.4 near Gurgaon on Gurgaon-Pataudi-Rewari Road with effect from 11.01.2003. It has been claimed by Sh. Rajiv Singla that the toll point was got shifted by the District Administration from K.M. 2.40 to K.M. 3.00 (Actual RD 3.40 Km.) with the help of local police on administrative grounds as is evident from the copies of News papers cutting dated 13.2.2003 and 14.2.2003. Deputy Commissioner, Gurgaon vide Letter No. 217 LP dated 08.04.2003 addressed to Executive Engineer, P.W.D. (B & R) B&R No.-1 Gurgaon with copy to Sh. Rajiv Singla had confirmed/admitted having got shifted the Toll point from Km. 2.4 to Km. 3.00 on administrative grounds.
8. Sh. Rajiv Singla informed the Managing Director vide Letter dated 09.04.2003 about these facts and brought out that due to shifting of toll point from K.M.2.4 to km.3.00, there did not remain any valid contract/agreement between both the parties. Sh. Rajiv Singla had requested the Managing Director for terminating the agreement on account of gross violation of the terms and conditions of the Agreement by the District



Administration Gurgaon and he may be compensated of the huge loss already incurred by him on account of deficiency in the toll collection.

9. The Managing Director vide Memo No. HSRDC/34/02/271 dated 22.04.2003 informed Sh. Rajiv Singla that no such instructions for shifting of the toll point have been given by HSRDC and as such taking instructions from the District Administration Gurgaon and thereby complying the same of his own have no bearing on the contract. The Managing Director also endorsed copy of this letter to the Deputy Commissioner Gurgaon clearly indicating that any contractual implication on account of their interference in the shifting of toll point shall rest upon the Deputy Commissioner Gurgaon.
10. In response to the letter from M.D. (HSRDC) Sh. Rajiv Singla informed the Managing Director vide letter dated 02.05.2003 that Haryana Government had issued notification for levying toll at K.M. 2.4 on Gurgaon-Pataudi Rewari Road and Sh. Rajiv Singla had been issued authorization letter for collecting toll from toll point in K.M. 2.4. While issuing the authorization letter to Sh. Rajiv Singla, copies of the same were also dispatched by the Managing Director to the Deputy Commissioner Gurgaon and Senior Superintendent of Police Gurgaon for information and necessary action. Evidently Sh. Rajiv Singla had to collect toll from the toll point in K.M.2.4 and the District Administration had to assist and cooperate with the Entrepreneur/Agent for ensuring smooth collection of toll in accordance with the provisions of the Notification. It was further brought out that no collection of toll is possible in the district at any toll point without the assistance and cooperation of District Administration. It was also intimated that the District Administration Gurgaon had forcibly got shifted the toll point from K.M. 2.4 to km. 3.40 thereby making the scope of the contract and the notification as invalid. Haryana State Roads & Bridges Development had awarded the contract to Sh. Rajiv Singla for the collection of toll at toll point in Km 2.4 in accordance with the provision of the contract and notification issued by the Haryana Government in this regard. Since no collection of toll was possible without the assistance and cooperation of the District Administration Gurgaon. The Managing Director had again been requested that this Agreement may please be terminated on account of fundamental breach of contract by the District Administration Gurgaon HSRDC.
11. The Managing Director, vide Letter No. HSRDC/34/02/382 dated 15.05.2003 intimated Sh. Rajiv Singla that HSRDC had not breached the Contract and the Agreement will not be terminated on this account. He was, therefore, requested to

deposit the monthly instalment which was due to be paid by 15.04.03 alongwith interest @ 0.05% per day of delayed period as per contract agreement besides paying interest of Rs. 19440/- as intimated vide letter No. HSRDC/229-30 dated 04.04.03, with in 30 days counted from the due date, failing which the contract agreement will be terminated without any further notice and security deposit will be forfeited as provided in the agreement. Sh.Rajiv Singla had deposited the next installment amount of Rs. 25,60,000/- on 15.05.2003 vide letter dated 15.05.2003 This installment had been deposited under protest subject to the condition that Sh. Rajiv Singla reserves the right to claim the refund of this installment on account of fundamental breach of Agreement by HSRDC.

12. Sh.Rajiv Singla claimed that he had been collecting toll at toll point in K.M. 3.40 in violation of the provisions of notification dated 02.01.2003 due to forcible shifting of the toll point from K.M. 2.40 to K.M. 3.40 by the District Administration Gurgaon though he had the authority of collection toll at toll point in K.M. 2.40 in view of the authorization issued by the Managing Director in this regard. Since no immediate relief was expected from the Managing Director as such he had no other option except to seek the arbitration of this dispute and accordingly he requested the Managing Director vide letter no Spl./4 dated 22.05.2003 for appointing the Arbitrator in accordance with the provisions of Clause 28 of the Agreement.
13. Next installment was also deposited by Sh. Rajiv Singla on 11.06.2003 vide his letter dated 11.06.2003. It was again pointed out by him that HSRDC has committed fundamental breach of Agreement due to shifting of the toll point. Neither Agreement had been terminated by the Managing Director on this account nor had the Arbitrator been appointed as such the Managing Director had again been informed that installment is being deposited under protest and he reserves the right to claim the refund of this amount along with interest.
14. Deputy Commissioner Gurgaon vide letter No. 255 LP dated 18.06.2003 had again directed Sh. Rajiv Singla for shifting of the toll point to its original location at Km. 2.40 near Gurgaon Pataudi road.
15. The Managing Director vide letter No. HSRDC/34/02 512 dated 04.07.2003 had again intimated Sh.Rajiv Singla that HSRDC had not breached the provisions of the contract because they had not asked Sh. Rajiv Singla for shifting of this toll point. Sh. Rajiv Singla claimed that the letter dated 18.06.2003 from Deputy Commissioner Gurgaon was received by him on 09.07.2003 and thereafter he was threatened by the District Administration for shifting of the toll point to its original position at K.M.

2.40 near Gurgaon. However, the District Administration got removed toll point from KM. 3.40 on 16.07.2003 and directed for shifting of toll point at K.M. 2.4 in accordance with the provisions of the Agreement and also as directed by the District Administration Gurgaon on 16.07.2003 but Sh. Rajiv Singla was unable to establish toll point at K.M. 2.40 because of stiff resistance from the local people with the result that he had informed the Managing Director about these facts vide letter dated 18.07.2003 and the Managing Director had been requested to release the security deposit and also compensate the loss already suffered on account of deficit toll collections.

16. The Managing Director proceeded to terminate the Agreement vide his Letter No. HSRDC/536 dated 18.07.2003 and also forfeited the security deposit amount of Rs. 1,28,16,000/- in the form of Bank Guarantee No. 23/02-03 dated 09.01.2003 of State Bank of Patiala, Hisar. The authorization issued to Sh. Rajiv Singla for collecting toll had also **been withdrawn**. However, the security deposit of Sh. Rajiv Singla could not be encashed on account of the stay order granted by the Civil Judge (Sr. Division), Gurgaon vide order dated 21.7.2003.
17. On the application of Sh. Rajiv Singla and the Corporation, E-in-C, Hr. P.W.D. (B&R) appointed firstly Sh.K.K.Gupta, the then Chief Engineer, Haryana Housing Board as Arbitrator and then consequent upon his posting as Managing Director, HSRDC appointed Sh.R.C.Mehndiratta, the then CE (NH) as Arbitrator, in exercise of the powers conferred upon him under the agreement. Sh.R.C.Mehndiratta conducted proceedings of arbitration. He was subsequently appointed as substituted Arbitrator after his retirement from the post of CE (NH) and continued the proceedings. But suddenly Sh.R.C.Mehndiratta, Arbitrator fell seriously ill and intimated the Engineer-in-Chief, Haryana P.W.D. (B & R) that he was unable to continue as Arbitrator. Eventually with the consent of both the parties to the dispute, E-in-C, Haryana P.W.D. B&R appointed Sh.R.P.Bansal, Chief Engineer (Roads), Haryana P.W.D. B&R as Sole Substituted Arbitrator.
18. Sh.R.P.Bansal, Arbitrator announced the award on 18.10.2004. (Copy of award enclosed herewith as **Annexure-VII**).
19. The case was referred to LR vide U.O dated 24.12.2004 stating that since the opinion of Legal Cell differs with the comments furnished by the S.E, Gurgaon Circle, LR & Secretary to Government may render legal advice, considered opinion as to whether it was a fit case for filing objections u/s 34 of the Arbitration Act, 1996. The opinion of LR was received vide U.O dated 7.1.2005 wherein it was opined that – “In view of the

opinion of Legal Cell conceded by the Administrative Department, the comments of the Superintending Engineer, P.W.D. (B & R) Circle, Gurgaon are of no avail. The arbitral award is not fit for challenging in the Court by filing an application under Section 34 of the Act (Copy of case sent to LR and the opinion received is enclosed herewith as **Annexure-VIII**).

20. The award given by the Arbitrator is mentioned below:-

- i) A sum of Rs.90,588 - is awarded to the claimant i.e. Sh.Rajiv Singla to be paid by the respondent i.e. Managing Director, HSRDC (as per claim No.2).
- ii) The orders passed by the respondent vide letter dated 18.7.2003 for forfeiture of security deposit of the claimant amounting to Rs.1,28,16,000/- are set aside and the same is awarded in favour of the claimant (Claim No.6). Accordingly, the Bank Guarantee dated 9.1.2003 amounting to Rs.1,28,16,000.- furnished by the claimant as security deposit should be released/returned to the claimant.
- iii) The claimant is further entitled for simple interest @ 10% per annum on Rs.90,588 - (amount of award) from 19.7.2003 upto the date of announcement of Award i.e. upto 18.10.2004 which comes to Rs.11,342/-. Furthermore, the claimant is also entitled to simple interest @ 10% per annum on Rs.90,588 - (principal amount only) from 19.10.2004 till the date of actual payment of award to the claimant.

21. In view of the position explained above, the Members of the Board may consider and approve the payment of award amount alongwith interest and release of security deposit bank guarantee to Sh.Rajiv Singla and pass the following resolution:-

**“Resolved that the payment of Rs.90,588/- to be made to Sh.Rajiv Singla alongwith simple interest @ 10% per annum on Rs.90,588/- from 19.7.2003 to date of announcement of award i.e. 18.10.2004 which comes to Rs.11,342 - and further simple interest @ 10% per annum on Rs.90,588 - till the date of actual payment and the release of Bank Guarantee of Rs.1,28,16,000/- as per the award of the Arbitrator be and is hereby approved.**

**Further resolved that the Managing Director of the Corporation be and is hereby authorised to release the said payment and bank guarantee to Sh.Rajiv Singla.”**

**GENDA ITEM NO. 19.04**

**ANY OTHER ITEM WITH THE PERMISSION OF CHAIR**

# **ARBITRATION AWARD**

By

**R.P.Bansal , Sole Substituted Arbitrator-cum-  
Chief Engineer (Roads) Haryana PWD B&R,  
Branch Chandigarh**

**IN THE MATTER OF THE ARBITRATION AND RECONCILIATION  
ACT, 1996**

**AND**

**IN THE MATTER OF ARBITRATION REGARDING  
DISPUTE ARISING OUT OF THE CONTRACT FOR THE  
WORK OF COLLECTION OF TOLL AT TOLL POINT  
NEAR PUNJAB BORDER ON BUDHLADA-RATIA-  
FATEHABAD ROAD.**

**(CONTRACT NO. HSRDC/ TOLL/ 10)**

**BETWEEN**

**M/s WAZIR SINGH & COMPANY,  
67, Arya Samaj Complex,  
Raj Guru Market, Hisar ("The Claimant")**

**And**

**The Managing Director,  
Haryana State Roads & Bridges Development  
Corporation Limited,  
SCO-23, Sector 7-C, Madhya Marg,  
Chandigarh- 160019. ("The Respondent")**



100Rs.



**ARBITRATION AWARD**

Before : R.P.Bansal ( Sole Substituted Arbitrator)  
Chief Engineer ( Roads)  
Haryana PWD B&R Branch  
Chandigarh

**IN THE MATTER OF THE ARBITRATION AND RECONCILIATION ACT, 1996**

**AND**

**IN THE MATTER OF ARBITRATION REGARDING DISPUTE ARISING OUT OF THE CONTRACT FOR THE WORK OF COLLECTION OF TOLL AT TOLL POINT NEAR PUNJAB BORDER ON BUDHLADA-RATIA-FATEHABAD ROAD. (CONTRACT NO. HSRDC/ TOLL/ 10)**

**BETWEEN**

M/s WAZIR SINGH & COMPANY, "ENTREPRENEUR"  
67, Arya Samaj Complex, herein after referred to as "The Claimant"  
Raj Guru Market, Hisar

And

The Managing Director, MD.HSRDC  
Haryana State Roads herein after referred to as "The Respondent"  
& Bridges Development Corporation Limited,  
SCO-23, Sector 7-C, Madhya Marg,  
Chandigarh- 160019.

Where as in pursuance of the contract No HSRDC/Toll/10 executed between M/s Wazir Singh & Co, 67 Arya Samaj Complex, Raj Guru Market, Hisar and the Managing Director, Haryana State Roads & Bridges Development Corporation Limited, SCO 23 Sector-7, Madhya Marg, Chandigarh for the appointment of Arbitrator under Section 15(2) of the Arbitration and Reconciliation Act, 1996 and Clause 28 of the Agreement pertaining to the work

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for the collection of toll at toll point near Punjab border on Budhla-Rata-Fatehabad Road (Contract No. HSRDC/Toll/10). Engineer-in-Chief, Haryana PWD B&R Chandigarh being the appointing authority in accordance with the provisions of the Agreement had initially appointed Sh. K.K.Gupta, the then Chief Engineer, Haryana Housing Board Chandigarh as Sole Arbitrator vide his memo no HHUP-II/483 dated 4.8.2003 and he conducted two hearings. Later on Sh. K.K.Gupta was appointed by the Haryana Government as Managing Director, Haryana State Roads & Bridges Development Corporation Limited (Respondent) as such on the request of Sh. K.K.Gupta, the Engineer-in-Chief, Haryana PWD B&R Chandigarh being the appointing authority in accordance with the provisions of the Agreement appointed Chief Engineer (NH), Haryana PWD B&R branch, Chandigarh as Sole Substituted Arbitrator vide his memo no HHUP-II/693 dated 17.11.2003. Six hearings were conducted by Sh. R.C. Mehndiratta Chief Engineer (NH)- cum-Sole Substituted Arbitrator). Although Sh. R.C.Mehndiratta Chief Engineer (NH) retired from Haryana Government service on 30.6.2003, but Engineer-in-Chief, Haryana PWD B&R Chandigarh re-appointed Sh. R.C.Mehndiratta (by name) as Sole Substituted Arbitrator vide his memo no HHUP-II/273 dated 5.7.2004 and he conducted one hearing. However later on he suffered heart attack and resigned from this assignment. He requested the appointing authority to appoint another substituted arbitrator. Accordingly, Engineer-in-Chief, Haryana PWD B&R Chandigarh appointed the undersigned as Substituted sole Arbitrator vide his memo no HHUP-II/336 dated 14.9.2004 for the settlement of dispute between the parties arising out of Contract no HSRDC.Toll/10

Accordingly both the parties were directed to attend the hearing along with all the documents and witnesses.

Where as I, R.P.Bansal, the Sole Substituted Arbitrator-cum-Chief Engineer (Roads) Haryana PWD B&R Branch, Chandigarh carefully considered



the submissions made in writing and orally as well as documents/evidence placed before me by both the parties. After going through the documents produced before me, along with written and oral arguments made by the Representatives and Counsels of both the parties, I hereby make my award as follows:-

### History of the case

1. Haryana Government vide notification No. 9/106/2001-3-B&R(Works) (Toll-10)- dated 31.12.2002 in exercise of the powers conferred by clause (f) of section 2 of the Haryana Mechanical Vehicles (Levy of Tolls) Act, 1996 ( Haryana Act 9 of 1996 notified Budhlada from Punjab border -Ratia- Fatehabad Road State Highway No.21) to be "toll facility" for the purpose of the said Act. Further in exercise of the powers conferred by section 4 of the said Act, the Governor of Haryana had authorized Haryana State Roads and Bridges Development Corporation Limited to demand, collect and retain tolls from the said toll facility at toll point near Punjab border on Budhlada- Ratia- Fatehabad Road
2. Managing Director, Haryana State Roads & Bridges Development Corporation Limited invited bids for the collection of toll at this toll point vide Bid Notice No HSRDC/ 10 dated 04.12.2002. Bids were received on 30.12.2002 and the Claimant had quoted the highest bid price of Rs. 1,00,08,000/- for two years to be deposited in 24 equal monthly installments.
3. The Respondent awarded this work to the Claimant and issued Letter of Acceptance to the Claimant vide his memo no HSRDC/103 dated 07.02.2003. The Claimant deposited Security amounting to Rs. 15.01,200/- (Rupees Fifteen lacs one thousand two hundred only ) vide Bank Guarantee no 09/2002-2003 dated 18.2.2003 of Oriental Bank of Commerce Urban Estate Hisar and also deposited advance installment to the Respondent amounting to Rs. 4,17,000/- through Bank draft in favour of the Managing Director, Haryana State Roads & Bridges Development Corporation Limited payable at Chandigarh. Agreement was executed between the Claimant and the Respondent on 19.2.2003 vide Agreement No HSRDC/Toll/10 for a contract price of Rs. 1,00,08,000/- to be deposited in 24 monthly installments of Rs. 4,17,000/- each and accordingly the Claimant was issued Letter of Authorization by the Respondent vide Memo No HSRDC/180 dated 19.2.2003 authorizing the Claimant for collecting toll from the toll point for period of 2 years at the rates specified in the Schedule.

4. As per provision of clause 2 of the Agreement, the Claimant had agreed to deposit remaining 23 instalments of Rs. 4,17,000/- each up to 15<sup>th</sup> of every calendar month and on default to pay any installment by the due date, the same will be paid along with the interest calculated @ 0.05% per day of the delay with in 30 days counted from the due date.
5. That the Claimant had deposited the first installment before entering into Agreement on 19.2.2003 and remaining 23 installments were to be deposited on 15<sup>th</sup> of every calendar month falling in the period of installment. The Claimant had deposited first installment on 19.2.2003 which was for the period from 20.2.2003 to 19.3.2003 and the period of 2<sup>nd</sup> installment was from 20.3.2003 to 19.4.2003 and this installment was to be deposited up to 15<sup>th</sup> of calendar month falling in the period of installment i.e up to 15<sup>th</sup> April, 2003 with out interest. The respondent interpreted that the payment of second installment falls due on 15.3.2003 with out interest and 14.4.2003 along with interest, where as the Claimant interpreted that the payment of second installment falls due on 15.4.2003 with out interest and up to 15.5.2003 along with interest and so on. The Respondent in communication to the Claimant vide memo No HSRDC/246 dated 10.4.2003, intimated that the next installment falls due on 15.3.2003 and the Claimant was advised by the Respondent to deposit next installment of toll. The Claimant informed the respondent vide Letter dated 12.4.2003 and 15.4.2003 that payment of next installment falls due on 15.4.2003 without interest and up to 15.5.2003 along with interest. Therefore, the Claimant would be depositing the second installment up to 15.5.2003 along with the interest. The Respondent after considering the contents of the above mentioned letters of the Claimant again intimated that the next payment of installment falls due on 15.3.2003 without interest and up to 15.4.2003 along with interest. The Respondent further directed the Claimant to deposit the second installment latest by 30.4.2003 and also warned the Claimant that if the installment is not deposited by the Claimant up to 30.4.2003, the Agreement executed with the Claimant would be terminated and security deposit shall be forfeited.
6. However, Claimant again intimated to the Respondent vide letter dated 29.4.2003 that interpretation of calculating the due date for depositing the second installment by the Respondent is totally contrary to the provisions of the Agreement because nowhere it is mentioned in the Agreement that the second installment is to deposited in the next month of the month of execution of Agreement.. However, the Claimant further conveyed his commitment vide letter dated 29.4.2003 for depositing the second

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- installment along with interest up to 15.5.2003 in accordance with the provisions of the Agreement.
7. Respondent with out further notice to the Claimant forfeited the security deposit of the Claimant amounting to Rs 15,01,200/- vide letter no HSRDC/360 dated 9.5.2003 and also got the bank guarantee no 09/2002-2003 dated 18.2.2003 of Oriental Bank of Commerce, Urban Estate Hisar amounting to Rs 15,01,200/- encashed from the bank on 10.5.2003. The letter of authorization for the collection of toll issued to the Claimant vide memo HSRDC/186 dated 19.2.2003 was also withdrawn and canceled by the Respondent through memo no HSRDC/360 dated 9.5.2003. Accordingly the Respondent also took over the possession of the toll point on 10.5.2003 and started the collection of toll departmentally with effect from 10.5.2003.
  8. The Claimant intimated to the respondent that the action of forfeiture of security deposit and withdrawal of authorization for the collection of toll on 9.5.2003 is illegal because the Claimant observed that the due date for depositing the second installment along with interest falls on 15.5.2003 where as the respondent considered the due date for depositing the second installment along with interest as 14.4.2003. Further more, the Claimant observed that the Respondent had forfeited the security deposit of the Claimant with out terminating the Agreement which is contrary to the provisions of the Agreement and therefore, the Claimant sought arbitration for the adjudication of their disputes. I have been appointed as Sole Substituted Arbitrator for adjudication of the disputes raised by the Claimant.

**The points/ disputes raised by the Claimant have been dealt as under:-**

**DISPUTE NOS 3.1, 3.2 AND 3.5 :-**

- 3.1 What would be the due date for depositing second installment with out interest and with interest and what would be the due dates for depositing further installments without interest and with interest?
- 3.2 As intimated in para 3.1 above, if the due date for the payment of second installment with out interest and with interest is considered as 15<sup>th</sup> April 2003 and 15<sup>th</sup> May 2003, then the action of the Respondent in forfeiting the security deposit amounting to Rs, 15,01,200/- vide letter no HSRDC/360 dated 9.5.2003 is illegal and against the provisions of the Agreement ?

- 3.5 Whether the Respondent was required to communicate his final decision to the Claimant on the letter dated 29.4.2003 of the Claimant before taking action by the respondent vide letter no HSRDC/360 dated 9.5.2003 ?

In support of the claim, the Claimant has explained/ brought out as under:-

- (i) The Claimant has brought that as per provisions of the Acceptance letter first installment amounting to Rs.4,17,000/- was deposited with the Respondent on 19.2.2003 through bank draft and accordingly the Agreement was executed by the Claimant with the Respondent on 19.2.2003. As per provision of clause 2 of the Agreement, the Claimant had agreed to deposit remaining 23 installments of Rs. 4,17,000/- each up to 15<sup>th</sup> of every calendar month and on default to pay any of the installment by the due date, the same will be paid along with the interest calculated @ 0.05% per day of the delay with in 30 days from the due date. The Claimant had deposited the first installment before entering into Agreement on 19.2.2003 and the remaining 23 installments were to be deposited on 15<sup>th</sup> of every calendar month. The Claimant further brought out that they had deposited the first installment which was for the period from 20.2.2003 to 19.3.2003 and the period of second installment was from 20.3.2003 to 19.4.2003 and therefore, the second installment was to be deposited up to 15<sup>th</sup> of the calendar month falling in the period of second installment with out interest. Therefore, payment of the second installment for the period from 20.3.2003 to 19.4.2003 was due to deposited by the claimant up to 15.4.2003 with out interest and up to 15.5.2003 along with interest.
- (ii) The Claimant clearly informed the Respondent vide his letter dated 29.4.2003 that the interpretation of calculating the due date by the Respondent for depositing the installments is totally contrary to the provisions of the Agreement, as where it is mentioned in the Agreement that the next installment is scheduled to be paid up to 15.3.2003. In fact, the Claimant had deposited the first installment on 19.2.2003 and thereafter the Agreement was signed. As per provision of the Agreement, the Claimant was required to deposit remaining 23 installments up to 15<sup>th</sup> of every calendar month and if the Claimant was required to deposit the next installment on 15<sup>th</sup> of the calendar month falling in the next month of the execution of the Agreement, then the Claimant will have to deposit 24 remaining installments on 15<sup>th</sup> of every calendar month falling in the period of contract, where as the Claimant is required to deposit remaining 23 installments. The Claimant further conveyed his commitment to the Respondent vide his letter dated

29.4.2003 to deposit the second installment up to 15.5.2003 along with interest in accordance with the provisions of the Agreement. The Claimant further intimated to the Respondent that any illegal/arbitrary action of terminating the Agreement in violation of the provisions of the Agreement will be the responsibility of the Respondent and they will claim full damages for the same.

- (iii) The Claimant further brought out in their Rejoinder that the plea taken by the respondent that the Claimant had deposited the first installment in the month of February 2003 and therefore the Claimant was required to deposit the second installment during the month of March 2003 with out interest i.e up to 15.3.3003 is further proved hypothetical and imaginary because as per version of the Respondent, if any Entrepreneur deposits the first installment on 31<sup>st</sup> of any month, then he has to deposit the second installment on 15<sup>th</sup> of the next month i.e after 15 days of depositing the first installment and if any Entrepreneur deposits the first installment on 1<sup>st</sup> of any month , then he has to deposit the second installment on 15<sup>th</sup> of the next month i.e. 45 days after depositing the first installment. This shows that Entrepreneur depositing the first installment on 1<sup>st</sup> of any month is allowed 45 days for depositing the second installment, where as the Entrepreneur depositing first installment one day prior to 1<sup>st</sup> of the month is allowed only 15 days for depositing the second installment. This is totally hypothetical and against the spirits of the Agreement where as the fact remains that the payment of second installment falls due on 15<sup>th</sup> of that calendar month falling in the period of installment and so on.
- (iv) To support the version about the interpretation of the due dates for depositing the second installment and subsequent installments, the Claimant has given reference of two other Agreements executed by the Respondent with other Entrepreneurs i.e Sh. Kushal Singh of Sikar in respect of Agreement Nos HSRDC/Toll/4 for the collection of toll at toll point in Km 4.1 near Palwal on Palwal-Sohna Road and HSRDC/Toll/13 for the collection of toll at toll point near UP border on Kairana -Panipat Road. In these two cases, the Entrepreneur had deposited first installment on 3.1.2003 which was for the period from 4.1.2003 to 3.2.2003. As per version of the Respondent taken in this case, the due date for depositing the second installment should have been 15<sup>th</sup> of January 2003 where as the Respondent in both these cases considered the due date for depositing the second installment as 15<sup>th</sup> February 2003 i.e 15<sup>th</sup> of the calendar month falling in the period of installment from 4.2.2003 to 3.3.2003. Although the Respondent



considered the due dates for depositing the second installment in the above two cases as 15<sup>th</sup> of the calendar month falling in the period of installment where as Respondent adopted different yardstick for calculating the date for depositing the second installment by the Claimant which is totally contrary to the provisions of the Agreement.

- (v) After depositing first installment on 19.2.2003 which was for the period from 20.2.2003 to 19.3.2003, claimant had undertaken to deposit the remaining 23 installments. He could only think of depositing the second installment after the expiry of period of first installment i.e after 20.3.2003. Since he had to deposit the installment on 15<sup>th</sup> of the calendar month as such the due date for depositing second installment would automatically fall on 15.4.2003 i.e 15<sup>th</sup> of the calendar month falling in the period of second installment. Furthermore, the Agreement period is from 20.2.2003 to 19.2.2005 and 15<sup>th</sup> of every calendar month would fall 24 times during the period of Agreement, where as the claimant is required to deposit remaining 23 installments and not the remaining 24 installments. Evidently the due date for depositing the second installment with out interest would be 15.4.2003 and with interest as 15.5.2003.
- (vi) Furthermore, as per provision of clause 6 of Instructions to Bidders ( Toll Remittance), the toll shall be collected by the Entrepreneur and remitted in the form of bank draft in favour of the Managing Director, HSRDC payable at Chandigarh on monthly basis by 15<sup>th</sup> of every calendar month. As per provision of this clause, nowhere it is mentioned that advance installment has to be deposited. The Entrepreneur is to collect the toll and thereafter remit the same to the Respondent. But whatever the case may be, the due date for depositing second installment falls due on 15<sup>th</sup> April 2003 with out interest i.e 15<sup>th</sup> of the calendar month falling in the period of second installment.
- (vii) As per provision of clause 2 of the Agreement, it is clearly specified that in case any of the installment is not paid within 30 days counted from the due date, then the Contract Agreement will be terminated with out any further notice. As per version of the Respondent, if the due date for depositing the second installment with out interest was 15<sup>th</sup> March 2003 and up to 15<sup>th</sup> April 2003 along with interest, then the Respondent should have terminated the Contract Agreement immediately after 15<sup>th</sup> April 2003 thereby not allowing the Entrepreneur to collect further toll from the toll point beyond 15<sup>th</sup> April 2003, but Respondent in this case with out terminating the Agreement forfeited

the security deposit of the Claimant on 9.5.2003 which clearly shows that he had the intention of considering the due date for depositing the second installment as 15<sup>th</sup> April 2003 with out interest and 15<sup>th</sup> May 2003 along with interest and that is why kept on waiting after 15<sup>th</sup> April 2003 and did not take any immediate action. However, Respondent forfeited the security of the Claimant with out terminating the Agreement on 9.5.2003 due to reasons best known to him. However, the action of forfeiting the security deposit of the Claimant before the expiry of due date for depositing the second installment along with interest is totally contrary to the provisions of the Agreement.

- (viii) It was the option of the Claimant to deposit installments in advance and the claimant would not claim any interest from the Respondent. But if the installment is not paid in advance then how the Respondent is entitled to claim interest for not paying the installment in advance. However, the Respondent should only be entitled to charge interest from the Entrepreneur if he fails to pay the installment after collecting the same for 30 days. However, considering the due date for depositing the second installment with out interest as 15<sup>th</sup> April 2003, even this date is still 5 days prior to the expiry of period of second installment.
- (ix) The Claimant has claimed that due date for depositing the second installment with out interest was 15<sup>th</sup> April 2003 and along with interest as 15<sup>th</sup> May 2003. Thus neither any action could be taken by the Respondent before 15<sup>th</sup> May 2003 in accordance with the provisions of the Agreement nor was the Claimant actually liable for any action before 15<sup>th</sup> May 2003.

**The Respondent has defended the dispute and explained as under:-**

- (a) That as per clause 2 of the Agreement it has been made clear that claimant shall pay all the installments on due dates in advance and the claimant shall not claim any interest on these installments. The Respondent reproduced the relevant para of the Agreement as under:

**"Further the Entrepreneur/Agent hereby agrees that he will pay to the HSRDC all installments on due dates in advance as aforesaid and that further he will have no claim for interest on these installments paid in advance".**

**"And whereas, of default to pay any installment by due date the same will be paid along with interest calculated @ 0.05% per day of delay. Further in case any installment along with interest is not paid**

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within 30 days counted from the due date, then the contract agreement will be terminated without any further notice. In such event without prejudicing the rights and other remedies available to the Haryana State Roads & Bridges development Corporation Limited, the Security Deposit and all installments of contract amount already paid shall stand forfeited without any claim from the agency."

"Further any authorization letter for collection of toll issued shall be treated as cancelled and withdrawn. Further more Haryana State Roads & Bridges development Corporation Limited will be at liberty to take over the site and start collection of toll as deemed fit."

- (b) The Respondent explained that as per provision of para 1.3 and 1.4 at page 7 of the Agreement and also para 3 & 4 at page 20 of the Agreement, the claimant had deposited first installment on 19.2.2003 and also signed the Agreement on 19.2.2003, so the next installment became due to be deposited on 15<sup>th</sup> of the next calendar month i.e March 2003 meaning thereby that second installment was due to be deposited up to 15<sup>th</sup> March 2003 with out interest. However, as per Agreement, in case of default to pay any installment by the due date, the same can be paid in next 30 days but along with interest calculated @ 0.05% of the due amount for each day of delay. Thus the second installment could be paid up to 15.3.2003 with out interest and up to 14.4.2003 along with interest. The plea taken by the Claimant that the second installment was for the period from 20.3.2003 to 19.4.2003 and the second installment could be deposited on 15<sup>th</sup> of the calendar month falling in the period of installment is not correct. Rather the installments are to be deposited in advance and regularly before 15<sup>th</sup> of the calendar month after depositing the first installment.
- (c) The Respondent explained that the plea of the Claimant that he would have to deposit 24 remaining installments on 15<sup>th</sup> of every calendar month falling in the period of Agreement if he is asked to deposit the second installment on 15<sup>th</sup> March 2003 is not correct because as per Agreement, the Claimant is only required to deposit 23 remaining installments during the contract period starting from 15.3.2003.
- (d) As per para 6 of Instructions to Bidders, the Claimant was required to remit the toll on monthly basis by 15<sup>th</sup> of every calendar month. Since the collection of toll commenced from 20.2.2003 as such the Claimant was required to pay the second installment on 15.3.2003 after collecting the same from the toll point.
- (e) The Respondent had clearly conveyed to the Claimant vide his letter no HSRDC/60/02/274 dated 22.4.2003 that second installment is due to



deposited up to 15.3.2003 with out interest and up to 14.4.2003 along with interest. However, the Respondent after taking lenient view further advised the Claimant to deposit the second installment even up to 30.4.2003 along with interest failing which the Agreement shall be terminated and security deposit shall be forfeited.

- (f) The Claimant had laid stress on the provisions of Clause 4(IV) of the Agreement but this clause would not help the Claimant and would help the Respondent. The clause is reproduced below:-

4(iv) "In the event of any default on the part of the Entrepreneur/Agent to comply with any of the terms of this contract or in the event of termination of the contract by the HSRDC under any provision, the HSRDC shall have the right to forfeit the entire or part amount of Security Deposit, furnished by the Entrepreneur/Agent and to appropriate the Security Deposit or any part thereof in or towards the satisfaction of any claim of the HSRDC any or damage, losses, costs charges of expenses, or otherwise however. The decision of Managing Director HSRDC shall be final in respect of such damages, losses, costs, charges or expenses or otherwise however shall be final binding on the Entrepreneur/Agent."

4( viii) "Except where otherwise provided or specified in the contract and subject also to, such power as may be delegated to him from time to time by the government, the decision of the Managing Director, HSRDC for the time being in charge of the said Toll facility on all questions and matter whatsoever arising out of or in relation to or in connection with this contract or as to the interpretation of any of its provisions or clause/s either during the subsistence of this contract or at any time thereafter shall be final and binding on the parties to this contract."

As per these provisions of the Agreement, all the questions in respect of the clauses of the contract would be interpreted by the managing Director during the currency of the contract or any time thereafter and the same would be final and binding on both the parties. However, the Claimant had no authority to interpret the clauses on its own and if the Claimant did not want to agree with the interpretations of the Respondent, then he should have firstly deposited the second installment on the due date as interpreted by the Respondent and thereafter could have sought arbitration against the decision of the Respondent in accordance with the provisions of clause 28 and 29 of the Agreement which are also reproduced below:-

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**Clause 28.** "In the event the Entrepreneur/Agent disagreeing, with the decision mentioned in the provision of above, he may request the Managing Director, HSRDC, for appointment of an Arbitrator for adjudication of the dispute. On receipt of request from the Entrepreneur/Agent for appointment of Arbitrator, Engineer-in-Chief, Haryana PWD B&R will appoint an Arbitrator for adjudication of the dispute. The arbitrator so appointed shall conduct the arbitration proceedings in accordance with the provision of the contract agreement. Fee of the Arbitrator shall be paid by the party who will seek the arbitration."

**Clause 29.** "Pending appointment of Arbitrator or resolution of the dispute by Arbitrator, the Entrepreneur/Agent will continue to remit the agreed installment of money to the Managing Director, HSRDC"

(g) the respondent had taken lenient view and had given full opportunity to the Claimant for depositing the second installment even up to 30.4.2003 along with interest but the Claimant failed to deposit the second installment and therefore violated the provisions of the Agreement as such orders dated 9.5.2003 passed by the Respondent are perfectly legal and in accordance with the provisions of the Agreement.

**After considering written arguments and after hearing oral arguments of both the parties, the dispute is adjudicated /decided as under:-**

(i) Para 2 of the Agreement provides as under:-

"AND WHEREAS, the Entrepreneur/Agent in pursuance to the terms and condition of the contract has deposited the first installment of Rs. 15,01,200/- ( Rupees Fifteen lacs one thousand two hundred only) Where as the Entrepreneur/Agent do hereby agree to pay regularly the following instalments as given under by the specified due dates".

Number of remaining installments	Amount of each installment	Due date of payment
23 Monthly	Rs.4,17,000/- ( Rupees four lacs seventeen thousand only)	To be deposited upto 15 <sup>th</sup> of every calendar month.

"AND WHEREAS, the Entrepreneur/Agent hereby agrees that all the above mentioned installments, shall be paid in the shape of demand drafts drawn on any Nationalized Bank/ ICICI / HDFC/ UTI/ IDBI Bank , payable at Chandigarh, in favour of Managing Director, Haryana State Roads & Bridges development Corporation Limited".

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**"Further the Entrepreneur/Agent hereby agrees that he will pay to the HSRDC all installments on due dates in advance as aforesaid and that further he will have no claim for interest on these installments paid in advance".**

**"And whereas, of default to pay any installment by due date the same will be paid along with interest calculated @ 0.05% per day of delay. Further in case any installment along with interest is not paid within 30 days counted from the due date, then the contract agreement will be terminated without any further notice. In such event without prejudicing the rights and other remedies available to the Haryana State Roads & Bridges development Corporation Limited, the Security Deposit and all installments of contract amount already paid shall stand forfeited without any claim from the agency".**

**"Further any authorization letter for collection of toll issued shall be treated as cancelled and withdrawn. Further more Haryana State Roads & Bridges development Corporation Limited will be at liberty to take over the site and start collection of toll as deemed fit."**

The Claimant deposited the first installment on 19.2.2003 and thereafter the Agreement was executed between both the parties on 19.2.2003. The Agreement period is from 20.2.2003 to 19.2.2005. The Claimant had deposited the first installment in advance which was for the period from 20.2.2003 to 19.3.2003. Although the Claimant had to deposit the installments in advance but the Respondent can neither ask the Claimant nor has any right to demand the second installment before the expiry of period of first installment i.e. up to 19.3.2003. Therefore, the Claimant was required to deposit the second installment after 19.3.2003 but the Agreement provides for depositing the remaining 23 installments up to 15<sup>th</sup> of every calendar month. Thus 15<sup>th</sup> of the calendar month falling after 19.3.2003 is 15.4.2003 and therefore, this date i.e. 15.4.2003 will have to be considered due date for depositing the second installment with out interest and 15.5.2003 along with interest.

- (ii) The Claimant had undertaken to deposit the remaining 23 installments up to 15<sup>th</sup> of every calendar month. The question of depositing second installment would only arise after the expiry of period of first installment i.e. 19.3.2003 other wise, how could the Claimant can be asked to deposit the second installment in advance when the first installment period for which he has deposited the first installment in advance had not expired. Furthermore, the contract period is from 20.2.2003 to 19.2.2005 and if the payment of remaining 23 installments is to commence on 15.3.2003, then the claimant

would have to deposit 24 remaining installments because 15<sup>th</sup> of calendar month would fall 24 times during the period of contract starting from 15.3.2003.

- (iii) The Respondent had brought out that the Claimant is required to deposit the next installment on 15<sup>th</sup> of next calendar month following the month of execution of Agreement but it has been found that there is no such provision in the Agreement that the Claimant is required to deposit the second installment on 15<sup>th</sup> of the next month of the execution of Agreement. However, as explained by the Claimant if any Entrepreneur deposits the first installment on 31<sup>st</sup> of any month and executes the Agreement on the same day, then he is required to deposit the second installment on 15<sup>th</sup> of the next month i.e after 15 days of depositing the first installment and if any Entrepreneur deposits the first installment on 1<sup>st</sup> of any month and executes the Agreement on the same day, then he is required to deposit the second installment on 15<sup>th</sup> of the next month i.e after 45 days of depositing the first installment. This shows that any Entrepreneur depositing the first installment one day prior to 1<sup>st</sup> of any month is allowed 15 days for depositing the second installment where as the Entrepreneur depositing the first installment on 1<sup>st</sup> of any month is allowed 45 days for depositing the second installment. This is totally hypothetical and contrary to the provisions of the Agreement and also against the principle of natural justice. Claimant further explained that Respondent has now inserted special clause in the new Agreement ( Agreement No HSRDC/Toll/13-R ) where in it is provided as under:-

**"Irrespective of the date of signing of the Agreement and deposit of first installment during any month, the second installment shall be deposited by the Entrepreneur by 15<sup>th</sup> of the following month"**

Evidently the Respondent had incorporated this clause in the new Agreement for depositing the second installment by 15<sup>th</sup> of the following month of executing the Agreement where as no such clause exist in this Agreement and these provisions can not be made applicable in respect of the dispute in question.

- (iv) The Claimant has given reference of two other Agreements executed by the Respondent in the case of Sh. Kushal Singh Sikar Entrepreneur in respect of Agreement Nos HSRDC/Toll/4 for the Collection of toll at toll point in Km 4.1 near Patwal on Palwal-Sohna Road and HSRDC/Toll/13 for the Collection of toll at toll point near UP Border on Kairana-Panipat Road. In these two cases, the Entrepreneur had deposited first installment on 3rd January 2003 which was for the period from 4.1.2003 to 3.2.2003 and second installment was for the period from 4.2.2003 to 3.3.2003. As

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per provisions of those Agreements, if the second installment was to be deposited on 15<sup>th</sup> of the calendar month, then the due date for depositing the second installments in these two cases should have been 15.1.2003, where as the Respondent in both these cases considered the due date for depositing the second installment as 15<sup>th</sup> February i.e 15<sup>th</sup> of the calendar month falling after the expiry of period of first installment. In view of the above, the due date for depositing the second installment in these two cases had been considered by the respondent as 15<sup>th</sup> of the calendar month falling after the expiry of period of first installment where as this yardstick was not adopted by the Respondent in this particular case under dispute and therefore, the claim of the Claimant considering the due date for depositing the second installment on 15.4.2003 with out interest can not be ignored.

- (v) Although the Claimant has claimed that due date for depositing the installment should only be considered after the Claimant had collected the toll for one month and if he fails to deposit the same on this date, then he is bound to pay interest on this installment otherwise, how could the Respondent claim interest from the Claimant if he had not collected the toll for one month. Although the plea of the Claimant appears to be genuine but we are now bound by the provisions of the Agreement which provides for depositing the remaining 23 installments up to 15<sup>th</sup> of every calendar month which is the due date for depositing the remaining installments with out interest.
- (vi) The Respondent considered the due date for depositing the second installment as 15.3.2003 with out interest and 14.4.2003 along with interest. The Respondent has brought out that although the Claimant had not deposited the second installment along with interest up to 14.4.2003 but he had taken the lenient view and did not take action against the Claimant immediately after that date and another opportunity was given to the Claimant to pay the second installment up to 30.4.2003 along with interest but the Claimant failed to deposit the second installment even up to 9.5.2003 as such the security deposit of the claimant had been forfeited in accordance with the provisions of the Agreement. It has been observed that there is no such provision in the Agreement empowering the Respondent to extend the date of depositing the second installment along with interest after the expiry of 30 days from the due date. It appears that the Respondent was not sure about the due date for depositing the second installment and that is why kept on waiting and did not take action against the Claimant immediately after 15.4.2003 or one or two days after this date knowing fully well that the Claimant has not deposited the second installment so



far. However, if in the opinion of the Respondent, the second installment was required to be deposited along with interest up to 14.4.2003, then he should have taken action against the Claimant immediately after 15.4.2003. Allowing the Claimant to charge toll from 15.4.2003 to 9.5.2003 itself proves the uncertainty/ ambiguity in the mind of respondent about the due date for depositing the second installment.

- (vii) Respondent has explained that as per provision of para 4(viii) of the Agreement, the decision of the Managing Director, HSRDC for the time being in charge of the toll facility on all questions and matters whatsoever arising of or in relation to or in connection with this contract or as to the interpretation of any of its provisions or clauses either during the subsistence of the contract or at any time thereafter shall be final and binding on both the parties. However, if the Claimant did not agree with the decision of the Respondent, then after depositing the second installment on the due date, the Claimant could have sought arbitration under clauses 28 and 29 of the Agreement which are reproduced below:-

**Clause 28** "In the event the Entrepreneur/Agent disagreeing, with the decision mentioned in the provision of above, he may request the Managing Director, HSRDC, for appointment of an Arbitrator for adjudication of the dispute. On receipt of request from the Entrepreneur/Agent for appointment of Arbitrator, Engineer-in-Chief, Haryana PWD B&R will appoint an Arbitrator for adjudication of the dispute. The arbitrator so appointed shall conduct the arbitration proceedings in accordance with the provision of the contract agreement. Fee of the Arbitrator shall be paid by the party who will seek the arbitration".

**Clause 29.** "Pending appointment of Arbitrator or resolution of the dispute by Arbitrator, the Entrepreneur/Agent will continue to remit the agreed installment of money to the Managing Director, HSRDC "

From the above plea of the Respondent, it is evident that he had full authority to interpret the provision of clauses and on all questions/matters and his decision is final and binding on both the parties. Since the Respondent had interpreted the due date for depositing the second installment as 15.3.2003 with out interest and 14.4.2003 along with interest as such there had been no other alternative with the Claimant except to refer the matter to the Arbitrator

for adjudication of the dispute as per provision of clause 28 of the Agreement and the Claimant should have continued the payment of installments pending the appointment/decision of the Arbitrator as per provision of clause 29 of the Agreement but there is no provision in these clauses that the Respondent can terminate the Agreement or forfeit the security deposit of the claimant on the basis of his own interpretation of the clauses or due date for depositing the second installment. However, the Claimant had certified to the Respondent that he will be depositing the second installment on 15.5.2003 along with interest. Since the Respondent did not take action against the Claimant immediately after 15.4.2003 and action was taken on 9.5.2003 as such the Respondent could have easily waited for another 6 days i.e up to 15.5.2003 and if the Claimant had failed to deposit the second installment up to 15.5.2003 as certified by him, then action should have been taken against the Claimant thereby leaving no scope for the Claimant to raise any dispute.

In view of the facts explained above, the Dispute no 3.1 is answered in favour of the Claimant meaning thereby that the due date for depositing the second installment with out interest would be 15.4.2003 and along with interest as 15.5.2003. Accordingly Dispute No 3.2 is also decided in favour of the Claimant. Regarding Dispute no 3.5, although as per provision of clause 2 of the Agreement, the Respondent had full authority to take action against the Claimant for not paying the second installment along with interest with in 30 days from the due date but the interpretation of the due dates had been made by the Respondent on its own which was being disputed by the Claimant as such the Claimant should have been informed about the proposed action and advice in accordance with the provisions of clause 28 and 29 of the Agreement.

#### DISPUTE NOS 3.3 AND 3.4 :-

- 3.3 Whether the Respondent had any authority to forfeit the security deposit of the Claimant amounting to Rs. 15,01,200/- and withdraw the authorization for the collection of toll without terminating the Agreement in accordance with the provisions of Clause 2 of the Agreement and whether the action of Respondent of forfeiting the security deposit of the claimant with out terminating the Agreement was illegal and contrary to the provisions of the Agreement?
- 3.4 Whether the Respondent had any authority to withdraw the authorization for the collection of toll from the Claimant with out terminating the agreement in accordance with the provisions of clause 2 of the Agreement?

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**In support of the claim, the Claimant has explained/ brought out as under:-**

- (i) As per provision of clause 2 of the Agreement, the Claimant had agreed to pay to HSRDC all the installments on due dates and of default to pay any of the installments by the due date, the same will be paid along with interest calculated @ 0.05% per day of the delay. Further in case, any installment along with the interest is not paid within 30 days counted from the due date, then the Contract Agreement will be terminated with out any further notice. In such event with out prejudicing the rights and other remedies available to the Haryana State Roads & Bridges Development Corporation Limited, the security deposit and all installments of the contract amount already paid shall stand forfeited with out any claim from the agency. Further any authorization letter issued to the Entrepreneur for the collection of toll shall be treated as cancelled and withdrawn. Further more, Haryana State Roads & Bridges Development Corporation Limited will be at liberty to take over the site and start collection of toll as deemed fit. As per these provisions, the Respondent was fully entitled to terminate the Agreement if the Claimant had failed to deposit the next installment along with interest within 30 days from the due date and after the termination of the Contract agreement the security deposit of the Claimant could be forfeited. The Respondent had not terminated the Agreement but had forfeited the security deposit of the Claimant amounting to Rs. 15,01,200/- vide letter no HSRDC/360 dated 9.5.2003 and also got the Bank Guarantee no 09/2002-2003 dated 18.2.2003 of Oriental Bank of Commerce, Urban Estate Hisar encashed from the Bank on 10.5.2003.
- (ii) There is no provision in the Agreement to forfeit the security deposit of the Claimant with out terminating the Agreement. Security deposit can only be forfeited if the Agreement is first terminated. Thus forfeiture of security deposit amounting to Rs. 15,01,200/- by the Respondent vide his letter no HSRDC/360 dated 9.5.2003 with out terminating the Agreement is totally illegal, arbitrary and against the provisions of Agreement. Since no event of termination of Agreement occurred as such there was no reason for forfeiting the security deposit of the Claimant with out terminating the Agreement. Claimant further explained that the Respondent had terminated another Agreement No HSRDC/Toll/2 and thereafter forfeited the security deposit and withdrawn the authorization for the collection of toll but in this case the Agreement had not been terminated.

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- (iii) As per provision of the Agreement, the letter of authorization for the collection of toll issued to the Claimant could only be withdrawn and cancelled after the termination of the agreement. Since the Agreement had not been terminated by the Respondent as such letter of authorization issued to the Claimant the collection of toll withdrawn by the Respondent vide letter no HSRDC/360 dated 9.5.2003 is totally illegal. The Claimant was forced to vacate the site for the collection of toll with the help of police with out official intimation to the Claimant. Even the staff of the claimant had been threatened of dire consequences.

**The Respondent has defended the disputes as under:-**

- (a) The Respondent explained that the operating part of clause of the Agreement to terminate the Agreement had been reproduced in para 2 of letter no HSRDC/360 dated 9.5.2003 i.e order of forfeiting the security deposit and withdrawal of authorization for the collection of toll. Moreover, the forfeiture of the security deposit and withdrawal of authorization for the collection of toll automatically means the termination of the Agreement. Thus the version of the Claimant that Agreement has not been terminated is wrong and denied.
- (b) The Claimant had failed to deposit the second installment along with interest after the expiry of 30 days counted from the due date as such the Claimant had become liable for the forfeiture of the security deposit in accordance with the provisions of clause 2 of the Agreement. Since the Respondent had cancelled and withdrawn the authorization for the collection of toll issued to the Claimant by virtue of which he had been authorized to collect toll from the toll point. Thus for all purposes, the Agreement stands terminated even if the word "termination" is used or not.
- (c) The Claimant failed to deposit the second installment and violated the provisions of the Agreement as such the order no HSRDC/360 dated 9.5.2003 passed by the Respondent is perfectly legal and in accordance with the clauses of the Agreement.

**After considering written arguments and after hearing oral arguments of both the parties, the dispute is adjudicated/ decided as under:-**

**Para 2 of the Agreement provides as under:-**

**"AND WHEREAS, the Entrepreneur/Agent hereby agrees that all the above mentioned installments, shall be paid in the shape of demand drafts drawn on any Nationalized Bank/ ICICI / HDFC/ UTI/ IDBI Bank ,**

payable at Chandigarh, in favour of Managing Director, Haryana State Roads & Bridges development Corporation Limited."

"Further the Entrepreneur/Agent hereby agrees that he will pay to the HSRDC all installments on due dates in advance as aforesaid and that further he will have no claim for interest on these installments paid in advance".

"And whereas, of default to pay any installment by due dates the same will be paid along with interest calculated @ 0.05% per day of delay. Further in case any installment along with interest is not paid within 30 days counted from the due date, then the contract agreement will be terminated without any further notice. In such event without prejudicing the rights and other remedies available to the Haryana State Roads & Bridges development Corporation Limited, the Security Deposit and all installments of contract amount already paid shall stand forfeited without any claim from the agency."

"Further any authorization letter for collection of toll issued shall be treated as cancelled and withdrawn. Further more Haryana State Roads & Bridges development Corporation Limited will be at liberty to take over the site and start collection of toll as deemed fit."

From the above provisions, it is clear that in case the Entrepreneur fails to deposit any of the installment with in 30 days counted from the due date along with interest, then his Agreement shall be terminated and in such event all other actions i.e forfeiture of the security deposit and withdrawal of authorization for the collection of toll could be taken. If the Respondent had observed that the Claimant has failed to deposit the second installment along with interest with in 30 days from the due date, then first course of action was to terminate the contract Agreement in accordance with the provisions of clause 2 of the Agreement and thereafter should have forfeited the security deposit of the claimant and should have taken action for the withdrawal of authorization for the collection of toll. Although technically speaking, the version of the respondent that the forfeiture of the security deposit and withdrawal of authorization for the collection of toll automatically means the termination of Agreement but legally the Agreement should have been firstly terminated and thereafter the action of forfeiting the security deposit should have been taken. Although in the opinion of the respondent, event of termination of the Agreement had arisen due to failure on the part of the Claimant to deposit the second installment along with interest with in 30 days from the due date but the action of forfeiture of security deposit and withdrawal of authorization for the collection of toll could only be taken after the termination of Agreement. The fact remains that the respondent had not

terminated the Agreement though the provisions of Clause 2 of the Agreement were mentioned in the letter no HSRDC/360 dated 9.5.2003. Furthermore, if the Respondent could terminate another Agreement no HSRDC/Toll/2 before forfeiting the security deposit as such the Respondent should have terminated this Agreement before forfeiting the security deposit of the Claimant

As explained above, dispute nos 3.3 and 3.4 are decided in favour of the Claimant because the Respondent should have first terminated the Agreement in accordance with the provisions of the Agreement and thereafter was entitled to forfeit the security deposit of the Claimant and withdrawal of authorization for the collection of toll.

### DISPUTE NO 3.6 :-

Whether the Respondent had taken illegal action on war footing for encashing the Bank Guarantee of the Claimant with malafide motive with the reasons best known to the respondent and whether the action of the respondent in taking over the possession of the toll site forcibly from the Claimant with the help of police with out any intimation to the Claimant was legally valid ?

In support of the claim, the Claimant has explained/ brought out as under:-

- (i) Claimant has explained that the Respondent's letter no HSRDC/360 dated 9.5.2003 indicating the forfeiture of the security deposit of the Claimant and withdrawing the authorization for the collection of toll from the Claimant was dispatched to the Claimant through registered speed post on 10.5.2003 at 10.30 AM from Chandigarh which was received by the Claimant on 13.5.2003 where as the officers of the Respondent approached Manager, Oriental Bank of Commerce Urban Estate Hisar on 10.5.2003 at 10.00 AM for getting the Bank Guarantee of Rs. 15,01,200/- encashed from the bank. Evidently the Respondent had taken advance action of encashing the bank guarantee of the claimant before informing the claimant about the same.
  - (ii) The letter dated 9.5.2003 of the respondent was received by the Claimant on 13.5.2003 where as the staff of the Respondent had taken the possession of the toll site on 10.5.2003 in the morning itself with the help of police with out informing the Claimant. This hasty action of the Respondent clearly proved his malafide motive against the Claimant.
- The Respondent has not explained any thing in respect of this dispute but has certified that the action of the Respondent was quite legal and in accordance with the provisions of the Agreement.

**After considering written arguments and after hearing oral arguments of both the parties, the dispute is adjudicated/ decided as under:-**

Although from the perusal of the envelope submitted by the Claimant, it is evident that letter dated 9.5.2003 was got dispatched to the Claimant through registered speed post from Chandigarh on 10.5.2003 at 10.30 AM and the security deposit of the Claimant had also been got encashed from the bank on the same day at Hisar. Even the possession of the toll site was taken from the Claimant on 10.5.2003 itself. Although the Respondent had passed the order on 9.5.2003 for forfeiting the security deposit of the Claimant and had also passed order withdrawing the authorization for the collection of toll but the intimation for the same was sent to the Claimant through speed post from Chandigarh on 10.5.2003 at 10.30 AM which was received by the Claimant on 13.5.2003. Thus it is evident that immediate/hasty action had been taken by the Respondent in getting the bank guarantee encashed from the bank on 10.5.2003 and taking over the possession of toll point with the help of police on 10.5.2003 but this hasty action on the part of the Respondent can not be treated/termed as malafide in view of absence of any specific evidence/reasons. Thus this dispute raised by the Claimant is rejected and answered in favour of the Respondent.

**DISPUTE NO 3.7 :-**

**Whether the Claimant is entitled for the rebate in the payment of toll due to nation wide strike of the trucks from 14.4.2003 to 23.4.2003**

In support of the claim, the Claimant has explained/ brought out as under:-

- (i) Claimant had intimated to the Respondent vide letter dated 14.4.2003 that due to nation wide strike of the trucks with effect from 14.4.2003, there has been no collection of toll through the toll point from 14.4.2003. It was further intimated to the Respondent vide letter dated 24.4.2003 that this 10 days nation wide strike of the trucks has been called off by the All India Motor transport Congress on 23.4.2003. Accordingly the trucks have started passing through the toll point with effect from 24.4.2003. However, it was also intimated that collection of toll will remain affected for the next few days till the situation becomes normal. Although Respondent vide letter no HSRDC/60/02/276 dated 22.4.2003 had intimated to the Claimant that strike of the trucks is incidental and can not be treated as closure of the toll facility or toll point but the Claimant again informed the respondent that as per provision of clause 4(iii) of the Agreement, neither party is liable to the other party for any loss or damage occurred/caused by or arising out of

the acts of God and in particular unprecedented floods resulting in disruption of traffic on the road, volcanic eruption, earth quake or other convulsions of the nature and other acts, such as but not restricted to invasion, the act of foreign countries, hostilities or war like operation before or after the declaration of rebellion, military operation which prevent the performance of the contract and which would not have been foreseen or avoided by the prudent person and in such cases, the decision of the Managing Director HSRDC shall be final. It was further indicated by the Claimant that as per provision of clause 5 of the Agreement, in case of closure of toll facility to motor vehicle traffic due to any reason, Entrepreneur/Agent may be granted rebate @1/30 of the installment amount for each day for the number of days of admitted closure as certified by the Managing Director, HSRDC

- (ii) It was intimated by the Claimant that this 10 day nation wide strike by the trucks could not be foreseen by any prudent person at the time of submission of bids and furthermore, due to this strike, toll could not be collected from the toll point for which Claimant has to be compensated for the loss of toll in accordance with the provisions of clause 5 of the Agreement. Thus the Claimant is entitled for the exemption from the payment of toll for the strike period as principle of natural justice.

**The Respondent has defended the dispute as under:-**

The Respondent has explained that neither there had been any interruption in the traffic during the strike period nor the toll facility or toll point had been closed to traffic in accordance with the provisions of clause 5 of the Agreement. Strike by the Trucks could not be treated as closure of toll facility or toll point and therefore such type of eventualities are incidental and no cognizance of the same can be taken in accordance with the provisions of the Agreement.

**The dispute is decided as under:-**

Although as a principle of natural justice, the Trucker's strike could not have been foreseen by the Claimant at the time of submission of bids and he had definitely suffered loss in the toll collection on account of this strike but the matter has to be decided in accordance with the provisions of Agreement. There is no specific provision in the Agreement to deal with such type of eventualities. Concession of toll to the Claimant for the affected days could only be admissible, had the toll facility or the toll point had been totally closed in accordance with the provisions of clause 5 of the Agreement but the fact remains that the toll facility or the toll point had not been totally closed to traffic during the strike period and other category of vehicles continued to

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pass through the toll point during the strike period as such the dispute raised by the Claimant is decided in favour of the Respondent.

#### **CLAIM NO 4.1 ( CLAIM NO-1)**

The Claimant filed claim for Rs. 8,34,000/- on account of illegally forfeiting the security deposit of the Claimant

Sr. No	Particulars	Amount of claim
1	Security deposit which has been illegally forfeited and got cashed from the bank i.e Rs 15,01,200/-	
	Less amount of installment which was to be paid for the period from 20.3.2003 to 9.5.2003 ( 1 month and 18 days) i.e	Rs. 6,67,200/-
	<b>Net Claim</b>	<b>Rs. 8,34,000/-</b>

Claimant explained that the payment of second installment for the period from 20.3.2003 to 19.4.2003 was due to be deposited by the Claimant up to 15.4.2003 with out interest and up to 15.5.2003 along with interest. Failure on the part of the Claimant to deposit the second installment up to 15.5.2003 along with interest, then only the respondent could have terminated the Agreement and could have forfeited the security deposit of the Claimant. As per provision of Clause 2 of the Agreement, the cause of action for terminating the Agreement and forfeiture of security deposit could only arise on 15.5.2003 if the claimant had failed to deposit the second installment up to 15.5.2003. Furthermore, as explained in para 3.3. security deposit could only be forfeited after terminating the Agreement. Since the Agreement had not been terminated as such security deposit of the Claimant could not have been forfeited. In view of these facts, forfeiture of the security deposit amounting to Rs. 15,01,200/- by the respondent vide his letter no HSRDC/360 dated 9.5.2003 with out terminating the Agreement is totally arbitrary, illegal and against the provisions of Agreement. The Claimant has raised claim for a sum of Rs. 8,34,000/- in this regard.

Respondent has explained that the Claimant was required to deposit the second installment up to 15.3.2003 with out interest and up to 14.4.2003 along with interest but the Claimant failed to deposit the second installment with in 30 days counted from the due date along with interest as such the respondent had full authority to terminate the Agreement, forfeit the security deposit of the Claimant and withdraw the authorization for the collection of toll from the Claimant in accordance with the provisions of Clause 2 of the Agreement. Even otherwise, the Claimant had been given two notices i.e vide letter dated 10.4.2003 and 22.4.2003 before passing the order of forfeiting the security deposit. The Respondent further argued that the Claimant was required to deposit 23 remaining installments and not 24 remaining installments as is being

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explained by him. Furthermore, clause 28 and 29 of the Agreement makes it abundantly clear that in case the claimant disagrees with the interpretation of the provisions/clauses of the agreement by the Respondent in accordance with the provision of clause 4(viii) of the Agreement, then the Claimant through written submission could have requested the Managing Director HSRDC for the appointment of the Arbitrator for the adjudication of the dispute. Furthermore, as per provision of clause 29 of the Agreement, pending appointment of the Arbitrator or resolution of dispute by the Arbitrator, the Claimant was required to deposit the installments on the due dates as interpreted by the Respondent. The provision of this clause of the Agreement leaves no room for the Claimant to interpret the clauses on its own and start acting accordingly. Furthermore, even as per provision of clause-6 of the Instructions to Bidders, the Claimant was to collect toll from the toll point and thereafter remit the same to the respondent. Since he had paid the first installment in advance and thereafter was required to deposit the remaining installments in advance after collecting toll in accordance with the provision of clause 2 of the Agreement and no interest was payable. Regarding Clause 10(b) of the Agreement, although no notice was required to be given to the Claimant in this regard in accordance with the provision of clause 2 of the agreement, but even then two notices were given by the respondent to the Claimant on 10.4.2003 and 22.4.2003 in this regard. Furthermore, as per provision of clause 4(iv) of the Agreement, in the event of any default, the Respondent had the right to forfeit the entire or part of the security deposit and damages, losses, costs and expenses shall be binding on the Entrepreneur. Thus the action of the respondent in forfeiting the security deposit of the Claimant is unquestionable particularly when the Claimant had committed the breach of contract by not paying the installment in spite of issue of notices and therefore the claim is not maintainable.

**This claim is decided as under:-**

As decided in dispute nos 3.1 and 3.2 above that the due date for depositing second installment with out interest would be upto 15.4.2003 and along with interest up to 15.5.2003 as such Respondent could have waited up to 15.5.2003. If the Respondent could wait for 25 days for taking action against the Claimant, then he could have easily waited for another 6 days. Heaven was not going to fall in those 6 days. Had the Respondent taken action against the Claimant immediately after 15.5.2003, there would have been no scope for the claimant to raise the claim.

It has also been decided under dispute nos 3.3 and 3.4 that before forfeiting the security deposit of the Claimant and also before withdrawing the authorization for the collection of toll from the Claimant, the Agreement should have been

terminated clearly in accordance with the provision of clause 2 of the Agreement thereby creating an event of making the Claimant liable for the forfeiture of security deposit and withdrawal of authorization for the collection of toll

As per provision of clause 10 of the Agreement, the Managing Director, HSRDC shall be entitled to terminate the Agreement at any time

- a) Without assigning any reason thereof after giving to the Entrepreneur/Agent fifteen days prior notice in writing and in that event the Entrepreneur/Agent shall not be entitled to claim, recover or receive from the government any compensation whatsoever on account of such premature termination.
- b) By giving 7 days notice in writing to Entrepreneur/Agent for breach or non observance by Entrepreneur/Agent any terms or conditions of this agreement for which no specific provision is available separately.

In the happening of such an event and agreement being terminated, Entrepreneur/Agent will be liable to pay to Managing Director, HSRDC money proportionately calculated at the rate of 1/30 of the monthly installment @ 1/30 of the monthly installment for each day, the agreement remained in force.

Further in case of the agreement having been terminated under clause (b) above, the Entrepreneur/Agent will further be liable to pay to HSRDC, out of his security deposit any amount or portion thereof of Security Deposit as deemed appropriated by the Managing Director, HSRDC whose decision will be final and binding upon the Entrepreneur/Agent.

Since the authorization for the collection of toll had been withdrawn from the Claimant on 9.5.2003 and thereafter the Respondent started the collection of toll from the toll point with effect from 10.5.2003 and also the work for the collection of toll at this toll point has been re- allotted to another agency as such continuation of this Agreement by the Claimant at this stage is not feasible. However, the Claimant had not deposited any further installment after depositing the first installment as such the Claimant is liable to make payment to the Respondent proportionate installment calculated @ 1/30 of the monthly installment for the number of days the claimant continued to collect toll after the expiry of period of first installment. Although full amount of security deposit amounting to Rs.15,01,200/- of the Claimant had been forfeited by the Respondent but the claimant is liable to pay a sum of Rs 7,00,004/- to the Respondent is detailed below:-

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Sr. No	Particulars	Amount to be paid by the Claimant to the Respondent
1	(i) Amount of installment which was to be paid for the period from 20.3.2003 to 19.4.2003 (1 month)	Rs. 4,17,000/-
	(ii) Amount of installment which was to be paid for the period from 20.4.2003 to 9.5.2003 (20 days)	Rs. 2,78,000/-
	(iii) Interest on second installment of Rs 4,17,000/- @ 0.05% per day for the period from 16.4.2003 to 9.5.2003(24 days)	Rs. 5,004/-
	Total amount to be paid by the Claimant	Rs 7,00,004/-

Thus the Claimant is entitled for the refund of balance amount of Rs 8,01,196/- against the claim of Rs. 8,34,000/- raised by the Claimant. I hereby award claim of Rs 8,01,196/- (Rupees eight lacs one thousand one hundred ninety six only) to the claimant in respect of this claim.

#### **CLAIM NO 4.2 ( CLAIM NO-2)**

The Claimant has raised claim of Rs 1,39,000/- on account of loss of toll collection on account of strike of the trucks from 14.4.2003 to 23.4.2003(10 days)

The Claimant has explained in dispute no 3.7 that he is entitled to the rebate in the toll installment for the number of days there had been strike of the trucks.

The Respondent explained that as per provision of clause 5 of the Agreement, the Claimant is entitled for the rebate @ 1/30 per day of the monthly installment if the toll facility or the toll point is closed for the traffic. In this case during the strike of trucks, the toll facility or the toll point did not remain closed. Furthermore, the claimant was supposed to furnish details of his intended claim for the rebate by 10<sup>th</sup> of the following month and by not doing so, the Claimant is not entitled for any rebate.

**This claim is decided as under:-**

It has already been decided in dispute no 3.7 that as a principal of natural justice, the Trucker's strike could not have been foreseen by the Claimant at the time of submission of bids and he had definitely suffered loss in the toll collection on account of this strike but the matter has to be decided in accordance with the provisions of Agreement. There is no specific provision in the Agreement to deal with such type of eventualities. Concession of toll to the Claimant for the affected days could only be admissible, had the toll facility or the toll point had been totally closed in accordance with the provisions of clause 5 of the Agreement. Although the Claimant had not been given

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an opportunity to submit claim for the rebate by 10<sup>th</sup> of the following month because authorization for the collection of toll had been withdrawn from him on 9.5.2003, but whatever the case may be, the fact remains that the toll facility or the toll point had not been totally closed to traffic during the strike period and other category of vehicles continued to pass through the toll point during the strike period and thus the claim raised by the Claimant is rejected.

#### CLAIM NO 4.3 ( CLAIM NO-3)

The Claimant had raised claim for Rs 55,600/- on account of loss of collection of toll on account after effects of the trucker's strike from 14.4.2003 to 23.4.2003

This claim is related to claim no 4.2 (Claim no-2), Since the dispute no 3.7 has not been decided in favour of the Claimant and furthermore, the claim no 4.2 (Claim no-2) raised by the Claimant has been rejected as such this claim of the claimant is also rejected.

#### CLAIM NO 4.4 ( CLAIM NO-4)

The Claimant has raised claim for Rs. 8,92,380/- on account of loss of profit due to reduction in the turn over of the Claimant on account of illegal withdrawal off authorization for the collection of toll from the Claimant on 9.5.2003.

The Claimant has explained the facts as under:-

- (i) The work for the collection of toll at toll point near Punjab border on Budhlada- Ratia- Fatehabad Road was awarded to the Claimant for Rs.1,00,08,000/- to be deposited in 24 monthly installments. The Agreement was executed by the Claimant with the Respondent on 19.2.2003. This Agreement was for the period of two years from 20.2.2003 to 19.2.2005.
- (ii) The work for the collection of toll was for 24 months and the Claimant had planned to carry out the work accordingly in 24 months and had made all arrangements. It was planned that the turn over of the Claimant would be Rs 1,00,08,000/- for the period of two years and he would be able to earn reasonable profit on the turn over during the currency of the contract. Due to illegal forfeiture of the security deposit of the Claimant and due to withdrawal of authorization for the collection of toll from the Claimant on 9.5.2003, the turn over of the Claimant has been restricted to Rs. 10,84,200/- against the planned turn over of Rs. 1,00,08,000/- Thus the Claimant had been deprived of the turn over of Rs 89,23,800/- during the period from 10.5.2003 to 19.2.2005. As per

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judgment of the Hon'ble Supreme Court of India, the Claimant is entitled to the profit for the remaining period of the Agreement

Claim is as under

Sr. No	Particulars	Amount of claim
1	(i) Total amount of the Agreement= Rs 1,00,08,000/-	
	(ii) Amount of turn over from 20.2.2003 to 9.5.2003 = Rs. 10,84,200/-	
	(iii) Amount of loss of turn over= Rs 89,23,800/-	
	(iv) Loss of profit on turn over i.e 10% of the anticipated turn over= Rs 8,92,380/-	
		Rs 8,92,380/-

The Respondent has refuted the claim and explained the same facts which have been explained in Claim no. 4.1 (Claim No-1). However, the respondent has further brought out that in this case the breach of contract has been caused by the Claimant by not depositing the second installment on the due date or even after 30 days from the due date along with interest. The judgment clearly stipulates that the party who causes the breach of contract is liable to compensate the other party and the judgment is in favour of the Respondent. Thus what to talk of claiming compensation, the respondent has suffered loss of Rs.27,56,247/- which should be compensated by the Claimant.

**The Claim is decided as under:-**

The work for the collection of toll at toll point near Punjab border on Budhlada- Ratia- Fatehabad Road was awarded to the Claimant for Rs. 1,00,08,000/- to be deposited in 24 monthly installments. The Agreement was executed by the Claimant with the Respondent on 19.2.2003. This Agreement was for the period of two years from 20.2.2003 to 19.2.2005. The authorization for the collection of toll was withdrawn from the claimant on 9.5.2003. Since the work for the collection of toll has been re- allotted to another agency at much lower rate i.e for about Rs. 62,00,000/- for the period of two years against this Agreement amount of Rs 1,00,08,000/- allotted to the Claimant. Evidently the Claimant might have been incurring huge loss in this work. Thus the Claimant is not entitled to any profit for the remaining period of the Agreement and therefore, the Claim of the Claimant is rejected.

**CLAIM NO 4.5 (CLAIM NO-5):-**

The Claimant has raised claim for Rs 1,49,162/- on account of loss of expenses incurred for establishing toll plaza, loss of wages of the contracted persons, additional administrative expenses, additional bank

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charges and idling of equipment and machinery arranged for the collection of toll.

The Claimant has explained as under:-

Due to illegal forfeiture of the security deposit of the Claimant and illegal withdrawal of the authorization for the collection of toll on 9.5.2003, the Claimant suffered loss in respect of the arrangements which he had already made for running the toll point for the entire period of two years. The Claimant had even paid advance for the fulfillment of the Agreement. The arrangement made for the erection of toll plaza had gone waste due to premature withdrawal of authorization. Thus the Claimant suffered huge loss on this account as detailed below which should be compensated:-

Sr. No	Particulars	Amount of claim
1	(i) Loss of arrangement made for establishing/ erection of toll plaza Rs 50,000/- x 89,23,800/1,00,08,000/-	44,581/-
	(ii) Loss of wages of contracted persons 50,000/- x 89,23,800/1,00,08,000/-	44,581/-
	(iii) Additional administrative expenses	25,000/-
	(iv) Additional bank charges and loss of bank commission paid for getting the bank guarantees	25,000/-
	(v) Loss on account of idle equipment and machinery	10,000/-
	Total claim	Rs 1,49,162/-

The Respondent has refuted the claim. He has explained that the Claimant has not constructed the toll plaza which was to be constructed by the Claimant as per the design approved from the Respondent in accordance with the provisions of clause 20 of the agreement. This Toll plaza was to be handed over to the respondent after the expiry of the Agreement period. In fact, the respondent has suffered loss of Rs. 10 lacs for the construction of toll plaza which should be compensated by the Claimant.

The Claim is decided as under:-

There is no specific provision in the Agreement where in the Respondent is liable to pay any such charges to the Claimant in case of withdrawal of authorization for the collection of toll from the claimant. In view of the above, the claim of the Claimant in this regard is rejected.

#### CLAIM NO 4.6( CLAIM NO- 6)

The Claimant has raised claim of Rs 15,01,200/- on account of compensation and damages on account of illegal action of the HSRDC for forfeiture of security deposit of the Claimant with out terminating the

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Agreement and on account of illegal withdrawal of authorization for the collection of toll from the Claimant on 9.5.2003.

**The Claimant has explained the facts as under:-**

Forfeiture of security deposit of the Claimant amounting to Rs. 15,01,200/- and withdrawing the authorization for the collection of toll from the Claimant vide letter no HSRDC/360 dated 9.5.2003 was totally illegal and contrary to the provisions of Agreement. This illegal action on the part of the Respondent has caused considerable/immense damage to the reputation of the Claimant in the eyes of the other departments, banks and public. Although loss of reputation can not be compensated, yet the Respondent is liable to pay damages amounting to Rs. 15,01,200/- equal to the amount of the security deposit which had been illegally forfeited by the respondent.

The respondent has refuted the claim of the Claimant. He has explained that action against the Claimant was taken in accordance with the provision of clause 2 of the Agreement and therefore the action taken by the Respondent was fully valid and legal. This claim is neither based on any contractual provision nor has any logic and legal justification.

**The Claim is decided as under:-**

There is no specific provision in the Agreement for claiming such type of damages. As observed in Claim no 3.4, the Claimant may not have been earning any profit but would have been incurring huge losses in running the toll point. Evidently the hasty action taken by the Respondent in violation of the provisions of the Agreement proved to be blessing in disguise to the Claimant. Since the claim raised by the Claimant is not supported with any contractual provisions and seems to be hypothetical as such the claim of the claimant is therefore rejected.

#### CLAIM NO 4.7 ( CLAIM NO-7)

The Claimant has raised the claim for the payment of interest on Rs. 10,28,600/- ( Claim no 4.1 to 4.3) from the date of illegal forfeiture of bank guarantee to the date of payment @ 18% per annum as per section 31 sub section 7(a) and 7(b) of the Arbitration and Reconciliation Act 1996.

**The Claimant has explained about this claim as under:-**

- (i) After coming into force, the Indian Contracts Act 1978, interest has become payable on all payments which are either delayed or due to be paid but not paid in time. In this case, forfeiture of the security deposit of the claimant amounting to Rs. 15,01,200/- by the respondent vide letter no HSRDC/360 dated 9.5.2003 was totally illegal and contrary to the provisions of the Agreement.

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- (ii) It is trade practice in the industry to charge interest at the rate of 18 percent per annum on the due payments. Even according to the provision of section 31(7) of the Arbitration and Reconciliation Act 1996, 18 percent interest has been allowed for future payments.
- (iii) As per provision of clause 2 of the Agreement, if there is delay on the part of the Entrepreneur in depositing the installment, then interest @ 0.05% per day or 18% per annum is payable by the Entrepreneur as such same rate of interest @ 18% per annum should be awarded on the security deposit amount which has been illegally forfeited.
- (iv) The Claimant is entitled to the payment of interest on Rs 10,28,600/- (amount of claim nos 4.1 to 4.3) from the date of illegal forfeiture of the security deposit i.e from 10.5.2003 till the date of payment. The learned Arbitrator is entitled to award interest @ 18 percent per annum from the date on which the cause of action arose till the date of payment.

The Respondent has refuted the claim. The demand of the interest by the Claimant is absolutely unfounded and without any basis because the claims of the claimant have not been substantiated by any reasons particularly when the Claimant had committed breach of contract. Rather it is the Respondent who had suffered losses.

**The Claim is decided as under:-**

As per Clause no 4.1 (Claim No-1), a sum of Rs. 8,01,196/- has been awarded to the Claimant and he is entitled to the interest on this amount from the date of forfeiture of security deposit i.e from 10.5.2003 till the date of payment to the Claimant. Although as per provision of the Agreement, the Claimant is liable to pay interest @ 18% for the delay in depositing the installments from the due dates and furthermore, as per trade practice, interest @ 18% per annum is applicable but due to softer interest regime, interest @ 18% per annum is on higher side. Since the Prime Lending rates of the leading banks is around 10 to 11 percent as such I hereby award interest @ 10 % per annum in favour of the Claimant on Rs. 8,01,196/- from the date of forfeiture of security deposit i.e from 10.5.2003 till the date of announcement of the award and also @ 10% per annum from the next day of date of announcement of the award till the payment is actually made to the Claimant.

10% interest awarded

**CLAIM NO 4.8 (CLAIM NO-8)**

The Claimant has raised claim of Rs 50,000/- as cost for reference to the Arbitrator

The Claimant has explained as under:-

The Respondent has openly committed breach of contract by illegally forfeiting the security deposit of the Claimant and had also illegally withdrawn the

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authorization for the collection of toll from the Claimant. There was no other alternative for the Claimant except to seek adjudication of the dispute through the Arbitrator in accordance with the provisions of clause 28 of the Agreement.

The Respondent has refuted the claim. He has explained that in fact, the Claimant has committed the breach of contract and heavy loss has been caused by the Claimant to the Respondent. The action taken by the Respondent in respect of forfeiture of security deposit of the Claimant and withdrawal of authorization for the collection of toll was strictly in accordance with the provisions of the Agreement as such the Claimant has entered into unnecessary litigation. Since the arbitration has been sought by the Claimant as such the cost has to be borne by him in accordance with the provisions of the Agreement.

The Claim is decided as under:-

Clause 28 of the Agreement provides that - In the event the Entrepreneur/Agent disagreeing, with the decision mentioned in the provision of above, he may request the Managing Director, HSRDC, for appointment of an Arbitrator for adjudication of the dispute. On receipt of request from the Entrepreneur/Agent for appointment of Arbitrator, Engineer-in-Chief, Haryana PWD B&R will appoint an Arbitrator for adjudication of the dispute. The arbitrator so appointed shall conduct the arbitration proceedings in accordance with the provision of the contract agreement. Fee of the Arbitrator shall be paid by the party who will seek the arbitration.

From the above provisions, it is evident that the arbitration has been sought by the Claimant as such the fee of the Arbitrator is to be borne by the Claimant. Furthermore, the Claimant has not attached any evidence/proof in support of the claim but had made general claim. Thus the Claim of the claimant is rejected.

### COUNTER CLAIMS FROM THE RESPONDENT

#### COUNTER CLAIM NO-1

The respondent has raised counter claim amounting to Rs. 10,00,000/- on account of non construction of the toll plaza by the Claimant. The respondent explained that the Claimant was bound to construct Toll Plaza at the site of toll at his own cost. However, no such toll plaza was constructed by the Claimant at Km 2.4 of the toll barrier. The claimant then backed out from the contract and the department shall have to construct the toll plaza and other amenities by spending Rs 10 lacs at the time of running the toll point. Thus the Claimant should pay Rs 10 lacs along with interest @ 18 percent interest from 30.7.2003 till the realization of this amount

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**The Claimant explained as under:-**

Although the Claimant was required to construct toll plaza in accordance with the design approved by the HSRDC but neither any design for the construction of toll plaza was supplied by the respondent nor any such design had been approved by the respondent. In fact, the Claimant had constructed temporary structure for facilitating the collection of toll which was duly approved by the Respondent. Executive Engineer in charge of the toll point and other officials of the respondent Corporation had been inspecting the toll point very frequently and also on regular intervals. They had never raised this issue of erecting temporary structure for the collection of toll and for all purposes the structure erected by the Claimant for the collection of toll was considered by the Respondent as Toll Plaza. It is incorrect that the Claimant had backed out from the contract. In fact, the respondent had taken illegal action of forfeiting the security deposit of the Claimant and withdrawal of authorization for the collection of toll. Actually the Respondent from the very beginning had started threatening the Claimant on one pretext or the other. However, the claim should be rejected.

**The Counter claim is decided as under:-**

The Respondent has not raised the counter claim properly. It appears that the claim related to some other Agreement because neither the Claimant was required to construct the toll plaza in Km 2.4 i.e site of the toll barrier nor the Claimant had backed out from the Contract. Furthermore, the Respondent has not supported his claim with the evidence i.e vouchers, bills/estimate for the construction of toll plaza

The work was awarded to the Claimant on 19.2.2003 where as Respondent had withdrawn the authorization for the collection of toll from the Claimant on 9.5.2003. Evidently the Claimant had been allowed to run the toll plaza from 20.2.2003 to 9.5.2003. The Respondent has failed to show any evidence directing the Claimant for the construction of toll plaza during this period. Evidently the Respondent was satisfied about the structure put up by the Claimant for facilitating the collection of toll. Furthermore, the respondent has not supplied any evidence indicating the supply of standard drawing to the Claimant for the construction of toll plaza or had accorded approval for the construction of toll plaza. In view of these facts, the counter claim raised by the Respondent against the Claimant is hereby rejected.

**COUNTER CLAIM NO-2**

The respondent has furnished counter claim no-2 in respect of loss amounting to Rs 27,56,247/- suffered by the respondent due to the breach of contract by the Claimant as detailed below

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(x)	Unpaid amount for the period from 20.3.2003 to 9.5.2003 ( for the period toll point remained with the Claimant ( 1 month 20 days ) i.e 5/3 months @ Rs 4,17,000/- per month	Rs 6,95,000/- (x)
(y)	<b>loss in toll collection by the department from 10.5.2003 to 20.3.2004</b> (i) Amount of toll collected departmentally from 10.5.2003 to 20.3.2004 = Rs. 27,78,330 /- (ii) less 10% collection and supervision charges = Rs. 2,77,833/-  Net toll collection= Rs 25,00,497/- Amount due from the Claimant for the period from 10.5.2003 to 20.3.2004. = Rs. 43,22,900/-  <b>Loss on account of less collection= Rs. 18,22,403/-</b>	(y) Rs. 18,22,403/-
(z)	<b>Loss of toll collection through the new Entrepreneur from 21.3.2004 to 19.2.2005</b>  (i) Total contract amount of the Claimant for two years:- <b>Rs. 1,00,08,000/-</b> (ii) Anticipated toll collection by the new Entrepreneur M/s Prince Toll Associates from 21.3.2004 to 20.3.2006 = Rs. 62,00,000/- (iii) Loss of toll = Rs. 38,08,000/- (iv) Loss due to less toll for the period from 21.3.2004 to 19.2.2005 i.e 10.29/30 months = Rs. 17,40,044/-  <b>Loss on account of less collection = Rs. 17,40,044/-</b>	(z) Rs. 17,40,044/-
	Total recoverable amount from M/s Wazir Singh & Co	Rs. 42,57,447/-
	Security deposit of the Claimant forfeited	Rs. 15,01,200/-
	<b>Balance amount recoverable from the Claimant</b>	<b>Rs 27,56,247/-</b>

There is provision in the Agreement under clause 4 (v) , that balance recoverable amount shall be paid by the Entrepreneur forthwith to HSRDC on demand and the Corporation has to the right to recover the recoverable amount from the land revenue of the Entrepreneur in accordance with the provision of clause 4(vii) of the Agreement. The respondent further stated that this counter claim amounting to Rs 27,56,247/- may be considered and accepted as counter claim no-2 in terms of provisions of Section 23 of the Arbitration and Reconciliation Act 1996.

The Claimant explained that no such facts were mentioned by the Respondent in his letter dated 9.5.2003 at the time of withdrawing the authorization for the collection of toll from the Claimant. Furthermore, this issue was never raised by the Respondent during arguments and therefore the counterclaim made now on 27.9.2004 is after thought and should not be entertained. Furthermore, the submissions made in the counter claim can not be considered as counter claim because there is no such provision in the Agreement itself that the Respondent Corporation can file counter claims.

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**This counter claim is decided as under:-**

- (i) The Respondent had not mentioned about the additional losses damages or counterclaims in his letter dated 9.5.2003 to the Claimant while withdrawing the authorization for the collection of toll from the Claimant.
- (ii) The Respondent had raised counter claim no-2 only on 27.9.2004 when the matter was already under arguments
- (iii) Although as per provision of clause 28 of the Agreement, the aggrieved person can seek arbitration and there is no provision in the Agreement indicating that the Respondent can raise the counter claim but the fact remains that as per provision in the Arbitration and Reconciliation Act, 1996, the other party i.e Respondent is entitled to submit counter claims before the Arbitrator even if he had not sought the arbitration originally.
- (iv) The Respondent has made the counter claim in three parts i.e (i) loss due to unpaid installments which were required to be deposited by the Claimant for the period toll point remained with him (ii) loss due to less collection of toll collected departmentally (iii) loss due to less toll collection collected through another agency. The claim to the extent of Rs. 6,95,000/- is admitted to the fact that the Claimant had run the toll point from 20.2.2003 to 9.5.2003 but had paid the first installment for the period from 20.2.2003 to 19.3.2003 where as the Claimant is required to deposit the remaining amount for the period from 20.3.2003 to 9.5.2003 amounting to Rs. 6,95,000/- This amount is due to the Respondent and accordingly credit for Rs. 6,95,000/- has been given to the Respondent while deciding Claim No 4.1 ( Claim No-1) and thus after the adjustment of Rs. 7,00,004/- including interest from the security deposit of the Claimant, there would be no claim of the Respondent on this account. Regarding the other parts of the losses claimed by the Respondent, the Claimant can not be held liable for any short collection or excess collection of toll after the authorization for the collection of toll is withdrawn from him. There is no provision in the Agreement for carrying out the work of collection of toll from any other agency at the risk and cost of the original agency. Had the anticipated/future toll collection been more than the amount of installments of the Claimant, then whether the Respondent would have paid the excess amount so collected to the Claimant. This part of the claim of the Respondent is hypothetical and the same is rejected.

**CONCLUSION**

Now, I R. P. Bansal, the Sole Substituted Arbitrator-cum Chief Engineer ( Roads ) Haryana PWD B&R Branch, Chandigarh having duly /carefully considered the whole matter submitted before

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me by both the parties, do hereby announce the award. I, accordingly award a sum of Rs 8,01,196/- ( Rs. Eight lacs one thousand one hundred ninty six only ) to the Claimant i.e M/s WAZIR SINGH & COMPANY, 67, Arya Samaj Complex, Raj Guru Market, Hisar to be paid by the Respondent i.e Managing Director, Haryana State Roads & Bridges Development Corporation Limited. The Claimant is further entitled for the simple interest @ 10 % per annum on Rs. 8,01,196/- ( amount of award) from the date of forfeiture of security deposit i.e from 10.5.2003 up to the date of announcement of award i.e up to 11.10.2004 ( 1 year 155 days ) and I award a sum of Rs 1,14,142/- ( Rs one lac fourteen thousand one hundred forty two only) to the Claimant (amount matter of calculation). Furthermore, the Claimant is also entitled simple interest @ 10 % per annum on Rs 8,01,196/- ( principal amount only) from 12.10.2004 (amount matter of calculation) till the date of actual payment of the award to the Claimant and I award the same to the Claimant.

Both the parties will bear their own cost for contesting the arbitration case.

The non judicial papers for writing the award were supplied by the Claimant for writing the award

In witness thereof, I R. P. Bansal acting as Sole Substituted Arbitrator have signed this on the day of 11th October, 2004 at Chandigarh'

Place : Chandigarh  
Dated : 11<sup>th</sup> October, 2004

*R.P. Bansal*  
( R.P.Bansal) 11/10/04  
Sole Substituted Arbitrator  
-cum Chief Engineer (Roads)  
Haryana PWD B&R Branch,  
Chandigarh

Registered  
Endst No

38-40/PA/47R) dated 11-10-2004

Copy of the above award is forwarded for information and further necessary action to the following:-

1. M/s WAZIR SINGH & COMPANY. 67. Arya Samaj Complex, Raj Guru Market, Hisar
2. The Managing Director, Haryana State Roads & Bridges Development Corporation Limited, SCO-23, Sector 7-C, Madhya Marg, Chandigarh-160019.
3. Engineer-in- Chief, Haryana PWD B&R branch, Chandigarh with reference to his memo no HHUP-II/336 dated 14.9.2004.

*(Signature)*  
Place : Chandigarh  
Dated : 11<sup>th</sup> October, 2004

*R.P. Bansal*  
( R.P.Bansal) 11/10/04  
Sole Substituted Arbitrator  
-cum Chief Engineer (Roads)  
Haryana PWD B&R Branch,  
Chandigarh

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# ARBITRATION AWARD

By

**R.P.Bansal , Sole Substituted Arbitrator-cum-  
Chief Engineer (Roads)Haryana PWD B&R,  
Branch Chandigarh**

IN THE MATTER OF THE ARBITRATION AND RECONCILIATION  
ACT, 1996

AND

IN THE MATTER OF ARBITRATION REGARDING  
DISPUTE ARISING OUT OF THE CONTRACT FOR THE  
WORK OF COLLECTION OF TOLL AT TOLL POINT  
NEAR HIMACHAL PRADESH BORDER ON JAGADHRI-  
CHHACHHRAULI- POANTA ROAD

**(CONTRACT NO. HSRDC/ TOLL/ 11)**

BETWEEN

**M/s WAZIR SINGH & COMPANY,  
67, Arya Samaj Complex,  
Raj Guru Market, Hisar ("The Claimant")**

And

**The Managing Director,  
Haryana State Roads & Bridges Development  
Corporation Limited,  
SCO-23, Sector 7-C, Madhya Marg,  
Chandigarh- 160019. ("The Respondent")**

100Rs



ARBITRATION AWARD

Before : R.P.Bansal ( Sole Substituted Arbitrator)  
Chief Engineer ( Roads)  
Haryana PWD B&R Branch  
Chandigarh

IN THE MATTER OF THE ARBITRATION AND RECONCILIATION ACT, 1996

AND

IN THE MATTER OF ARBITRATION REGARDING DISPUTE ARISING OUT OF THE CONTRACT FOR THE WORK OF COLLECTION OF TOLL AT TOLL POINT NEAR HIMACHAL PRADESH BORDER ON JAGADHRI-CHHACHHRAULI-POANTA ROAD. (CONTRACT NO. HSRDC/ TOLL/ 11)

BETWEEN

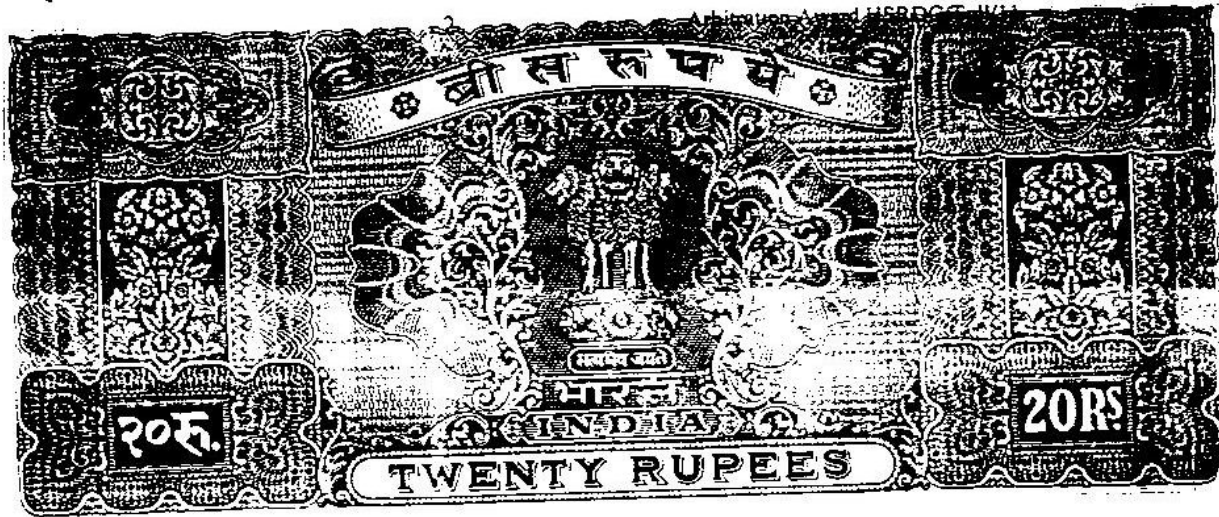
M/s WAZIR SINGH & COMPANY, "ENTREPRENEUR"  
67, Arya Samaj Complex, herein after referred to as "The Claimant"  
Raj Guru Market, Hisar

And

The Managing Director, MD.HSRDC  
Haryana State Roads herein after referred to as "The Respondent"  
& Bridges Development Corporation Limited,  
SCO-23, Sector 7-C, Madhya Marg,  
Chandigarh- 160019.

Where as in pursuance of the contract No HSRDC/Toll/11 executed between M/s Wazir Singh & Co. 67 Arya Samaj Complex, Raj Guru Market, Hisar and the Managing Director, Haryana State Roads & Bridges Development Corporation Limited, SCO 23 Sector-7, Madhya Marg, Chandigarh for the appointment of Arbitrator under Section 15(2) of the Arbitration and Reconciliation Act, 1996 and Clause 28 of the Agreement pertaining to the work

20 Rs.



for the collection of toll at toll point near Himachal Pradesh border on Jagadhri-Chhachhrauli- Poanta Road (Contract no. HSRDC / Toll/ 11). Engineer-in-Chief, Haryana PWD B&R, Chandigarh being the appointing authority in accordance with the provisions of the Agreement had initially appointed Sh. K.K.Gupta, the then Chief Engineer, Haryana Housing Board Chandigarh as Sole Arbitrator vide his memo no HHUP-II/486 dated 4.8.2003 and he conducted two hearings. Later on Sh. K.K.Gupta was appointed by the Haryana Government as Managing Director, Haryana State Roads & Bridges Development Corporation Limited (Respondent); as such on the request of Sh. K.K.Gupta, the Engineer-in-Chief, Haryana PWD B&R Chandigarh being the appointing authority in accordance with the provisions of the Agreement appointed Chief Engineer (NH), Haryana PWD B&R branch, Chandigarh as Sole Substituted Arbitrator vide his memo no HHUP-II/697 dated 17.11.2003. Six hearings were conducted by Sh. R. C. Mehndiratta Chief Engineer (NH)- cum-Sole Substituted Arbitrator). Although Sh. R.C.Mehndiratta Chief Engineer (NH) retired from Haryana Government service on 30.6.2003, but Engineer-in-Chief, Haryana PWD B&R Chandigarh re-appointed Sh. R.C.Mehndiratta (by name) as Sole Substituted Arbitrator vide his memo no HHUP-II/273 dated 5.7.2004 and he conducted one hearing. However, later on he suffered heart attack and resigned from this assignment. He requested the appointing authority to appoint another substituted arbitrator. Accordingly, Engineer-in-Chief, Haryana PWD B&R Chandigarh appointed the undersigned as Substituted sole Arbitrator vide his memo no HHUP-II/340 dated 14.9.2004 for the settlement of dispute between the parties arising out of Contract no HSRDC/Toll/11

Accordingly both the parties were directed to attend the hearing along with all the documents and witnesses.

Where as I, R.P.Bansal, the Sole Substituted Arbitrator-cum-Chief Engineer (Roads) Haryana PWD B&R Branch, Chandigarh carefully considered

the submissions made in writing and orally as well as documents/evidence placed before me by both the parties. After going through the documents produced before me, along with written and oral arguments made by the Representatives and Councils of both the parties, I hereby make my award as follows:-

### History of the case

1. Haryana Government vide notification No. 9/106/2001-3-B&R(Works) (Toll-11) dated 31.12.2002: in exercise of the powers conferred by clause (f) of section 2 of the Haryana Mechanical Vehicles (Levy of Tolls) Act, 1996 ( Haryana Act 9 of 1996), notified Jagadhri- Chhachhrauli- Poanta Road to be "toll facility" for the purpose of the said Act. Further in exercise of the powers conferred by section 4 of the said Act, the Governor of Haryana had authorized Haryana State Roads and Bridges Development Corporation Limited to demand, collect and retain tolls from the said toll facility at toll point near Himachal Pradesh border on Jagadhri- Chhachhrauli- Poanta Road
2. Managing Director, Haryana State Roads & Bridges Development Corporation Limited invited bids for the collection of toll at this toll point vide Bid Notice No HSRDC/ 11 dated 04.12.2002. Bids were received on 30.12.2002 and the Claimant had quoted the highest bid price of Rs. 1,18,80,000/- for two years to be deposited in 24 equal monthly installments
3. The Respondent awarded this work to the Claimant and issued Letter of Acceptance to the Claimant vide his memo no HSRDC/105 dated 07.02.2003. The Claimant deposited Security amounting to Rs. 17,82,200/- (Rupees seventeen lacs eighty two thousand two hundred only ) vide Bank Guarantee no 08/2002-2003 dated 18.2.2003 of Oriental Bank of Commerce, Urban Estate Hisar and also deposited advance installment to the Respondent amounting to Rs. 4,95,000/- through Bank draft in favour of the Managing Director, Haryana State Roads & Bridges Development Corporation Limited payable at Chandigarh. Agreement was executed between the Claimant and the Respondent on 19.2.2003 vide Agreement No HSRDC/Toll/11 for a contract price of Rs. 1,18,80,000/- to be deposited in 24 monthly installments of Rs. 4,95,000/- each and accordingly the Claimant was issued Letter of Authorization by the Respondent vide Memo No HSRDC/184 dated 19.2.2003 authorizing the Claimant for collecting toll from the toll point for period of 2 years at the rates specified in the Schedule



4. As per provision of clause 2 of the Agreement, the Claimant had agreed to deposit remaining 23 installments of Rs. 4,95,000/- each up to 15<sup>th</sup> of every calendar month and on default to pay any installment by the due date, the same will be paid along with the interest calculated @ 0.05% per day of the delay within 30 days counted from the due date.
5. That the Claimant had deposited the first installment before entering into Agreement on 19.2.2003 and remaining 23 installments were to be deposited on 15<sup>th</sup> of every calendar month falling in the period of installment. The Claimant had deposited first installment on 19.2.2003 which was for the period from 20.2.2003 to 19.3.2003 and the period of 2<sup>nd</sup> installment was from 20.3.2003 to 19.4.2003 and this installment was to be deposited up to 15<sup>th</sup> of calendar month falling in the period of installment i.e up to 15<sup>th</sup> April, 2003 with out interest. The respondent interpreted that the payment of second installment falls due on 15.3.2003 with out interest and 14.4.2003 along with interest, where as the Claimant interpreted that the payment of second installment falls due on 15.4.2003 with out interest and up to 15.5.2003 along with interest and so on. The Respondent in communication to the Claimant vide memo No HSRDC/242 dated 10.4.2003, intimated that the next installment falls due on 15.3.2003 and the Claimant was advised by the Respondent to deposit next installment of toll. The Claimant informed the respondent vide Letter dated 12.4.2003 and 15.4.2003 that payment of next installment falls due on 15.4.2003 without interest and upto 15.5.2003 along with interest. Therefore, the Claimant would be depositing the second installment up to 15.5.2003 along with the interest. The Respondent after considering the contents of the above mentioned letters of the Claimant again intimated that the next payment of installment falls due on 15.3.2003 without interest and up to 15.4.2003 along with interest. The Respondent further directed the Claimant to deposit the second installment latest by 30.4.2003 and also warned the Claimant that if the installment is not deposited by the Claimant up to 30.4.2003, the Agreement executed with the Claimant would be terminated and security deposit shall be forfeited.
6. However, Claimant again intimated to the Respondent vide letter dated 29.4.2003 that interpretation of calculating the due date for depositing the second installment by the Respondent is totally contrary to the provisions of the Agreement because nowhere it is mentioned in the Agreement that the second installment is to deposited in the next month of the month of execution of Agreement. However the Claimant further conveyed his commitment vide letter dated 29.4.2003 for depositing the second



instalment along with interest up to 15.5.2003 in accordance with the provisions of the Agreement.

7. Respondent with out further notice to the Claimant forfeited the security deposit of the Claimant amounting to Rs 17,82,200/- vide letter no HSRDC/366 dated 9.5.2003 and also got the bank guarantee no 08/2002-2003 dated 18.2.2003 of Oriental Bank of Commerce, Urban Estate Hisar amounting to Rs 17,82,200/- encashed from the bank on 10.5.2003. The letter of authorization for the collection of toll issued to the Claimant vide memo HSRDC/184 dated 18.2.2003 was also withdrawn and cancelled by the Respondent through memo no HSRDC/366 dated 9.5.2003. Accordingly the Respondent also took over the possession of the toll point on 10.5.2003 and started the collection of toll departmentally with effect from 10.5.2003.
8. The Claimant intimated to the respondent that the action of forfeiture of security deposit and withdrawal of authorization for the collection of toll on 9.5.2003 is illegal because the Claimant observed that the due date for depositing the second instalment along with interest falls on 15.5.2003 where as the respondent considered the due date for depositing the second instalment along with interest as 14.4.2003. Further more, the Claimant observed that the Respondent had forfeited the security deposit of the Claimant with out terminating the Agreement which is contrary to the provisions of the Agreement and therefore, the Claimant sought arbitration for the adjudication of their disputes. I have been appointed as Sole Substituted Arbitrator for adjudication of the disputes raised by the Claimant.

**The points/ disputes raised by the Claimant have been dealt as under:-**

**DISPUTE NOS 3.1, 3.2 AND 3.5 :-**

- 3.1 What would be the due date for depositing second instalment with out interest and with interest and what would be the due dates for depositing further instalments without interest and with interest?
- 3.2 As intimated in para 3.1 above, if the due date for the payment of second instalment with out interest and with interest is considered as 15<sup>th</sup> April 2003 and 15<sup>th</sup> May 2003, then the action of the Respondent in forfeiting the security deposit amounting to Rs, 17,82,200/- vide letter no HSRDC/366 dated 9.5.2003 is illegal and against the provisions of the Agreement ?

**3.5 Whether the Respondent was required to communicate his final decision to the Claimant on the letter dated 29.4.2003 of the Claimant before taking action by the respondent vide letter no HSRDC/366 dated 9.5.2003 ?**

In support of the claim, the Claimant has explained/ brought out as under:-

- (i) The Claimant has brought that as per provisions of the Acceptance letter, first installment amounting to Rs.4,95,000/- was deposited with the Respondent on 19.2.2003 through bank draft and accordingly the Agreement was executed by the Claimant with the Respondent on 19.2.2003. As per provision of clause 2 of the Agreement, the Claimant had agreed to deposit remaining 23 installments of Rs. 4,95,000/- each up to 15<sup>th</sup> of every calendar month and on default to pay any of the installment by the due date, the same will be paid along with the interest calculated @ 0.05% per day of the delay with in 30 days from the due date. The Claimant had deposited the first installment before entering into Agreement on 19.2.2003 and the remaining 23 installments were to be deposited on 15<sup>th</sup> of every calendar month. The Claimant further brought out that they had deposited the first installment which was for the period from 20.2.2003 to 19.3.2003 and the period of second installment was from 20.3.2003 to 19.4.2003 and therefore, the second installment was to be deposited up to 15<sup>th</sup> of the calendar month falling in the period of second installment with out interest. Therefore, payment of the second installment for the period from 20.3.2003 to 19.4.2003 was due to deposited by the claimant up to 15.4.2003 with out interest and up to 15.5.2003 along with interest.
- (ii) The Claimant clearly informed the Respondent vide his letter dated 29.4.2003 that the interpretation of calculating the due date by the Respondent for depositing the installments is totally contrary to the provisions of the Agreement. No where it is mentioned in the Agreement that the next installment is scheduled to be paid up to 15.3.2003. In fact, the Claimant had deposited the first installment on 19.2.2003 and thereafter the Agreement was signed. As per provision of the Agreement, the Claimant was required to deposit remaining 23 installments up to 15<sup>th</sup> of every calendar month and if the Claimant was required to deposit the next installment on 15<sup>th</sup> of the calendar month falling in the next month of the execution of the Agreement, then the Claimant will have to deposit 24 remaining installments on 15<sup>th</sup> of every calendar month falling in the period of contract, where as the Claimant is required to deposit remaining 23 installments. The Claimant further conveyed his commitment to the Respondent vide his letter dated

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29.4.2003 to deposit the second installment up to 15.5.2003 along with interest in accordance with the provisions of the Agreement. The Claimant further intimated to the Respondent that any illegal/arbitrary action of terminating the Agreement in violation of the provisions of the Agreement will be the responsibility of the Respondent and they will claim full damages for the same.

- (iii) The Claimant further brought out in their Rejoinder that the plea taken by the respondent that the Claimant had deposited the first installment in the month of February 2003 and therefore the Claimant was required to deposit the second installment during the month of March 2003 with out interest i.e up to 15.3.2003 is further proved hypothetical and imaginary because as per version of the Respondent, if any Entrepreneur deposits the first installment on 31<sup>st</sup> of any month, then he has to deposit the second installment on 15<sup>th</sup> of the next month i.e after 15 days of depositing the first installment and if any Entrepreneur deposits the first installment on 1<sup>st</sup> of any month, then he has to deposit the second installment on 15<sup>th</sup> of the next month i.e. 45 days after depositing the first installment. This shows that Entrepreneur depositing the first installment on 1<sup>st</sup> of any month is allowed 45 days for depositing the second installment, where as the Entrepreneur depositing first installment one day prior to 1<sup>st</sup> of the month is allowed only 15 days for depositing the second installment. This is totally hypothetical and against the spirits of the Agreement where as the fact remains that the payment of second installment falls due on 15<sup>th</sup> of that calendar month falling in the period of installment and so on.
- (iv) To support the version about the interpretation of the due dates for depositing the second installment and subsequent installments, the Claimant has given reference of two other Agreements executed by the Respondent with other Entrepreneurs i.e Sh. Kushal Singh of Sikar in respect of Agreement nos HSRDC/Toll/4 for the collection of toll at toll point in Km 4.1 near Palwal on Palwal-Sohna Road and HSRDC/Toll/13 for the collection of toll at toll point near UP border on Kairana -Panipat Road. In these two cases, the Entrepreneur had deposited first installment on 3.1.2003 which was for the period from 4.1.2003 to 3.2.2003. As per version of the Respondent taken in this case, the due date for depositing the second installment should have been 15<sup>th</sup> of January 2003 where as the Respondent in both these cases considered the due date for depositing the second installment as 15<sup>th</sup> February 2003 i.e 15<sup>th</sup> of the calendar month falling in the period of installment from 4.2.2003 to 3.3.2003. Although the Respondent

considered the due dates for depositing the second instalment in the above two cases as 15<sup>th</sup> of the calendar month falling in the period of instalment whereas Respondent adopted different yardstick for calculating the date for depositing the second instalment by the Claimant which is totally contrary to the provisions of the Agreement.

- (v) After depositing first instalment on 19.2.2003 which was for the period from 20.2.2003 to 19.3.2003, claimant had undertaken to deposit the remaining 23 instalments. He could only think of depositing the second instalment after the expiry of period of first instalment i.e after 20.3.2003. Since he had to deposit the instalment on 15<sup>th</sup> of the calendar month as such the due date for depositing second instalment would automatically fall on 15.4.2003 i.e 15<sup>th</sup> of the calendar month falling in the period of second instalment. Furthermore, the Agreement period is from 20.2.2003 to 19.2.2005 and 15<sup>th</sup> of every calendar month would fall 24 times during the period of Agreement, whereas the claimant is required to deposit remaining 23 instalments and not the remaining 24 instalments. Evidently the due date for depositing the second instalment with out interest would be 15.4.2003 and with interest as 15.5.2003.
- (vi) Furthermore, as per provision of clause 6 of Instructions to Bidders (Toll Remittance), the toll shall be collected by the Entrepreneur and remitted in the form of bank draft in favour of the Managing Director, HSRDC payable at Chandigarh on monthly basis by 15<sup>th</sup> of every calendar month. As per provision of this clause, nowhere it is mentioned that advance instalment has to be deposited. The Entrepreneur is to collect the toll and thereafter remit the same to the Respondent. But whatever the case may be, the due date for depositing second instalment falls due on 15<sup>th</sup> April 2003 with out interest i.e 15<sup>th</sup> of the calendar month falling in the period of second instalment.
- (vii) As per provision of clause 2 of the Agreement, it is clearly specified that in case any of the instalment is not paid within 30 days counted from the due date, then the Contract Agreement will be terminated with out any further notice. As per version of the Respondent, if the due date for depositing the second instalment with out interest was 15<sup>th</sup> March 2003 and up to 15<sup>th</sup> April 2003 along with interest, then the Respondent should have terminated the Contract Agreement immediately after 15<sup>th</sup> April 2003 thereby not allowing the Entrepreneur to collect further toll from the toll point beyond 15<sup>th</sup> April 2003, but Respondent in this case with out terminating the Agreement forfeited

the security deposit of the Claimant on 9.5.2003 which clearly shows that he had the intention of considering the due date for depositing the second installment as 15<sup>th</sup> April 2003 with out interest and 15<sup>th</sup> May 2003 along with interest and that is why kept on waiting after 15<sup>th</sup> April 2003 and did not take any immediate action. However, Respondent forfeited the security of the Claimant with out terminating the Agreement on 9.5.2003 due to reasons best known to him. However, the action of forfeiting the security deposit of the Claimant before the expiry of due date for depositing the second installment along with interest is totally contrary to the provisions of the Agreement.

- (viii) It was the option of the Claimant to deposit installments in advance and the claimant would not claim any interest from the Respondent. But if the installment is not paid in advance then how the Respondent is entitled to claim interest for not paying the installment in advance. However, the Respondent should only be entitled to charge interest from the Entrepreneur if he fails to pay the installment after collecting the same for 30 days. However, considering the due date for depositing the second installment with out interest as 15<sup>th</sup> April 2003, even this date is still 5 days prior to the expiry of period of second installment.
- (ix) The Claimant has claimed that due date for depositing the second installment with out interest was 15<sup>th</sup> April 2003 and along with interest as 15<sup>th</sup> May 2003. Thus neither any action could be taken by the Respondent before 15<sup>th</sup> May 2003 in accordance with the provisions of the Agreement nor was the Claimant actually liable for any action before 15<sup>th</sup> May 2003.

**The Respondent has defended the dispute and explained as under:-**

- (a) That as per clause 2 of the Agreement, it has been made clear that claimant shall pay all the installments on due dates in advance and the claimant shall not claim any interest on these installments. The Respondent reproduced the relevant para of the Agreement as under

**"Further the Entrepreneur/Agent hereby agrees that he will pay to the HSRDC all installments on due dates in advance as aforesaid and that further he will have no claim for interest on these installments paid in advance".**

**"And whereas, of default to pay any installment by due date the same will be paid along with interest calculated @ 0.05% per day of delay. Further in case any installment along with interest is not paid**



within 30 days counted from the due date, then the contract agreement will be terminated without any further notice. In such event without prejudicing the rights and other remedies available to the Haryana State Roads & Bridges development Corporation Limited, the Security Deposit and all installments of contract amount already paid shall stand forfeited without any claim from the agency."

"Further any authorization letter for collection of toll issued shall be treated as cancelled and withdrawn. Further more Haryana State Roads & Bridges development Corporation Limited will be at liberty to take over the site and start collection of toll as deemed fit."

- (b) The Respondent explained that as per provision of para 1.3 and 1.4 at page 7 of the Agreement and also para 3 & 4 at page 20 of the Agreement, the claimant had deposited first installment on 19.2.2003 and also signed the Agreement on 19.2.2003, so the next installment became due to be deposited on 15<sup>th</sup> of the next calendar month i.e March 2003 meaning thereby that second installment was due to be deposited up to 15<sup>th</sup> March 2003 with out interest. However, as per Agreement, in case of default to pay any installment by the due date, the same can be paid in next 30 days but along with interest calculated @ 0.05% of the due amount for each day of delay. Thus the second installment could be paid up to 15.3.2003 with out interest and up to 14.4.2003 along with interest. The plea taken by the Claimant that the second installment was for the period from 20.3.2003 to 19.4.2003 and the second installment could be deposited on 15<sup>th</sup> of the calendar month falling in the period of installment is not correct. Rather the installments are to be deposited in advance and regularly before 15<sup>th</sup> of the calendar month after depositing the first installment.
- (c) The Respondent explained that the plea of the Claimant that he would have to deposit 24 remaining installments on 15<sup>th</sup> of every calendar month falling in the period of Agreement if he is asked to deposit the second installment on 15<sup>th</sup> March 2003 is not correct because as per Agreement, the Claimant is only required to deposit 23 remaining installments during the contract period starting from 15.3.2003.
- (d) As per para 6 of Instructions to Bidders, the Claimant was required to remit the toll on monthly basis by 15<sup>th</sup> of every calendar month. Since the collection of toll commenced from 20.2.2003 as such the Claimant was required to pay the second installment on 15.3.2003 after collecting the same from the toll point.
- (e) The Respondent had clearly conveyed to the Claimant vide his letter no HSRDC/31/02/280 dated 22.4.2003 that second installment is due to

deposited up to 15.3.2003 with out interest and up to 14.4.2003 along with interest. However, the Respondent after taking lenient view further advised the Claimant to deposit the second installment even up to 30.4.2003 along with interest failing which the Agreement shall be terminated and security deposit shall be forfeited.

- (f) The Claimant had laid stress on the provisions of Clause 4(IV) of the Agreement but this clause would not help the Claimant and would help the Respondent. The clause is reproduced below:-

4(iv) "In the event of any default on the part of the Entrepreneur/Agent to comply with any of the terms of this contract or in the event of termination of the contract by the HSRDC under any provision, the HSRDC shall have the right to forfeit the entire or part amount of Security Deposit, furnished by the Entrepreneur/Agent and to appropriate the Security Deposit or any part thereof in or towards the satisfaction of any claim of the HSRDC any or damage, losses, costs charges of expenses, or otherwise however. The decision of Managing Director HSRDC shall be final in respect of such damages, losses, costs, charges or expenses or otherwise however shall be final binding on the Entrepreneur/Agent."

4(viii) "Except where otherwise provided or specified in the contract and subject also to, such power as may be delegated to him from time to time by the government, the decision of the Managing Director, HSRDC for the time being in charge of the said Toll facility on all questions and matter whatsoever arising out of or in relation to or in connection with this contract or as to the interpretation of any of its provisions or clause/s either during the subsistence of this contract or at any time thereafter shall be final and binding on the parties to this contract."

As per these provisions of the Agreement all the questions in respect of the clauses of the contract would be interpreted by the managing Director during the currency of the contract or any time thereafter and the same would be final and binding on both the parties. However, the Claimant had no authority to interpret the clauses on its own and if the Claimant did not want to agree with the interpretations of the Respondent, then he should have firstly deposited the second installment on the due date as interpreted by the Respondent and thereafter could have sought arbitration against the decision of the Respondent in accordance with the provisions of clause 28 and 29 of the Agreement which are also reproduced below:-

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**Clause 28.** "In the event the Entrepreneur/Agent disagreeing, with the decision mentioned in the provision of above, he may request the Managing Director, HSRDC, for appointment of an Arbitrator for adjudication of the dispute. On receipt of request from the Entrepreneur/Agent for appointment of Arbitrator, Engineer-in-Chief, Haryana PWD B&R will appoint an Arbitrator for adjudication of the dispute. The arbitrator so appointed shall conduct the arbitration proceedings in accordance with the provision of the contract agreement. Fee of the Arbitrator shall be paid by the party who will seek the arbitration."

**Clause 29.** "Pending appointment of Arbitrator or resolution of the dispute by Arbitrator, the Entrepreneur/Agent will continue to remit the agreed installment of money to the Managing Director, HSRDC"

- (g) the respondent had taken lenient view and had given full opportunity to the Claimant for depositing the second installment even up to 30.4.2003 along with interest but the Claimant failed to deposit the second installment and therefore violated the provisions of the Agreement as such orders dated 9.5.2003 passed by the Respondent are perfectly legal and in accordance with the provisions of the Agreement.

**After considering written arguments and after hearing oral arguments of both the parties, the dispute is adjudicated /decided as under:-**

(i) Para 2 of the Agreement provides as under:-

"AND WHEREAS, the Entrepreneur/Agent in pursuance to the terms and condition of the contract has deposited the first installment of Rs. 17,82,200/- (Rupees seventeen lacs eighty two thousand two hundred only) Where as the Entrepreneur/Agent do hereby agree to pay regularly the following installments as given under by the specified due dates".

Number of remaining installments	Amount of each installment	Due date of payment
23 Monthly	Rs.4,95,000/- (Rupees four lacs ninety five thousand only)	To be deposited upto 15 <sup>th</sup> of every calendar month.

"AND WHEREAS, the Entrepreneur/Agent hereby agrees that all the above mentioned installments, shall be paid in the shape of demand drafts drawn on any Nationalized Bank/ ICICI / HDFC/ UTI/ IDBI Bank , payable at Chandigarh, in favour of Managing

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Director, Haryana State Roads & Bridges development Corporation Limited".

"Further the Entrepreneur/Agent hereby agrees that he will pay to the HSRDC all installments on due dates in advance as aforesaid and that further he will have no claim for interest on these installments paid in advance".

"And whereas, of default to pay any installment by due dates the same will be paid along with interest calculated @ 0.05% per day of delay. Further in case any installment along with interest is not paid within 30 days counted from the due date, then the contract agreement will be terminated without any further notice. In such event without prejudicing the rights and other remedies available to the Haryana State Roads & Bridges development Corporation Limited, the Security Deposit and all installments of contract amount already paid shall stand forfeited without any claim from the agency".

"Further any authorization letter for collection of toll issued shall be treated as cancelled and withdrawn. Further more Haryana State Roads & Bridges development Corporation Limited will be at liberty to take over the site and start collection of toll as deemed fit."

The Claimant deposited the first installment on 19.2.2003 and thereafter the Agreement was executed between both the parties on 19.2.2003. The Agreement period is from 20.2.2003 to 19.2.2005. The Claimant had deposited the first installment in advance which was for the period from 20.2.2003 to 19.3.2003. Although the Claimant had to deposit the installments in advance but the Respondent can neither ask the Claimant nor has any right to demand the second installment before the expiry of period of first installment i.e. up to 19.3.2003. Therefore, the Claimant was required to deposit the second installment after 19.3.2003 but the Agreement provides for depositing the remaining 23 instalments up to 15<sup>th</sup> of every calendar month. Thus 15<sup>th</sup> of the calendar month falling after 19.3.2003 is 15.4.2003 and therefore, this date i.e. 15.4.2003 will have to be considered due date for depositing the second installment with out interest and 15.5.2003 along with interest.

- (ii) The Claimant had undertaken to deposit the remaining 23 installments up to 15<sup>th</sup> of every calendar month. The question of depositing second installment would only arise after the expiry of period of first installment i.e. 19.3.2003 other wise, how could the Claimant can be asked to deposit the

second installment in advance when the first installment period for which he has deposited the first installment in advance had not expired. Furthermore, the contract period is from 20.2.2003 to 19.2.2005 and if the payment of remaining 23 installments is to commence on 15.3.2003, then the claimant would have to deposit 24 remaining installments because 15<sup>th</sup> of calendar month would fall 24 times during the period of contract starting from 15.3.2003.

- (iii) The Respondent had brought out that the Claimant is required to deposit the next installment on 15<sup>th</sup> of next calendar month following the month of execution of Agreement but it has been found that there is no such provision in the Agreement that the Claimant is required to deposit the second installment on 15<sup>th</sup> of the next month of the execution of Agreement. However, as explained by the Claimant if any Entrepreneur deposits the first installment on 31<sup>st</sup> of any month and executes the Agreement on the same day, then he is required to deposit the second installment on 15<sup>th</sup> of the next month i.e after 15 days of depositing the first installment and if any Entrepreneur deposits the first installment on 1<sup>st</sup> of any month and executes the Agreement on the same day, then he is required to deposit the second installment on 15<sup>th</sup> of the next month i.e after 45 days of depositing the first installment. This shows that any Entrepreneur depositing the first installment one day prior to 1<sup>st</sup> of any month is allowed 15 days for depositing the second installment where as the Entrepreneur depositing the first installment on 1<sup>st</sup> of any month is allowed 45 days for depositing the second installment. This is totally hypothetical and contrary to the provisions of the Agreement and also against the principle of natural justice. Claimant further explained that Respondent has now inserted special clause in the new Agreement ( Agreement No HSRDC/Toll/13-R ) where in it is provided as under:-

**"Irrespective of the date of signing of the Agreement and deposit of first installment during any month, the second installment shall be deposited by the Entrepreneur by 15<sup>th</sup> of the following month"**

Evidently the Respondent had incorporated this clause in the new Agreement for depositing the second installment by 15<sup>th</sup> of the following month of executing the Agreement where as no such clause exist in this Agreement and these provisions can not be made applicable in respect of the dispute in question.

- (iv) The Claimant has given reference of two other Agreements executed by the Respondent in the case of Sh. Kushal Singh Sikar Entrepreneur in respect of Agreement nos HSRDC/Toll/4 for the Collection of toll at toll point in Km 4.1 near Palwal on Palwal-Sohna Road and HSRDC/Toll/13



for the Collection of toll at toll point near UP Border on Kairana-Panipat Road. In these two cases the Entrepreneur had deposited first installment on 3rd January 2003 which was for the period from 4.1.2003 to 3.2.2003 and second installment was for the period from 4.2.2003 to 3.3.2003. As per provisions of those Agreements, if the second installment was to be deposited on 15<sup>th</sup> of the calendar month, then the due date for depositing the second installments in these two cases should have been 15.1.2003, where as the Respondent in both these cases considered the due date for depositing the second installment as 15<sup>th</sup> February i.e 15<sup>th</sup> of the calendar month falling after the expiry of period of first installment. In view of the above, the due date for depositing the second installment in these two cases had been considered by the respondent as 15<sup>th</sup> of the calendar month falling after the expiry of period of first installment where as this yardstick was not adopted by the Respondent in this particular case under dispute and therefore, the claim of the Claimant considering the due date for depositing the second installment on 15.4.2003 with out interest can not be ignored.

- (v) Although the Claimant has claimed that due date for depositing the installment should only be considered after the Claimant had collected the toll for one month and if he fails to deposit the same on this date, then he is bound to pay interest on this installment otherwise, how could the Respondent claim interest from the Claimant if he had not collected the toll for one month. Although the plea of the Claimant appears to be genuine but we are now bound by the provisions of the Agreement which provides for depositing the remaining 23 installments up to 15<sup>th</sup> of every calendar month which is the due date for depositing the remaining installments with out interest.
- (vi) The Respondent considered the due date for depositing the second installment as 15.3.2003 with out interest and 14.4.2003 along with interest. The Respondent has brought out that although the Claimant had not deposited the second installment along with interest up to 14.4.2003 but he had taken the lenient view and did not take action against the Claimant immediately after that date and another opportunity was given to the Claimant to pay the second installment up to 30.4.2003 along with interest but the Claimant failed to deposit the second installment even up to 9.5.2003 as such the security deposit of the claimant had been forfeited in accordance with the provisions of the Agreement. It has been observed that there is no such provision in the Agreement empowering the Respondent to extend the date of depositing the second instalment along with interest after the expiry of 30 days from the due date. It appears that the Respondent was not

sure about the due date for depositing the second installment and that is why kept on writing and did not take action against the Claimant immediately after 15.4.2003 or one or two days after this date knowing fully well that the Claimant has not deposited the second installment so far. However, if in the opinion of the Respondent, the second installment was required to be deposited along with interest up to 14.4.2003, then he should have taken action against the Claimant immediately after 15.4.2003. Allowing the Claimant to charge toll from 15.4.2003 to 9.5.2003 itself proves the uncertainty/ ambiguity in the mind of respondent about the due date for depositing the second installment.

- (vii) Respondent has explained that as per provision of para 4(viii) of the Agreement, the decision of the Managing Director, HSRDC for the time being in charge of the toll facility on all questions and matters whatsoever arising of or in relation to or in connection with this contract or as to the interpretation of any of its provisions or clauses either during the subsistence of the contract or at any time thereafter shall be final and binding on both the parties. However, if the Claimant did not agree with the decision of the Respondent, then after depositing the second installment on the due date, the Claimant could have sought arbitration under clauses 28 and 29 of the Agreement which are reproduced below:-

**Clause 28** "In the event the Entrepreneur/Agent disagreeing, with the decision mentioned in the provision of above, he may request the Managing Director, HSRDC, for appointment of an Arbitrator for adjudication of the dispute. On receipt of request from the Entrepreneur/Agent for appointment of Arbitrator, Engineer-in-Chief, Haryana PWD B&R will appoint an Arbitrator for adjudication of the dispute. The arbitrator so appointed shall conduct the arbitration proceedings in accordance with the provision of the contract agreement. Fee of the Arbitrator shall be paid by the party who will seek the arbitration".

**Clause 29.** "Pending appointment of Arbitrator or resolution of the dispute by Arbitrator, the Entrepreneur/Agent will continue to remit the agreed installment of money to the Managing Director, HSRDC "

From the above plea of the Respondent, it is evident that he had full authority to interpret the provision of clauses and on all questions/matters and his

decision is final and binding on both the parties. Since the Respondent had interpreted the due date for depositing the second installment as 15.3.2003 with out interest and 14.4.2003 along with interest as such there had been no other alternative with the Claimant except to refer the matter to the Arbitrator for adjudication of the dispute as per provision of clause 28 of the Agreement and the Claimant should have continued the payment of installments pending the appointment/decision of the Arbitrator as per provision of clause 29 of the Agreement but there is no provision in these clauses that the Respondent can terminate the Agreement or forfeit the security deposit of the claimant on the basis of his own interpretation of the clauses or due date for depositing the second installment. However, the Claimant had certified to the Respondent that he will be depositing the second installment on 15.5.2003 along with interest. Since the Respondent did not take action against the Claimant immediately after 15.4.2003 and action was taken on 9.5.2003 as such the Respondent could have easily waited for another 6 days i.e up to 15.5.2003 and if the Claimant had failed to deposit the second installment up to 15.5.2003 as certified by him, then action should have been taken against the Claimant thereby leaving no scope for the Claimant to raise any dispute.

**In view of the facts explained above, the Dispute no 3.1 is answered in favour of the Claimant meaning thereby that the due date for depositing the second installment with out interest would be 15.4.2003 and along with interest as 15.5.2003. Accordingly Dispute No 3.2 is also decided in favour of the Claimant. Regarding Dispute no 3.5, although as per provision of clause 2 of the Agreement, the Respondent had full authority to take action against the Claimant for not paying the second installment along with interest with in 30 days from the due date but the interpretation of the due dates had been made by the Respondent on its own which was being disputed by the Claimant as such the Claimant should have been informed about the proposed action and advice in accordance with the provisions of clause 28 and 29 of the Agreement.**

**DISPUTE NOS 3.3 AND 3.4 :-**

- 3.3 Whether the Respondent had any authority to forfeit the security deposit of the Claimant amounting to Rs. 17,82,200/- and withdraw the authorization for the collection of toll without terminating the Agreement in accordance with the provisions of Clause 2 of the Agreement and whether the action of Respondent of forfeiting the security deposit of the claimant with out terminating the Agreement was illegal and contrary to the provisions of the Agreement?

3.4 Whether the Respondent had any authority to withdraw the authorization for the collection of toll from the Claimant with out terminating the agreement in accordance with the provisions of clause 2 of the Agreement?

In support of the claim, the Claimant has explained/ brought out as under:-

- (i) As per provision of clause 2 of the Agreement, the Claimant had agreed to pay to HSRDC all the installments on due dates and of default to pay any of the installments by the due date, the same will be paid along with interest calculated @ 0.05% per day of the delay. Further in case, any installment along with the interest is not paid within 30 days counted from the due date, then the Contract Agreement will be terminated with out any further notice. In such event with out prejudicing the rights and other remedies available to the Haryana State Roads & Bridges Development Corporation Limited, the security deposit and all installments of the contract amount already paid shall stand forfeited with out any claim from the agency. Further any authorization letter issued to the Entrepreneur for the collection of toll shall be treated as cancelled and withdrawn. Further more, Haryana State Roads & Bridges Development Corporation Limited will be at liberty to take over the site and start collection of toll as deemed fit. As per these provisions, the Respondent was fully entitled to terminate the Agreement if the Claimant had failed to deposit the next installment along with interest within 30 days from the due date and after the termination of the Contract agreement the security deposit of the Claimant could be forfeited. The Respondent had not terminated the Agreement but had forfeited the security deposit of the Claimant amounting to Rs. 17,82,200/- vide letter no HSRDC/366 dated 9.5.2003 and also got the Bank Guarantee no 08/2002-2003 dated 18.2.2003 of Oriental Bank of Commerce, Urban Estate Hisar encashed from the Bank on 10.5.2003.
- (ii) There is no provision in the Agreement to forfeit the security deposit of the Claimant with out terminating the Agreement. Security deposit can only be forfeited if the Agreement is first terminated. Thus forfeiture of security deposit amounting to Rs. 17,82,200/- by the Respondent vide his letter no HSRDC/366 dated 9.5.2003 with out terminating the Agreement is totally illegal, arbitrary and against the provisions of Agreement. Since no event of termination of Agreement occurred as such there was no reason for forfeiting the security deposit of the Claimant with out terminating the Agreement. Claimant further explained that the Respondent had terminated another Agreement No

HSRDC/Toll/2 and thereafter forfeited the security deposit and withdrawn the authorization for the collection of toll but in this case the Agreement had not been terminated.

- (ii) As per provision of the Agreement, the letter of authorization for the collection of toll issued to the Claimant could only be withdrawn and cancelled after the termination of the agreement. Since the Agreement had not been terminated by the Respondent as such letter of authorization issued to the Claimant the collection of toll withdrawn by the Respondent vide letter no HSRDC/366 dated 9.5.2003 is totally illegal. The Claimant was forced to vacate the site for the collection of toll with the help of police with out official intimation to the Claimant. Even the staff of the claimant had been threatened of dire consequences.

**The Respondent has defended the disputes as under:-**

- (a) The Respondent explained that the operating part of clause of the Agreement to terminate the Agreement had been reproduced in para 2 of letter no HSRDC/366 dated 9.5.2003 i.e order of forfeiting the security deposit and withdrawal of authorization for the collection of toll. Moreover, the forfeiture of the security deposit and withdrawal of authorization for the collection of toll automatically means the termination of the Agreement. Thus the version of the Claimant that Agreement has not been terminated is wrong and denied.
- (b) The Claimant had failed to deposit the second installment along with interest after the expiry of 30 days counted from the due date as such the Claimant had become liable for the forfeiture of the security deposit in accordance with the provisions of clause 2 of the Agreement. Since the Respondent had cancelled and withdrawn the authorization for the collection of toll issued to the Claimant by virtue of which he had been authorized to collect toll from the toll point. Thus for all purposes, the Agreement stands terminated even if the word "termination" is used or not.
- (c) The Claimant failed to deposit the second installment and violated the provisions of the Agreement as such the order no HSRDC/366 dated 9.5.2003 passed by the Respondent is perfectly legal and in accordance with the clauses of the Agreement.

**After considering written arguments and after hearing oral arguments of both the parties, the dispute is adjudicated/ decided as under:-**

**Para 2 of the Agreement provides as under:-**

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"AND WHEREAS, the Entrepreneur/Agent hereby agrees that all the above mentioned installments, shall be paid in the shape of demand drafts drawn on any Nationalized Bank/ ICICI / HDFC/ UTI/ IDBI Bank , payable at Chandigarh, in favour of Managing Director, Haryana State Roads & Bridges development Corporation Limited."

"Further the Entrepreneur/Agent hereby agrees that he will pay to the HSRDC all installments on due dates in advance as aforesaid and that further he will have no claim for interest on these installments paid in advance".

"And whereas, of default to pay any installment by due dates, the same will be paid along with interest calculated @ 0.05% per day of delay. Further in case any installment along with interest is not paid within 30 days counted from the due date, then the contract agreement will be terminated without any further notice. In such event without prejudicing the rights and other remedies available to the Haryana State Roads & Bridges development Corporation Limited, the Security Deposit and all installments of contract amount already paid shall stand forfeited without any claim from the agency."

"Further any authorization letter for collection of toll issued shall be treated as cancelled and withdrawn. Further more Haryana State Roads & Bridges development Corporation Limited will be at liberty to take over the site and start collection of toll as deemed fit."

From the above provisions, it is clear that in case the Entrepreneur fails to deposit any of the installment within 30 days counted from the due date along with interest, then his Agreement shall be terminated and in such event all other actions i.e forfeiture of the security deposit and withdrawal of authorization for the collection of toll could be taken. If the Respondent had observed that the Claimant has failed to deposit the second installment along with interest within 30 days from the due date, then first course of action was to terminate the contract Agreement in accordance with the provisions of clause 2 of the Agreement and thereafter should have forfeited the security deposit of the claimant and should have taken action for the withdrawal of authorization for the collection of toll. Although technically speaking, the version of the respondent that the forfeiture of the security deposit and withdrawal of authorization for the collection of toll automatically means the termination of Agreement but legally the Agreement should have been firstly terminated and thereafter the action of forfeiting the security deposit should have been taken. Although in the opinion of the respondent, event of termination of the Agreement had arisen due to failure on the part of the Claimant to deposit the second installment along with interest within 30 days from the due date but the

action of forfeiture of security deposit and withdrawal of authorization for the collection of toll could only be taken after the termination of Agreement. The fact remains that the respondent had not terminated the Agreement though the provisions of Clause 2 of the Agreement were mentioned in the letter of HSRDC/366 dated 9.5.2003. Furthermore, if the Respondent could terminate another Agreement no HSRDC/Toll-2 before forfeiting the security deposit as such the Respondent should have terminated this Agreement before forfeiting the security deposit of the Claimant.

As explained above, dispute nos 3.3 and 3.4 are decided in favour of the Claimant because the Respondent should have first terminated the Agreement in accordance with the provisions of the Agreement and thereafter was entitled to forfeit the security deposit of the Claimant and withdrawal of authorization for the collection of toll.

#### **DISPUTE NO 3.6 :-**

Whether the Respondent had taken illegal action on war footing for encashing the Bank Guarantee of the Claimant with malafide motive with the reasons best known to the respondent and whether the action of the respondent in taking over the possession of the toll site forcibly from the Claimant with the help of police with out any intimation to the Claimant was legally valid ?

**In support of the claim, the Claimant has explained/ brought out as under:-**

- (i) Claimant has explained that the Respondent's letter no HSRDC/366 dated 9.5.2003 indicating the forfeiture of the security deposit of the Claimant and withdrawing the authorization for the collection of toll from the Claimant was dispatched to the Claimant through registered speed post on 10.5.2003 at 10.30 AM from Chandigarh which was received by the Claimant on 13.5.2003 where as the officers of the Respondent approached Manager, Oriental Bank of Commerce Urban Estate Hisar on 10.5.2003 at 10.00 AM for getting the Bank Guarantee of Rs. 17,82,200/- encashed from the bank. Evidently the Respondent had taken advance action of encashing the bank guarantee of the claimant before informing the claimant about the same.
- (ii) The letter dated 9.5.2003 of the respondent was received by the Claimant on 13.5.2003 where as the staff of the Respondent had taken the possession of the toll site on 10.5.2003 in the morning itself with the help of police with out informing the Claimant. This hasty action of the Respondent clearly proves his malafide motive against the Claimant.

The Respondent has not explained any thing in respect of this dispute but has certified that the action of the Respondent was quite legal and in accordance with the provisions of the Agreement.

**After considering written arguments and after hearing oral arguments of both the parties, the dispute is adjudicated/ decided as under:-**

Although from the perusal of the envelope submitted by the Claimant, it is evident that letter dated 9.5.2003 was got dispatched to the Claimant through registered speed post from Chandigarh on 10.5.2003 at 10.30 AM and the security deposit of the Claimant had also been got encashed from the bank on the same day at Hisar. Even the possession of the toll site was taken from the Claimant on 10.5.2003 itself. Although the Respondent had passed the order on 9.5.2003 for forfeiting the security deposit of the Claimant and had also passed order withdrawing the authorization for the collection of toll but the intimation for the same was sent to the Claimant through speed post from Chandigarh on 10.5.2003 at 10.30 AM which was received by the Claimant on 13.5.2003. Thus it is evident that immediate/hasty action had been taken by the Respondent in getting the bank guarantee encashed from the bank on 10.5.2003 and taking over the possession of toll point with the help of police on 10.5.2003 but this hasty action on the part of the Respondent can not be treated/termed as malafide in view of absence of any specific evidence/reasons. Thus this dispute raised by the Claimant is rejected and answered in favour of the Respondent.

### DISPUTE NO 3.7 :-

Whether the Claimant is entitled for the rebate in the payment of toll due to nation wide strike of the trucks from 14.4.2003 to 23.4.2003

In support of the claim, the Claimant has explained/ brought out as under:-

- (i) Claimant had intimated to the Respondent vide letter dated 14.4.2003 that due to nation wide strike of the trucks with effect from 14.4.2003, there has been no collection of toll through the toll point from 14.4.2003. It was further intimated to the Respondent vide letter dated 24.4.2003 that this 10 days nation wide strike of the trucks has been called off by the All India Motor transport Congress on 23.4.2003. Accordingly the trucks have started passing through the toll point with effect from 24.4.2003. However, it was also intimated that collection of toll will remain affected for the next few days till the situation becomes normal. Although Respondent vide letter no HSRDC/280 dated 22.4.2003 had intimated to the Claimant that strike of the trucks is

incidental and can not be treated as closure of the toll facility or toll point but the Claimant again informed the respondent that as per provision of clause 4(iii) of the Agreement, neither party is liable to the other party for any loss or damage occurred/caused by or arising out of the acts of God and in particular unprecedented floods resulting in disruption of traffic on the road, volcanic eruption, earth quake or other convulsions of the nature and other acts, such as but not restricted to invasion, the act of foreign countries, hostilities or war like operation before or after the declaration of rebellion, military operation which prevent the performance of the contract and which would not have been foreseen or avoided by the prudent person and in such cases, the decision of the Managing Director HSRDC shall be final. It was further indicated by the Claimant that as per provision of clause 5 of the Agreement, in case of closure of toll facility to motor vehicle traffic due to any reason, Entrepreneur/Agent may be granted rebate @1/30 of the installment amount for each day for the number of days of admitted closure as certified by the Managing Director, HSRDC

- (ii) It was intimated by the Claimant that this 10 day nation wide strike by the trucks could not be foreseen by any prudent person at the time of submission of bids and furthermore, due to this strike, toll could not be collected from the toll point for which Claimant has to be compensated for the loss of toll in accordance with the provisions of clause 5 of the Agreement. Thus the Claimant is entitled for the exemption from the payment of toll for the strike period as principle of natural justice.

**The Respondent has defended the dispute as under:-**

The Respondent has explained that neither there had been any interruption in the traffic during the strike period nor the toll facility or toll point had been closed to traffic in accordance with the provisions of clause 5 of the Agreement. Strike by the Trucks could not be treated as closure of toll facility or toll point and therefore such type of eventualities are incidental and no cognizance of the same can be taken in accordance with the provisions of the Agreement.

**The dispute is decided as under:-**

Although as a principle of natural justice, the Trucker's strike could not have been foreseen by the Claimant at the time of submission of bids and he had definitely suffered loss in the toll collection on account of this strike but the matter has to be decided in accordance with the provisions of Agreement. There is no specific provision in the Agreement to deal with such type of eventualities. Concession of toll to the Claimant for the affected days could only be admissible, had the toll facility or the toll point had been totally closed in accordance with the provisions of clause 5 of the Agreement but the fact

remains that the toll facility or the toll point had not been totally closed to traffic during the strike period and other category of vehicles continued to pass through the toll point during the strike period as such the dispute raised by the Claimant is decided in favour of the Respondent.

#### CLAIM NO 4.1 ( CLAIM NO-1)

The Claimant filed claim for Rs. 9,90,000/- on account of illegally forfeiting the security deposit of the Claimant

Sr. No	Particulars	Amount of claim
1	Security deposit which has been illegally forfeited and got cashed from the bank i.e	Rs 17,82,200/-
	Less amount of installment which was to be paid for the period from 20.3.2003 to 9.5.2003( 1 month and 18 days) i.e	Rs 7,92,000/-
	<b>Net Claim</b>	<b>Rs. 9,90,000/-      Rs. 9,90,000/-</b>

Claimant explained that the payment of second installment for the period from 20.3.2003 to 19.4.2003 was due to be deposited by the Claimant up to 15.4.2003 with out interest and up to 15.5.2003 along with interest. Failure on the part of the Claimant to deposit the second installment up to 15.5.2003 along with interest, then only the respondent could have terminated the Agreement and could have forfeited the security deposit of the Claimant. As per provision of Clause 2 of the Agreement, the cause of action for terminating the Agreement and forfeiture of security deposit could only arise on 15.5.2003 if the claimant had failed to deposit the second installment up to 15.5.2003. Furthermore, as explained in para 3.3, security deposit could only be forfeited after terminating the Agreement. Since the Agreement had not been terminated as such security deposit of the Claimant could not have been forfeited. In view of these facts, forfeiture of the security deposit amounting to Rs. 17,82,200/- by the respondent vide his letter no HSRDC/366 dated 9.5.2003 with out terminating the Agreement is totally arbitrary, illegal and against the provisions of Agreement. The Claimant has raised claim for a sum of Rs. 9,90,000/- in this regard.

Respondent has explained that the Claimant was required to deposit the second installment up to 15.3.2003 with out interest and up to 14.4.2003 along with interest but the Claimant failed to deposit the second installment with in 30 days counted from the due date along with interest as such the respondent had full authority to terminate the Agreement, forfeit the security deposit of the Claimant and withdraw the authorization for the collection of toll from the Claimant in accordance with the provisions of Clause 2 of the Agreement. Even otherwise, the Claimant had been given two notices i.e vide letter dated



10.4.2003 and 22.4.2003 before passing the order of forfeiting the security deposit. The Respondent further argued that the Claimant was required to deposit 23 remaining installments and not 24 remaining installments as is being explained by him. Furthermore, clause 28 and 29 of the Agreement makes it abundantly clear that in case the claimant disagrees with the interpretation of the provisions/clauses of the agreement by the Respondent in accordance with the provision of clause 4(viii) of the Agreement, then the Claimant through written submission could have requested the Managing Director HSRDC for the appointment of the Arbitrator for the adjudication of the dispute. Furthermore, as per provision of clause 29 of the Agreement, pending appointment of the Arbitrator or resolution of dispute by the Arbitrator, the Claimant was required to deposit the installments on the due dates as interpreted by the Respondent. The provision of this clause of the Agreement leaves no room for the Claimant to interpret the clauses on its own and start acting accordingly. Furthermore, even as per provision of clause-6 of the Instructions to Bidders, the Claimant was to collect toll from the toll point and thereafter remit the same to the respondent. Since he had paid the first installment in advance and thereafter was required to deposit the remaining installments in advance after collecting toll in accordance with the provision of clause 2 of the Agreement and no interest was payable. Regarding Clause 10(b) of the Agreement, although no notice was required to be given to the Claimant in this regard in accordance with the provision of clause 2 of the agreement, but even then two notices were given by the respondent to the Claimant on 10.4.2003 and 22.4.2003 in this regard. Furthermore, as per provision of clause 4(iv) of the Agreement, in the event of any default, the Respondent had the right to forfeit the entire or part of the security deposit and the decision of Managing Director, HSRDC shall be final in respect of such damages, losses, costs and expenses shall be binding on the Entrepreneur. Thus the action of the respondent in forfeiting the security deposit of the Claimant is unquestionable particularly when the Claimant had committed the breach of contract by not paying the installment in spite of issue of notices and therefore the claim is not maintainable.

**This claim is decided as under:-**

As decided in dispute nos 3.1 and 3.2 above that the due date for depositing second installment with out interest would be upto 15.4.2003 and along with interest upto 15.5.2003 as such Respondent could have waited upto 15.5.2003. If the Respondent could wait for 25 days for taking action against the Claimant, then he could have easily waited for another 6 days. Heaven was not going to fall in those 6 days. Had the Respondent taken action against the Claimant immediately after 15.5.2003, there would have been no scope for the claimant to raise the claim.

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It has also been decided in the dispute nos 3.3 and 3.4 that before forfeiting the security deposit of the Claimant and also before withdrawing the authorization for the collection of toll from the Claimant, the Agreement should have been terminated clearly in accordance with the provision of clause 2 of the Agreement thereby creating an event of making the Claimant liable for the forfeiture of security deposit and withdrawal of authorization for the collection of toll. As per provision of clause 10 of the Agreement, the Managing Director, HSRDC shall be entitled to terminate the Agreement at any time

- a) Without assigning any reason thereof after giving to the Entrepreneur/Agent fifteen days prior notice in writing and in that event the Entrepreneur/Agent shall not be entitled to claim, recover or receive from the government any compensation whatsoever on account of such premature termination.
- b) By giving 7 days notice in writing to Entrepreneur/Agent for breach or non observance by Entrepreneur/Agent any terms or conditions of this agreement for which no specific provision is available separately.

In the happening of such an event and agreement being terminated, Entrepreneur/Agent will be liable to pay to Managing Director, HSRDC money proportionately calculated at the rate of 1/30 of the monthly installment @ 1/30 of the monthly installment for each day, the agreement remained in force.

Further in case of the agreement having been terminated under clause (b) above, the Entrepreneur/Agent will further be liable to pay to HSRDC, out of his security deposit any amount or portion thereof of Security Deposit as deemed appropriated by the Managing Director, HSRDC whose decision will be final and binding upon the Entrepreneur/Agent.

Since the authorization for the collection of toll had been withdrawn from the Claimant on 9.5.2003 and thereafter the Respondent started the collection of toll from the toll point with effect from 10.5.2003 and also the work for the collection of toll at this toll point has been re- allotted to another agency as such continuation of this Agreement by the Claimant at this stage is not feasible. However, the Claimant had not deposited any further installment after depositing the first installment as such the Claimant is liable to make payment to the Respondent proportionate installment calculated @ 1/30 of the monthly installment for the number of days the claimant continued to collect toll after the expiry of period of first installment. Although full amount of security deposit amounting to Rs.17,82,200/- of the Claimant had been forfeited by the Respondent but the

claimant is liable to pay a sum of Rs. 8,30,940/- to the Respondent is detailed below:-

Sr. No	Particulars	Amount to be paid by the Claimant to the Respondent
1	(i) Amount of installment which was to be paid for the period from 20.3.2003 to 19.4.2003 (1 month)	Rs. 4,95,000/-
	(ii) Amount of installment which was to be paid for the period from 20.4.2003 to 9.5.2003 (20 days)	Rs. 3,30,000/-
	(iii) Interest on second installment of Rs. 4,95,000/- @ 0.05% per day for the period from 16.4.2003 to 9.5.2003 (24 days)	Rs. 5,940/-
Total amount to be paid by the Claimant		Rs. 8,30,940/-

Thus the Claimant is entitled for the refund of balance amount of Rs. 9,51,260/- against the claim of Rs. 9,90,000/- raised by the Claimant. I hereby award claim of Rs. 9,51,260/- (Rupees Nine lacs fifty one thousand two hundred sixty only) to the claimant in respect of this claim.

#### CLAIM NO 4.2 ( CLAIM NO-2)

The Claimant has raised claim of Rs. 1,65,000/- on account of loss of toll collection on account of strike of the trucks from 14.4.2003 to 23.4.2003 (10 days)

The Claimant has explained in dispute no 3.7 that he is entitled to the rebate in the toll installment for the number of days there had been strike of the trucks.

The Respondent explained that as per provision of clause 5 of the Agreement, the Claimant is entitled for the rebate @ 1/30 per day of the monthly installment if the toll facility or the toll point is closed for the traffic. In this case during the strike of trucks, the toll facility or the toll point did not remain closed. Furthermore, the claimant was supposed to furnish details of his intended claim for the rebate by 10<sup>th</sup> of the following month and by not doing so, the Claimant is not entitled for any rebate.

**This claim is decided as under:-**

It has already been decided in dispute no 3.7 that as a principal of natural justice, the Trucker's strike could not have been foreseen by the Claimant at the time of submission of bids and he had definitely suffered loss in the toll collection on account of this strike but the matter has to be decided in accordance with the provisions of Agreement. There is no specific provision in the Agreement to deal with such type of eventualities. Concession of toll to the Claimant for the affected days could only be admissible, had the toll facility or the toll point had been totally closed in accordance with the provisions of

clause 5 of the Agreement. Although the Claimant had not been given an opportunity to submit claim for the rebate by 10<sup>th</sup> of the following month because authorization for the collection of toll had been withdrawn from him on 9.5.2003, but whatever the case may be, the fact remains that the toll facility or the toll point had not been totally closed to traffic during the strike period and other category of vehicles continued to pass through the toll point during the strike period and thus the claim raised by the Claimant is rejected.

#### CLAIM NO 4.3 ( CLAIM NO-3)

The Claimant had raised claim for Rs 56,000/- on account of loss of collection of toll on account after effects of the trucker's strike from 14.4.2003 to 23.4.2003

This claim is related to claim no 4.2 (Claim no-2). Since the dispute no 3.7 has not been decided in favour of the Claimant and furthermore, the claim no 4.2(Claim no-2) raised by the Claimant has been rejected as such this claim of the claimant is also rejected.

#### CLAIM NO 4.4 ( CLAIM NO-4)

The Claimant has raised claim for Rs. 10,59,300/- on account of loss of profit due to reduction in the turn over of the Claimant on account of illegal withdrawal off authorization for the collection of toll from the Claimant on 9.5.2003.

The Claimant has explained the facts as under:-

- (i) The work for the collection of toll at toll point near Himachal Pradesh border on Jagadhri-Chhachhrauli-Poanta Road was awarded to the Claimant for Rs.1,18,80,000/- to be deposited in 24 monthly installments. The Agreement was executed by the Claimant with the Respondent on 19.2.2003. This Agreement was for the period of two years from 20.2.2003 to 19.2.2005.
- (ii) The work for the collection of toll was for 24 months and the Claimant had planned to carry out the work accordingly in 24 months and had made all arrangements. It was planned that the turn over of the Claimant would be Rs 1,18,80,000/- for the period of two years and he would be able to earn reasonable profit on the turn over during the currency of the contract. Due to illegal forfeiture of the security deposit of the Claimant and due to withdrawal of authorization for the collection of toll from the Claimant on 9.5.2003, the turn over of the Claimant has been restricted to Rs. 12,87,000/- against the planned turn over of Rs. 1,18,80,000/-. Thus the Claimant had been deprived of the turn over of

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Rs 1,05,93,000/- during the period from 10.5.2003 to 19.2.2005. As per judgment of the Hon'ble Supreme Court of India, the Claimant is entitled to the profit for the remaining period of the Agreement

Claim is as under

Sr. No	Particulars	Amount claim	of
1	(i) Total amount of the Agreement=	Rs 1,18,80,000/-	
	(ii) Amount of turn over from 20.2.2003 to 9.5.2003 =	Rs. 12,87,000	
	(iii) Amount of loss of turn over=	Rs 1,05,93,000/-	
	(iv) Loss of profit on turn over i.e 10% of the anticipated turn over=	Rs 10,59,300/-	Rs 10,59,300/-

The Respondent has refuted the claim and explained the same facts which have been explained in Claim no 4.1( Claim No-1). However, the respondent has further brought out that in this case the breach of contract has been caused by the Claimant by not depositing the second installment on the due date or even after 30 days from the due date along with interest. The judgment clearly stipulates that the party who causes the breach of contract is liable to compensate the other party and the judgment is in favour of the Respondent. Thus what to talk of claiming compensation, the respondent has suffered loss of Rs.17,82,000/- which should be compensated by the Claimant.

**The Claim is decided as under:-**

The work for the collection of toll at toll point near Himachal Pradesh border on Jagadhri-Chhachhrauli-Poanta Road was awarded to the Claimant for Rs. 1,18,80,000/- to be deposited in 24 monthly installments. The Agreement was executed by the Claimant with the Respondent on 19.2.2003. This Agreement was for the period of two years from 20.2.2003 to 19.2.2005. The authorization for the collection of toll was withdrawn from the claimant on 9.5.2003. Since the work for the collection of toll has been re- allotted to another agency at much lower rate i.e for about Rs. 1,11,00,000/- for the period of two years against this Agreement amount of Rs 1,18,80,000/- allotted to the Claimant. Evidently the Claimant might have been incurring huge loss in this work. Thus the Claimant is not entitled to any profit for the remaining period of the Agreement and therefore, the Claim of the Claimant is rejected.

**CLAIM NO 4.5 (CLAIM NO-5):-**

The Claimant has raised claim for Rs 1,49,162/- on account of loss of expenses incurred for establishing toll plaza, loss of wages of the



contracted persons, additional administrative expenses, additional bank charges and idling of equipment and machinery arranged for the collection of toll.

The Claimant has explained as under:-

Due to illegal forfeiture of the security deposit of the Claimant and illegal withdrawal of the authorization for the collection of toll on 9.5.2003, the Claimant suffered loss in respect of the arrangements which he had already made for running the toll point for the entire period of two years. The Claimant had even paid advance for the fulfillment of the Agreement. The arrangement made for the erection of toll plaza had gone waste due to premature withdrawal of authorization. Thus the Claimant suffered huge loss on this account as detailed below which should be compensated:-

Sr. No	Particulars	Amount of claim
1	(i) Loss of arrangement made for establishing/ erection of toll plaza Rs 50,000/- x 1,05,93,000/1,18,80,000/-	Rs. 44,581/-
	(ii) Loss of wages of contracted persons 50,000/- x 1,05,93,000/1,18,80,000/-	Rs 44,581/-
	(iii) Additional administrative expenses	Rs. 25,000/-
	(iv) Additional bank charges and loss of bank commission paid for getting the bank guarantees	Rs. 25,000/-
	(v) Loss on account of idle equipment and machinery	Rs 10,000/-
	Total claim	Rs 1,49,162/-

The Respondent has refuted the claim. He has explained that the Claimant has not constructed the toll plaza which was to be constructed by the Claimant as per the design approved from the Respondent in accordance with the provisions of clause 20 of the agreement. This Toll plaza was to be handed over to the respondent after the expiry of the Agreement period. In fact, the respondent has suffered loss of Rs. 10 lacs for the construction of toll plaza which should be compensated by the Claimant.

The Claim is decided as under:-

There is no specific provision in the Agreement where in the Respondent is liable to pay any such charges to the Claimant in case of withdrawal of authorization for the collection of toll from the claimant. In view of the above, the claim of the Claimant in this regard is rejected.

#### CLAIM NO 4.6( CLAIM NO- 6)

The Claimant has raised claim of Rs 17,82,200/- on account of compensation and damages on account of illegal action of the HSRDC for forfeiture of security deposit of the Claimant with out terminating the Agreement and on account of illegal withdrawal of authorization for the collection of toll from the Claimant on 9.5.2003.

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**The Claimant has explained the facts as under:-**

Forfeiture of security deposit of the Claimant amounting to Rs. 17,82,200/- and withdrawing the authorization for the collection of toll from the Claimant vide letter no HSRDC/366 dated 9.5.2003 was totally illegal and contrary to the provisions of Agreement. This illegal action on the part of the Respondent has caused considerable/immense damage to the reputation of the Claimant in the eyes of the other department banks and public. Although loss of reputation can not be compensated, yet the Respondent is liable to pay damages amounting to Rs. 17,82,200/- equal to the amount of the security deposit which had been illegally forfeited by the respondent.

The respondent has refuted the claim of the Claimant. He has explained that action against the Claimant was taken in accordance with the provision of clause 2 of the Agreement and therefore the action taken by the Respondent was fully valid and legal. This claim is neither based on any contractual provision nor has any logic and legal justification.

**The Claim is decided as under:-**

There is no specific provision in the Agreement for claiming such type of damages. As observed in Claim no 3.4, the Claimant may not have been earning any profit but would have been incurring huge losses in running the toll point. Evidently the hasty action taken by the Respondent in violation of the provisions of the Agreement proved to be blessing in disguise to the Claimant. Since the claim raised by the Claimant is not supported with any contractual provisions and seems to be hypothetical as such the claim of the claimant is therefore rejected.

#### **CLAIM NO 4.7 ( CLAIM NO-7)**

The Claimant has raised the claim for the payment of interest on Rs. 12,21,000/- ( Claim no 4.1 to 4.3) from the date of illegal forfeiture of bank guarantee to the date of payment @ 18% per annum as per section 31 sub section 7(a) and 7(b) of the Arbitration and Reconciliation Act 1996.

**The Claimant has explained about this claim as under:-**

- (i) After coming into force, the Indian Contracts Act 1978, interest has become payable on all payments which are either delayed or due to be paid but not paid in time. In this case, forfeiture of the security deposit of the claimant amounting to Rs. 17,82,200/- by the respondent vide letter no HSRDC/366 dated 9.5.2003 was totally illegal and contrary to the provisions of the Agreement.
- (ii) It is trade practice in the industry to charge interest at the rate of 18 percent per annum on the due payments. Even according to the

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- provision of section 31(7) of the Arbitration and Reconciliation Act 1996, 18 percent interest has been allowed for future payments.
- (iii) As per provision of clause 2 of the Agreement, if there is delay on the part of the Entrepreneur in depositing the installment, then interest @ 0.05% per day or 18% per annum is payable by the Entrepreneur as such same rate of interest @ 18% per annum should be awarded on the security deposit amount which has been illegally forfeited.
- (iv) The Claimant is entitled to the payment of interest on Rs 12,21,000/- ( amount of claim nos 4.1 to 4.3) from the date of illegal forfeiture of the security deposit i.e from 10.5.2003 till the date of payment. The learned Arbitrator is entitled to award interest @ 18 percent per annum from the date on which the cause of action arose till the date of payment.

The Respondent has refuted the claim. The demand of the interest by the Claimant is absolutely unfounded and with out any basis because the claims of the claimant have not been substantiated by any reasons particularly when the Claimant had committed breach of contract. Rather it is the Respondent who had suffered losses.

**The Claim is decided as under:-**

As per Clause no 4.1 (Claim No-1), a sum of Rs. 9,51,260/- has been awarded to the Claimant and he is entitled to the interest on this amount from the date of forfeiture of security deposit i.e from 10.5.2003 till the date of payment to the Claimant. Although as per provision of the Agreement, the Claimant is liable to pay interest @ 18% for the delay in depositing the installments from the due dates and furthermore, as per trade practice, interest @ 18% per annum is applicable but due to softer interest regime, interest @ 18% per annum is on higher side. Since the Prime Lending rates of the leading banks is around 10 to 11 percent as such I hereby award interest @ 10 % per annum in favour of the Claimant on Rs. 9,51,260/- from the date of forfeiture of security deposit i.e from 10.5.2003 till the date of announcement of the award and also @ 10% per annum from the next day of date of announcement of the award till the payment is actually made to the Claimant.

**CLAIM NO 4.8 (CLAIM NO-8)**

The Claimant has raised claim of Rs 50,000/- as cost for reference to the Arbitrator

**The Claimant has explained as under:-**

The Respondent has openly committed breach of contract by illegally forfeiting the security deposit of the Claimant and had also illegally withdrawn the

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authorization for the collection of toll from the Claimant. There was no other alternative for the Claimant except to seek adjudication of the dispute through the Arbitrator in accordance with the provisions of clause 28 of the Agreement.

The Respondent has refuted the claim. He has explained that in fact, the Claimant has committed the breach of contract and heavy loss has been caused by the Claimant to the Respondent. The action taken by the Respondent in respect of forfeiture of security deposit of the Claimant and withdrawal of authorization for the collection of toll was strictly in accordance with the provisions of the Agreement as such the Claimant has entered into unnecessary litigation. Since the arbitration has been sought by the Claimant as such the cost has to be borne by him in accordance with the provisions of the Agreement.

The Claim is decided as under:-

Clause 28 of the Agreement provides that - In the event the Entrepreneur/Agent disagreeing, with the decision mentioned in the provision of above, he may request the Managing Director, HSRDC, for appointment of an Arbitrator for adjudication of the dispute. On receipt of request from the Entrepreneur/Agent for appointment of Arbitrator, Engineer-in-Chief, Haryana PWD B&R will appoint an Arbitrator for adjudication of the dispute. The arbitrator so appointed shall conduct the arbitration proceedings in accordance with the provision of the contract agreement. Fee of the Arbitrator shall be paid by the party who will seek the arbitration.

From the above provisions, it is evident that the arbitration has been sought by the Claimant as such the fee of the Arbitrator is to be borne by the Claimant. Furthermore, the Claimant has not attached any evidence/proof in support of the claim but had made general claim. Thus the Claim of the claimant is rejected.

### COUNTER CLAIMS FROM THE RESPONDENT

#### COUNTER CLAIM NO-1

The respondent has raised counter claim amounting to Rs. 10,00,000/- on account of non construction of the toll plaza by the Claimant. The respondent explained that the Claimant was bound to construct Toll Plaza at the site of toll at his own cost. However, no such toll plaza was constructed by the Claimant at Km 2.4 of the toll barrier. The claimant then backed out from the contract and the department shall have to construct the toll plaza and other amenities by spending Rs 10 lacs at the time of running the toll point. Thus the Claimant should pay Rs 10 lacs along with interest @ 18 percent interest from 30.7.2003 till the realization of this amount

By



**The Claimant explained as under:-**

Although the Claimant was required to construct toll plaza in accordance with the design approved by the HSRDC but neither any design for the construction of toll plaza was supplied by the respondent nor any such design had been approved by the respondent. In fact the Claimant had constructed temporary structure for facilitating the collection of toll which was duly approved by the Respondent Executive Engineer in charge of the toll point and other officials of the respondent Corporation had been inspecting the toll point very frequently and also on regular intervals. They had never raised this issue of erecting temporary structure for the collection of toll and for all purposes the structure erected by the Claimant for the collection of toll was considered by the Respondent as Toll Plaza. It is incorrect that the Claimant had backed out from the contract. In fact, the respondent had taken illegal action of forfeiting the security deposit of the Claimant and withdrawal of authorization for the collection of toll. Actually the Respondent from the very beginning had started threatening the Claimant on one pretext or the other. However, the claim should be rejected.

**The Counter claim is decided as under:-**

The Respondent has not raised the counter claim properly. It appears that the claim related to some other Agreement because neither the Claimant was required to construct the toll plaza in Km 2.4 i.e site of the toll barrier nor the Claimant had backed out from the Contract. Furthermore, the Respondent has not supported his claim with the evidence i.e vouchers, bills/estimate for the construction of toll plaza

The work was awarded to the Claimant on 19.2.2003 where as Respondent had withdrawn the authorization for the collection of toll from the Claimant on 9.5.2003. Evidently the Claimant had been allowed to run the toll plaza from 20.2.2003 to 9.5.2003. The Respondent has failed to show any evidence directing the Claimant for the construction of toll plaza during this period. Evidently the Respondent was satisfied about the structure put up by the Claimant for facilitating the collection of toll. Furthermore, the respondent has not supplied any evidence indicating the supply of standard drawing to the Claimant for the construction of toll plaza or had accorded approval for the construction of toll plaza. In view of these facts, the counter claim raised by the Respondent against the Claimant is hereby rejected.

**COUNTER CLAIM NO-2**

The respondent has furnished counter claim no-2 in respect of loss amounting to Rs 4,57,583/-suffered by the respondent due to the breach of contract by the Claimant as detailed below

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(x)	Unpaid amount for the period from 20.3.2003 to 9.5.2003 ( for the period toll point remained with the Claimant ( 1 month 20 days ) i.e 5/3 months @ Rs 4,95,000/- per month	Rs 8,25,000/- (x)
(y)	loss in toll collection by the department from 10.5.2003 to 19.3.2004 (i) Amount of toll collected departmentally from 10.5.2003 to 19.3.2004 = Rs. 45,08,797 /- (ii) less 10% collection and supervision charges = Rs. 4,50,880/-  Net toll collection = Rs 40,57,917/- Amount due from the Claimant for the period from 10.5.2003 to 19.3.2004 = Rs. 51,15,000/-  Loss on account of less collection = Rs. 10,57,083/-	(y)          Rs. 10,57,083/-
(z)	Loss of toll collection through the new Entrepreneur from 20.3.2004 to 19.2.2005 (i) Total contract amount of the Claimant for two years:- Rs. 1,18,80,000/- (ii) Anticipated toll collection by the new Entrepreneur M/s Prince Toll Associates from 20.3.2004 to 19.3.2006 = Rs. 1,11,00,000/- (iii) Loss of toll = Rs. 7,80,000/- (iv) Loss due to less toll for the period from 20.3.2004 to 19.2.2005 i.e 11 months = Rs. 3,57,500/-  Loss on account of less collection = Rs. 3,57,500/-	(z)          Rs. 3,57,500/-
	Total recoverable amount from M/s Wazir Singh & Co	Rs. 22,39,583/-
	Security deposit of the Claimant forfeited	Rs. 17,82,200/-
	Balance amount recoverable from the Claimant	Rs 4,57,583/-

There is provision in the Agreement under clause 4 (v) , that balance recoverable amount shall be paid by the Entrepreneur forthwith to HSRDC on demand and the Corporation has to the right to recover the recoverable amount from the land revenue of the Entrepreneur in accordance with the provision of clause 4(vii) of the Agreement. The respondent further stated that this counter claim amounting to Rs 4,57,583/- may be considered and accepted as counter claim no-2 in terms of provisions of Section 23 of the Arbitration and Reconciliation Act 1996.

The Claimant explained that no such facts were mentioned by the Respondent in his letter dated 9.5.2003 at the time of withdrawing the authorization for the collection of toll from the Claimant. Furthermore, this issue was never raised by the Respondent during arguments and therefore the counterclaim made now on 27.9.2004 is after thought and should not be entertained. Furthermore, the submissions made in the counter claim can not be considered as counter claim because there is no such provision in the Agreement itself that the Respondent Corporation can file counter claims.

**This counter claim is decided as under:-**

- (i) The Respondent had not mentioned about the additional losses, damages or counter-claims in his letter dated 9.5.2003 to the Claimant while withdrawing the authorization for the collection of toll from the Claimant.
- (ii) The Respondent had raised counter claim no-2 only on 27.9.2004 when the matter was already under arguments.
- (iii) Although as per provision of clause 28 of the Agreement, the aggrieved person can seek arbitration and there is no provision in the Agreement indicating that the Respondent can raise the counter claim but the fact remains that as per provision in the Arbitration and Reconciliation Act, 1996, the other party, i.e Respondent, is entitled to submit counter claims before the Arbitrator even if he had not sought the arbitration originally.
- (iv) The Respondent has made the counter claim in three parts i.e (i) loss due to unpaid installments which were required to be deposited by the Claimant for the period toll point remained with him (ii) loss due to less collection of toll collected departmentally (iii) loss due to less toll collection collected through another agency. The claim to the extent of Rs. 8,25,000/- is admitted to the fact that the Claimant had run the toll point from 20.2.2003 to 9.5.2003 but had paid the first installment for the period from 20.2.2003 to 19.3.2003 where as the Claimant is required to deposit the remaining amount for the period from 20.3.2003 to 9.5.2003 amounting to Rs. 8,25,000/- This amount is due to the Respondent and accordingly credit for Rs. 8,25,000/- has been given to the Respondent while deciding Claim No 4.1 ( Claim No-1) and thus after the adjustment of Rs 8,30,940/- along with interest from the security deposit of the Claimant, there would be no claim of the Respondent on this account. Regarding the other parts of the losses claimed by the Respondent, the Claimant can not be held liable for any short collection or excess collection of toll after the authorization for the collection of toll is withdrawn from him. There is no provision in the Agreement for carrying out the work of collection of toll from any other agency at the risk and cost of the original agency. Had the anticipated/future toll collection been more than the amount of installments of the Claimant, then whether the Respondent would have paid the excess amount so collected to the Claimant. This part of the claim of the Respondent is hypothetical and the same is rejected.

**CONCLUSION**

Now, I R. P. Bansal, the Sole Substituted Arbitrator-cum Chief Engineer ( Roads ) Haryana PWD B&R Branch, Chandigarh having duly /carefully considered the whole matter submitted before

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me by both the parties, do hereby announce the award. I, accordingly award a sum of Rs 9,51,260/- ( Rs. Nine lacs fifty one thousand two hundred sixty only ) to the Claimant i.e M/s WAZIR SINGH & COMPANY, 67, Arya Samaj Complex, Raj Guru Market, Hisar to be paid by the Respondent i.e Managing Director, Haryana State Roads & Bridges Development Corporation Limited. The Claimant is further entitled for the simple interest @ 10 % per annum on Rs. 9,51,260/- ( amount of award) from the date of forfeiture of security deposit i.e from 10.5.2003 up to the date of announcement of award i.e up to 11.10.2004 ( 1 year 155 days ) and I award a sum of Rs 1,35,521/- ( Rs one lac thirty five thousand five hundred twenty one only ) to the Claimant (amount matter of calculation). Furthermore, the Claimant is also entitled simple interest @ 10 % per annum on Rs 9,51,260/- ( principal amount only) from 12.10.2004 (amount matter of calculation) till the date of actual payment of the award to the Claimant and I award the same to the Claimant.

Both the parties will bear their own cost for contesting the arbitration case.

The non judicial papers for writing the award were supplied by the Claimant for writing the award

In witness thereof, I R. P. Bansal acting as Sole Substituted Arbitrator have signed this on the day of 11th October, 2004 at Chandigarh'

Place : Chandigarh  
Dated : 11<sup>th</sup> October, 2004

*R.P. Bansal*  
( R.P.Bansal ) 11/10/04  
Sole Substituted Arbitrator  
-cum Chief Engineer (Roads)  
Haryana PWD B&R Branch,  
Chandigarh

Registered  
Endst No 41-43/PA/CET(R) dated 11-10-2004  
Copy of the above award is forwarded for information and further necessary action to the following:-

1. M/s WAZIR SINGH & COMPANY, 67, Arya Samaj Complex, Raj Guru Market, Hisar
2. The Managing Director, Haryana State Roads & Bridges Development Corporation Limited, SCO-23, Sector 7-C, Madhya Marg, Chandigarh-160019
3. Engineer-in- Chief, Haryana PWD B&R branch, Chandigarh with reference to his memo no HHUP-II/340 dated 14.9.2004.

Place : Chandigarh  
Dated : 11<sup>th</sup> October, 2004

*R.P. Bansal*  
( R.P.Bansal ) 11/10/04  
Sole Substituted Arbitrator  
-cum Chief Engineer (Roads)  
Haryana PWD B&R Branch,  
Chandigarh

# ARBITRATION AWARD

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K.S. (G.S.D.)  
P.V.  
E.P.S.R.D.C.  
A.M.  
28/10/04  
Q.S.

**R.P.Bansal , Sole Substituted Arbitrator-cum-  
Chief Engineer (Roads)Haryana PWD B&R,  
Branch Chandigarh**

IN THE MATTER OF THE ARBITRATION AND RECONCILIATION  
ACT, 1996

AND

IN THE MATTER OF ARBITRATION REGARDING  
DISPUTE ARISING OUT OF THE CONTRACT FOR THE  
WORK OF COLLECTION OF TOLL AT TOLL POINT  
NEAR UTTAR PRADESH BORDER ON U.P. BORDER-  
SONIPAT-GOHANA ROAD

**(CONTRACT NO. HSRDC/ TOLL/ 14)**

BETWEEN

**M/s WAZIR SINGH & COMPANY,  
67, Arya Samaj Complex,  
Raj Guru Market, Hisar ("The Claimant")**

And

**The Managing Director,  
Haryana State Roads & Bridges Development  
Corporation Limited,  
SCO-23, Sector 7-C, Madhya Marg,  
Chandigarh- 160019. ("The Respondent")**

100Rs.



**ARBITRATION AWARD**

Before : R.P.Bansal ( Sole Substituted Arbitrator)  
Chief Engineer ( Roads)  
Haryana PWD B&R Branch  
Chandigarh

**IN THE MATTER OF THE ARBITRATION AND RECONCILIATION  
ACT, 1996**

**AND**

**IN THE MATTER OF ARBITRATION REGARDING DISPUTE ARISING OUT  
OF THE CONTRACT FOR THE WORK OF COLLECTION OF TOLL AT  
TOLL POINT NEAR UTTAR PRADESH BORDER ON U.P. BORDER-  
SONIPAT-GOHANA ROAD. (CONTRACT NO. HSRDC/ TOLL/ 14)**

**BETWEEN**

**M/s WAZIR SINGH & COMPANY, "ENTREPRENEUR"  
67, Arya Samaj Complex, herein after referred to as "The Claimant"  
Raj Guru Market, Hisar**

**And**

**The Managing Director, MD.HSRDC  
Haryana State Roads herein after referred to as "The Respondent"  
& Bridges Development Corporation Limited,  
SCO-23, Sector 7-C, Madhya Marg,  
Chandigarh- 160019.**

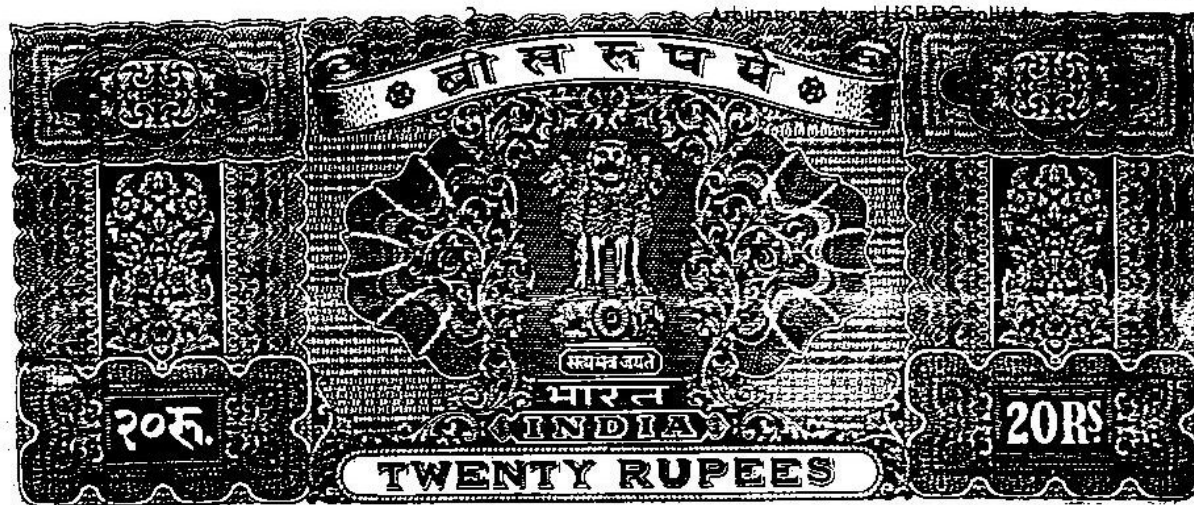
Where as in pursuance of the contract No HSRDC/Toll/14  
executed between M/s Wazir Singh & Co. 67 Arya Samaj Complex, Raj Guru  
Market, Hisar and the Managing Director, Haryana State Roads & Bridges  
Development Corporation Limited, SCO 23 Sector-7, Madhya Marg, Chandigarh  
for the appointment of Arbitrator under Section 15(2) of the Arbitration and  
Reconciliation Act, 1996 and Clause 28 of the Agreement pertaining to the work

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for the collection of toll at toll point near Uttar Pradesh border on U.P. border-Sonapat-Gohana road. (Contract no. HSRDC /Toll/ 14). Engineer-in-Chief, Haryana PWD B&R Chandigarh being the appointing authority in accordance with the provisions of the Agreement had initially appointed Sh. K.K.Gupta, the then Chief Engineer, Haryana Housing Board Chandigarh as Sole Arbitrator vide his memo no HHUP-II/489 dated 4.8.2003 and he conducted two hearings. Later on Sh. K.K.Gupta was appointed by the Haryana Government as Managing Director, Haryana State Roads & Bridges Development Corporation Limited (Respondent) as such on the request of Sh. K.K.Gupta, the Engineer-in-Chief, Haryana PWD B&R Chandigarh being the appointing authority in accordance with the provisions of the Agreement appointed Chief Engineer (NH), Haryana PWD B&R branch, Chandigarh as Sole Substituted Arbitrator vide his memo no HHUP-II/701 dated 17.11.2003. Six hearings were conducted by Sh. R .C. Mehndiratta Chief Engineer (NH)- cum-Sole Substituted Arbitrator). Although Sh. R.C.Mehndiratta Chief Engineer (NH) retired from Haryana Government service on 30.6.2004<sup>by</sup> but Engineer-in-Chief, Haryana PWD B&R Chandigarh re-appointed Sh. R.C.Mehndiratta (by name) as Sole Substituted Arbitrator vide his memo no HHUP-II/273 dated 5.7.2004 and he conducted one hearing. However, later on he suffered heart attack and resigned from this assignment. He requested the appointing authority to appoint another substituted arbitrator. Accordingly, Engineer-in-Chief, Haryana PWD B&R Chandigarh appointed the undersigned as Substituted sole Arbitrator vide his memo no HHUP-II/344 dated 14.9.2004 for the settlement of dispute between the parties arising out of Contract no HSRDC/Toll/14

Accordingly both the parties were directed to attend the hearing along with all the documents and witnesses

Where as I, R.P.Bansal, the Sole Substituted Arbitrator-cum Chief Engineer (Roads) Haryana PWD B&R Branch, Chandigarh carefully considered

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the submissions made in writing and orally as well as documents/evidence placed before me by both the parties. After going through the documents produced before me, along with written and oral arguments made by the Representatives and Counsels of both the parties I hereby make my award as follows:-

### History of the case

1. Haryana Government vide notification No. 9/106/2001-3-B&R (Works, Toll-14) dated 31.12.2002, in exercise of the powers conferred by clause (f) of section 2 of the Haryana Mechanical Vehicles (Levy of Tolls) Act, 1996 (Haryana Act 9 of 1996), notified the section of Uttar Pradesh Border-Sonipat-Gohana Road (State Highway No.11) to be "toll facility" for the purpose of the said Act. Further in exercise of the powers conferred by section 4 of the said Act, the Governor of Haryana had authorized Haryana State Roads and Bridges Development Corporation Limited to demand, collect and retain tolls from the said toll facility at toll point near Uttar Pradesh Border.
2. Managing Director, Haryana State Roads & Bridges Development Corporation Limited invited bids for the collection of toll at this toll point vide Bid Notice No HSRDC/ 14 dated 04.12.2002. Bids were received on 30.12.2002 and the Claimant had quoted the highest bid price of Rs. 14,58,00,000/- for two years to be deposited in 24 equal monthly installments.
3. The Respondent awarded this work to the Claimant and issued Letter of Acceptance to the Claimant vide his memo no HSRDC/107 dated 07.02.2003. The Claimant deposited Security amounting to Rs. 2,18,70,000/- (Rupees Two crores eighteen lacs seventy thousand only ) vide Bank Guarantee no 07/2002-2003 dated 18.2.2003 of Oriental Bank of Commerce, Urban Estate Hisar and also deposited advance installment to the Respondent amounting to Rs. 60,75,000/- through Bank draft in favour of the Managing Director, Haryana State Roads & Bridges Development Corporation Limited payable at Chandigarh. Agreement was executed between the Claimant and the Respondent on 19.2.2003 vide Agreement No HSRDC/Toll/14 for a contract price of Rs. 14,58,00,000/- to be deposited in 24 monthly installments of Rs. 60,75,000/- each and accordingly the Claimant was issued Letter of Authorization by the Respondent vide Memo No HSRDC/188 dated 19.2.2003 authorizing the Claimant for collecting toll from the toll point for period of 2 years at the rates specified in the Schedule.

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4. As per provision of clause 2 of the Agreement, the Claimant had agreed to deposit remaining 23 installments of Rs. 60,75,000/- each up to 15<sup>th</sup> of every calendar month and on default to pay any installment by the due date, the same will be paid along with the interest calculated @ 0.05% per day of the delay with in 30 days counted from the due date.
5. That the Claimant had deposited the first installment before entering into Agreement on 19.2.2003 and remaining 23 installments were to be deposited on 15<sup>th</sup> of every calendar month falling in the period of installment. The Claimant had deposited first installment on 19.2.2003 which was for the period from 20.2.2003 to 19.3.2003 and the period of 2<sup>nd</sup> installment was from 20.3.2003 to 19.4.2003 and this installment was to be deposited up to 15<sup>th</sup> of calendar month falling in the period of installment i.e up to 15<sup>th</sup> April, 2003 with out interest. The respondent interpreted that the payment of second installment falls due on 15.3.2003 with out interest and 14.4.2003 along with interest, where as the Claimant interpreted that the payment of second installment falls due on 15.4.2003 with out interest and up to 15.5.2003 along with interest and so on. The Respondent in communication to the Claimant vide memo No HSRDC/244 dated 10.4.2003, intimated that the next installment falls due on 15.3.2003 and the Claimant was advised by the Respondent to deposit next installment of toll. The Claimant informed the respondent vide Letter dated 12.4.2003 and 15.4.2003 that payment of next installment falls due on 15.4.2003 without interest and upto 15.5.2003 along with interest. Therefore, the Claimant would be depositing the second installment up to 15.5.2003 along with the interest. The Respondent after considering the contents of the above mentioned letters of the Claimant again intimated that the next payment of installment falls due on 15.3.2003 without interest and up to 15.4.2003 along with interest. The Respondent further directed the Claimant to deposit the second installment latest by 30.4.2003 and also warned the Claimant that if the installment is not deposited by the Claimant up to 30.4.2003, the Agreement executed with the Claimant would be terminated and security deposit shall be forfeited.
6. However, Claimant again intimated to the Respondent vide letter dated 29.4.2003 that interpretation of calculating the due date for depositing the second installment by the Respondent is totally contrary to the provisions of the Agreement because no where it is mentioned in the Agreement that the second installment is to deposited in the next month of the month of execution of Agreement.. However, the Claimant further conveyed his commitment vide letter dated 29.4.2003 for depositing the second

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installment along with interest up to 15.5.2003 in accordance with the provisions of the Agreement.

7. Respondent with out further notice to the Claimant forfeited the security deposit of the Claimant amounting to Rs 2,18,70,000/- vide letter no HSRDC/354 dated 9.5.2003 and also got the bank guarantee no 07/2002-2003 dated 18.2.2003 of Oriental Bank of Commerce, Urban Estate Hisar amounting to Rs 2,18,70,000/- encashed from the bank on 10.5.2003. The letter of authorization for the collection of toll issued to the Claimant vide memo HSRDC/188 dated 19.2.2003 was also withdrawn and cancelled by the Respondent through memo no HSRDC/354 dated 9.5.2003. Accordingly the Respondent also took over the possession of the toll point on 10.5.2003 and started the collection of toll departmentally with effect from 10.5.2003.
8. The Claimant intimated to the respondent that the action of forfeiture of security deposit and withdrawal of authorization for the collection of toll on 9.5.2003 is illegal because the Claimant observed that the due date for depositing the second installment along with interest falls on 15.5.2003 where as the respondent considered the due date for depositing the second installment along with interest as 14.4.2003. Further more, the Claimant observed that the Respondent had forfeited the security deposit of the Claimant with out terminating the Agreement which is contrary to the provisions of the Agreement and therefore, the Claimant sought arbitration for the adjudication of their disputes. I have been appointed as Sole Substituted Arbitrator for adjudication of the disputes raised by the Claimant.

**The points/ disputes raised by the Claimant have been dealt as under:-**

**DISPUTE NOS 3.1, 3.2 AND 3.5 :-**

- 3.1 What would be the due date for depositing second installment with out interest and with interest and what would be the due dates for depositing further installments without interest and with interest?
- 3.2 As intimated in para 3.1 above, if the due date for the payment of second installment with out interest and with interest is considered as 15<sup>th</sup> April 2003 and 15<sup>th</sup> May 2003, then the action of the Respondent in forfeiting the security deposit amounting to Rs, 2,18,70,000/- vide letter no HSRDC/354 dated 9.5.2003 is illegal and against the provisions of the Agreement ?

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**3.5 Whether the Respondent was required to communicate his final decision to the Claimant on the letter dated 29.4.2003 of the Claimant before taking action by the respondent vide letter no HSRDC/354 dated 9.5.2003 ?**

In support of the claim, the Claimant has explained/ brought out as under:-

- (i) The Claimant has brought that as per provisions of the Acceptance letter, first installment amounting to Rs.60,75,000/- was deposited with the Respondent on 19.2.2003 through bank draft and accordingly the Agreement was executed by the Claimant with the Respondent on 19.2.2003. As per provision of clause 2 of the Agreement, the Claimant had agreed to deposit remaining 23 installments of Rs. 60,75,000/- each up to 15<sup>th</sup> of every calendar month and on default to pay any of the installment by the due date, the same will be paid along with the interest calculated @ 0.05% per day of the delay with in 30 days from the due date. The Claimant had deposited the first installment before entering into Agreement on 19.2.2003 and the remaining 23 installments were to be deposited on 15<sup>th</sup> of every calendar month. The Claimant further brought out that they had deposited the first installment which was for the period from 20.2.2003 to 19.3.2003 and the period of second installment was from 20.3.2003 to 19.4.2003 and therefore, the second installment was to be deposited up to 15<sup>th</sup> of the calendar month falling in the period of second instalment with out interest. Therefore, payment of the second instalment for the period from 20.3.2003 to 19.4.2003 was due to deposited by the claimant up to 15.4.2003 with out interest and up to 15.5.2003 along with interest.
- (ii) The Claimant clearly informed the Respondent vide his letter dated 29.4.2003 that the interpretation of calculating the due date by the Respondent for depositing the installments is totally contrary to the provisions of the Agreement. No where it is mentioned in the Agreement that the next installment is scheduled to be paid up to 15.3.2003. In fact, the Claimant had deposited the first installment on 19.2.2003 and thereafter the Agreement was signed. As per provision of the Agreement, the Claimant was required to deposit remaining 23 installments up to 15<sup>th</sup> of every calendar month and if the Claimant was required to deposit the next installment on 15<sup>th</sup> of the calendar month falling in the next month of the execution of the Agreement, then the Claimant will have to deposit 24 remaining installments on 15<sup>th</sup> of every calendar month falling in the period of contract, where as the Claimant is required to deposit remaining 23 installments. The Claimant further conveyed his commitment to the Respondent vide his letter dated



29.4.2003 to deposit the second installment up to 15.5.2003 along with interest in accordance with the provisions of the Agreement. The Claimant further intimated to the Respondent that any illegal/arbitrary action of terminating the Agreement in violation of the provisions of the Agreement will be the responsibility of the Respondent and they will claim full damages for the same.

- (iii) The Claimant further brought out in their Rejoinder that the plea taken by the respondent that the Claimant had deposited the first installment in the month of February 2003 and therefore the Claimant was required to deposit the second installment during the month of March 2003 with out interest i.e up to 15.3.2003 is further proved hypothetical and imaginary because as per version of the Respondent, if any Entrepreneur deposits the first installment on 31<sup>st</sup> of any month, then he has to deposit the second installment on 15<sup>th</sup> of the next month i.e after 15 days of depositing the first installment and if any Entrepreneur deposits the first installment on 1<sup>st</sup> of any month, then he has to deposit the second installment on 15<sup>th</sup> of the next month i.e. 45 days after depositing the first installment. This shows that Entrepreneur depositing the first installment on 1<sup>st</sup> of any month is allowed 45 days for depositing the second installment, where as the Entrepreneur depositing first installment one day prior to 1<sup>st</sup> of the month is allowed only 15 days for depositing the second installment. This is totally hypothetical and against the spirits of the Agreement where as the fact remains that the payment of second installment falls due on 15<sup>th</sup> of that calendar month falling in the period of installment and so on.
- (iv) To support the version about the interpretation of the due dates for depositing the second installment and subsequent installments, the Claimant has given reference of two other Agreements executed by the Respondent with other Entrepreneurs i.e Sh. Kushal Singh of Sikar in respect of Agreement nos HSRDC/Toll/4 for the collection of toll at toll point in Km 4.1 near Palwal on Palwal-Sohna Road and HSRDC/Toll/13 for the collection of toll at toll point near UP border on Kairana -Panipat Road. In these two cases, the Entrepreneur had deposited first installment on 3.1.2003 which was for the period from 4.1.2003 to 3.2.2003. As per version of the Respondent taken in this case, the due date for depositing the second installment should have been 15<sup>th</sup> of January 2003 where as the Respondent in both these cases considered the due date for depositing the second installment as 15<sup>th</sup> February 2003 i.e 15<sup>th</sup> of the calendar month falling in the period of installment from 4.2.2003 to 3.3.2003. Although the Respondent

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considered the due dates for depositing the second installment in the above two cases as 15<sup>th</sup> of the calendar month falling in the period of installment where as Respondent adopted different yardstick for calculating the date for depositing the second installment by the Claimant which is totally contrary to the provisions of the Agreement.

- (v) After depositing first installment on 19.2.2003 which was for the period from 20.2.2003 to 19.3.2003, claimant had undertaken to deposit the remaining 23 installments. He could only think of depositing the second installment after the expiry of period of first installment i.e after 20.3.2003. Since he had to deposit the installment on 15<sup>th</sup> of the calendar month as such the due date for depositing second installment would automatically fall on 15.4.2003 i.e 15<sup>th</sup> of the calendar month falling in the period of second installment. Furthermore, the Agreement period is from 20.2.2003 to 19.2.2005 and 15<sup>th</sup> of every calendar month would fall 24 times during the period of Agreement, where as the claimant is required to deposit remaining 23 instalments and not the remaining 24 installments. Evidently the due date for depositing the second installment with out interest would be 15.4.2003 and with interest as 15.5.2003.
- (vi) Furthermore, as per provision of clause 6 of Instructions to Bidders (Toll Remittance), the toll shall be collected by the Entrepreneur and remitted in the form of bank draft in favour of the Managing Director, HSRDC payable at Chandigarh on monthly basis by 15<sup>th</sup> of every calendar month. As per provision of this clause, nowhere it is mentioned that advance installment has to be deposited. The Entrepreneur is to collect the toll and thereafter remit the same to the Respondent. But whatever the case may be, the due date for depositing second installment falls due on 15<sup>th</sup> April 2003 with out interest i.e 15<sup>th</sup> of the calendar month falling in the period of second installment.
- (vii) As per provision of clause 2 of the Agreement, it is clearly specified that in case any of the installment is not paid within 30 days counted from the due date, then the Contract Agreement will be terminated without any further notice. As per version of the Respondent, if the due date for depositing the second installment with out interest was 15<sup>th</sup> March 2003 and up to 15<sup>th</sup> April 2003 along with interest, then the Respondent should have terminated the Contract Agreement immediately after 15<sup>th</sup> April 2003 thereby not allowing the Entrepreneur to collect further toll from the toll point beyond 15<sup>th</sup> April 2003, but Respondent in this case with out terminating the Agreement forfeited

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the security deposit of the Claimant on 9.5.2003 which clearly shows that he had the intention of considering the due date for depositing the second installment as 15<sup>th</sup> April 2003 with out interest and 15<sup>th</sup> May 2003 along with interest and that is why kept on waiting after 15<sup>th</sup> April 2003 and did not take any immediate action. However, Respondent forfeited the security of the Claimant with out terminating the Agreement on 9.5.2003 due to reasons best known to him. However, the action of forfeiting the security deposit of the Claimant before the expiry of due date for depositing the second installment along with interest is totally contrary to the provisions of the Agreement.

- (viii) It was the option of the Claimant to deposit installments in advance and the claimant would not claim any interest from the Respondent. But if the installment is not paid in advance, then how the Respondent is entitled to claim interest for not paying the installment in advance. However, the Respondent should only be entitled to charge interest from the Entrepreneur if he fails to pay the installment after collecting the same for 30 days. However, considering the due date for depositing the second installment with out interest as 15<sup>th</sup> April 2003, even this date is still 5 days prior to the expiry of period of second installment.
- (ix) The Claimant has claimed that due date for depositing the second installment with out interest was 15<sup>th</sup> April 2003 and along with interest as 15<sup>th</sup> May 2003. Thus neither any action could be taken by the Respondent before 15<sup>th</sup> May 2003 in accordance with the provisions of the Agreement nor was the Claimant actually liable for any action before 15<sup>th</sup> May 2003.

**The Respondent has defended the dispute and explained as under:-**

- (a) That as per clause 2 of the Agreement, it has been made clear that claimant shall pay all the installments on due dates in advance and the claimant shall not claim any interest on these installments. The Respondent reproduced the relevant para of the Agreement as under

**"Further the Entrepreneur/Agent hereby agrees that he will pay to the HSRDC all installments on due dates in advance as aforesaid and that further he will have no claim for interest on these installments paid in advance".**

**"And whereas, of default to pay any installment by due date the same will be paid along with interest calculated @ 0.05% per day of delay. Further in case any installment along with interest is not paid**

within 30 days counted from the due date, then the contract agreement will be terminated without any further notice. In such event without prejudicing the rights and other remedies available to the Haryana State Roads & Bridges development Corporation Limited, the Security Deposit and all installments of contract amount already paid shall stand forfeited without any claim from the agency."

"Further any authorization letter for collection of toll issued shall be treated as cancelled and withdrawn. Further more Haryana State Roads & Bridges development Corporation Limited will be at liberty to take over the site and start collection of toll as deemed fit."

- (b) The Respondent explained that as per provision of para 1.3 and 1.4 at page 7 of the Agreement and also para 3 & 4 at page 20 of the Agreement, the claimant had deposited first installment on 19.2.2003 and also signed the Agreement on 19.2.2003, so the next installment became due to be deposited on 15<sup>th</sup> of the next calendar month i.e March 2003 meaning thereby that second installment was due to be deposited up to 15<sup>th</sup> March 2003 with out interest. However, as per Agreement, in case of default to pay any installment by the due date, the same can be paid in next 30 days but along with interest calculated @ 0.05% of the due amount for each day of delay. Thus the second installment could be paid up to 15.3.2003 with out interest and up to 14.4.2003 along with interest. The plea taken by the Claimant that the second installment was for the period from 20.3.2003 to 19.4.2003 and the second installment could be deposited on 15<sup>th</sup> of the calendar month falling in the period of installment is not correct. Rather the installments are to be deposited in advance and regularly before 15<sup>th</sup> of the calendar month after depositing the first installment.
- © The Respondent explained that the plea of the Claimant that he would have to deposit 24 remaining installments on 15<sup>th</sup> of every calendar month falling in the period of Agreement if he is asked to deposit the second installment on 15<sup>th</sup> March 2003 is not correct because as per Agreement, the Claimant is only required to deposit 23 remaining installments during the contract period starting from 15.3.2003.
- (d) As per para 6 of Instructions to Bidders, the Claimant was required to remit the toll on monthly basis by 15<sup>th</sup> of every calendar month. Since the collection of toll commenced from 20.2.2003 as such the Claimant was required to pay the second installment on 15.3.2003 after collecting the same from the toll point.
- (e) The Respondent had clearly conveyed to the Claimant vide his letter no HSRDC/31/02/282 dated 22.4.2003 that second installment is due to

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deposited up to 15.3.2003 with out interest and up to 14.4.2003 along with interest. However, the Respondent after taking lenient view further advised the Claimant to deposit the second installment even up to 30.4 2003 along with interest failing which the Agreement shall be terminated and security deposit shall be forfeited.

- (f) The Claimant had laid stress on the provisions of Clause 4(IV) of the Agreement but this clause would not help the Claimant and would help the Respondent. The clause is reproduced below:-

4 (iv) "In the event of any default on the part of the Entrepreneur/Agent to comply with any of the terms of this contract or in the event of termination of the contract by the HSRDC under any provision, the HSRDC shall have the right to forfeit the entire or part amount of Security Deposit furnished by the Entrepreneur/Agent and to appropriate the Security Deposit or any part thereof in or towards the satisfaction of any claim of the HSRDC any or damage, losses, costs charges of expenses, or otherwise however. The decision of Managing Director HSRDC shall be final in respect of such damages, losses, costs, charges or expenses or otherwise however shall be final binding on the Entrepreneur/Agent."

- 4( viii) "Except where otherwise provided or specified in the contract and subject also to, such power as may be delegated to him from time to time by the government, the decision of the Managing Director, HSRDC for the time being in charge of the said Toll facility on all questions and matter whatsoever arising out of or in relation to or in connection with this contract or as to the interpretation of any of its provisions or clause/s either during the subsistence of this contract or at any time thereafter shall be final and binding on the parties to this contract."

As per these provisions of the Agreement, all the questions in respect of the clauses of the contract would be interpreted by the managing Director during the currency of the contract or any time thereafter and the same would be final and binding on both the parties. However, the Claimant had no authority to interpret the clauses on its own and if the Claimant did not want to agree with the interpretations of the Respondent, then he should have firstly deposited the second installment on the due date as interpreted by the Respondent and thereafter could have sought arbitration against the decision of the Respondent in accordance with the provisions of clause 28 and 29 of the Agreement which are also reproduced below:-

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**Clause 28.** "In the event the Entrepreneur/Agent disagreeing, with the decision mentioned in the provision of above, he may request the Managing Director, HSRDC, for appointment of an Arbitrator for adjudication of the dispute. On receipt of request from the Entrepreneur/Agent for appointment of Arbitrator, Engineer-in-Chief, Haryana PWD B&R will appoint an Arbitrator for adjudication of the dispute. The arbitrator so appointed shall conduct the arbitration proceedings in accordance with the provision of the contract agreement. Fee of the Arbitrator shall be paid by the party who will seek the arbitration."

**Clause 29.** "Pending appointment of Arbitrator or resolution of the dispute by Arbitrator, the Entrepreneur/Agent will continue to remit the agreed installment of money to the Managing Director, HSRDC"

- (g) the respondent had taken lenient view and had given full opportunity to the Claimant for depositing the second installment even up to 30.4.2003 along with interest but the Claimant failed to deposit the second installment and therefore violated the provisions of the Agreement as such orders dated 9.5.2003 passed by the Respondent are perfectly legal and in accordance with the provisions of the Agreement.

**After considering written arguments and after hearing oral arguments of both the parties, the dispute is adjudicated /decided as under:-**

- (i) Para 2 of the Agreement provides as under:-

"AND WHEREAS, the Entrepreneur/Agent in pursuance to the terms and condition of the contract has deposited the first installment of Rs.60,75,000/- (Rupees Sixty lacs seventy five thousand only) Where as the Entrepreneur/Agent do hereby agree to pay regularly the following installments as given under by the specified due dates".

Number of remaining installments	Amount of each installment	Due date of payment
23 Monthly	Rs.60,75,000/- (Rupees Sixty lacs seventy five thousand only)	To be deposited upto 15 <sup>th</sup> of every calendar month.

"AND WHEREAS, the Entrepreneur/Agent hereby agrees that all the above mentioned installments, shall be paid in the shape of demand drafts drawn on any Nationalized Bank/ ICICI / HDFC/ UTI/ IDBI Bank , payable at Chandigarh, in favour of Managing

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**Director, Haryana State Roads & Bridges development Corporation Limited”.**

“Further the Entrepreneur/Agent hereby agrees that he will pay to the HSRDC all installments on due dates in advance as aforesaid and that further he will have no claim for interest on these installments paid in advance”.

“And whereas, of default to pay any installment by due date the same will be paid along with interest calculated @ 0.05% per day of delay. Further in case any installment along with interest is not paid within 30 days counted from the due date, then the contract agreement will be terminated without any further notice. In such event without prejudicing the rights and other remedies available to the Haryana State Roads & Bridges development Corporation Limited, the Security Deposit and all installments of contract amount already paid shall stand forfeited without any claim from the agency”.

“Further any authorization letter for collection of toll issued shall be treated as cancelled and withdrawn. Further more Haryana State Roads & Bridges development Corporation Limited will be at liberty to take over the site and start collection of toll as deemed fit.”

The Claimant deposited the first installment on 19.2.2003 and thereafter the Agreement was executed between both the parties on 19.2.2003. The Agreement period is from 20.2.2003 to 19.2.2005. The Claimant had deposited the first installment in advance which was for the period from 20.2.2003 to 19.3.2003. Although the Claimant had to deposit the installments in advance but the Respondent can neither ask the Claimant nor has any right to demand the second installment before the expiry of period of first installment i.e. up to 19.3.2003. Therefore, the Claimant was required to deposit the second installment after 19.3.2003 but the Agreement provides for depositing the remaining 23 installments up to 15<sup>th</sup> of every calendar month. Thus 15<sup>th</sup> of the calendar month falling after 19.3.2003 is 15.4.2003 and therefore, this date i.e. 15.4.2003 will have to be considered due date for depositing the second installment with out interest and 15.5.2003 along with interest.

- (ii) The Claimant had undertaken to deposit the remaining 23 installments up to 15<sup>th</sup> of every calendar month. The question of depositing second installment would only arise after the expiry of period of first installment i.e 19.3.2003 other wise, how could the Claimant can be asked to deposit the second installment in advance when the first installment period for which he

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has deposited the first installment in advance had not expired. Furthermore, the contract period is from 20.2.2003 to 19.2.2005 and if the payment of remaining 23 installments is to commence on 15.3.2003, then the claimant would have to deposit 24 remaining installments because 15<sup>th</sup> of calendar month would fall 24 times during the period of contract starting from 15.3.2003.

- (iii) The Respondent had brought out that the Claimant is required to deposit the next installment on 15<sup>th</sup> of next calendar month following the month of execution of Agreement but it has been found that there is no such provision in the Agreement that the Claimant is required to deposit the second installment on 15<sup>th</sup> of the next month of the execution of Agreement. However, as explained by the Claimant if any Entrepreneur deposits the first installment on 31<sup>st</sup> of any month and executes the Agreement on the same day, then he is required to deposit the second installment on 15<sup>th</sup> of the next month i.e after 15 days of depositing the first installment and if any Entrepreneur deposits the first installment on 1<sup>st</sup> of any month and executes the Agreement on the same day, then he is required to deposit the second installment on 15<sup>th</sup> of the next month i.e after 45 days of depositing the first installment. This shows that any Entrepreneur depositing the first installment one day prior to 1<sup>st</sup> of any month is allowed 15 days for depositing the second installment where as the Entrepreneur depositing the first installment on 1<sup>st</sup> of any month is allowed 45 days for depositing the second installment. This is totally hypothetical and contrary to the provisions of the Agreement and also against the principle of natural justice. Claimant further explained that Respondent has now inserted special clause in the new Agreement ( Agreement No HSRDC/Toll/13-R ) where in it is provided as under:-

**"Irrespective of the date of signing of the Agreement and deposit of first installment during any month, the second installment shall be deposited by the Entrepreneur by 15<sup>th</sup> of the following month"**

Evidently the Respondent had incorporated this clause in the new Agreement for depositing the second installment by 15<sup>th</sup> of the following month of executing the Agreement where as no such clause exist in this Agreement and these provisions can not be made applicable in respect of the dispute in question.

- (iv) The Claimant has given reference of two other Agreements executed by the Respondent in the case of Sh. Kushal Singh Sikar Entrepreneur in respect of Agreement nos HSRDC/Toll/4 for the Collection of toll at toll point in Km 4.1 near Palwal on Palwal-Sohna Road and HSRDC/Toll/13 for the Collection of toll at toll point near UP Border on Kairana-Panipat

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Road. In these two cases, the Entrepreneur had deposited first installment on 3rd January 2003 which was for the period from 4.1.2003 to 3.2.2003 and second installment was for the period from 4.2.2003 to 3.3.2003. As per provisions of those Agreements, if the second installment was to be deposited on 15<sup>th</sup> of the calendar month, then the due date for depositing the second installments in these two cases should have been 15.1.2003, where as the Respondent in both these cases considered the due date for depositing the second installment as 15<sup>th</sup> February i.e 15<sup>th</sup> of the calendar month falling after the expiry of period of first installment. In view of the above, the due date for depositing the second installment in these two cases had been considered by the respondent as 15<sup>th</sup> of the calendar month falling after the expiry of period of first installment where as this yardstick was not adopted by the Respondent in this particular case under dispute and therefore, the claim of the Claimant considering the due date for depositing the second installment on 15.4.2003 with out interest can not be ignored.

- (v) Although the Claimant has claimed that due date for depositing the installment should only be considered after the Claimant had collected the toll for one month and if he fails to deposit the same on this date, then he is bound to pay interest on this installment otherwise, how could the Respondent claim interest from the Claimant if he had not collected the toll for one month. Although the plea of the Claimant appears to be genuine but we are now bound by the provisions of the Agreement which provides for depositing the remaining 23 installments up to 15<sup>th</sup> of every calendar month which is the due date for depositing the remaining installments with out interest.
- (vi) The Respondent considered the due date for depositing the second installment as 15.3.2003 with out interest and 14.4.2003 along with interest. The Respondent has brought out that although the Claimant had not deposited the second installment along with interest up to 14.4.2003 but he had taken the lenient view and did not take action against the Claimant immediately after that date and another opportunity was given to the Claimant to pay the second installment up to 30.4.2003 along with interest but the Claimant failed to deposit the second installment even up to 9.5.2003 as such the security deposit of the claimant had been forfeited in accordance with the provisions of the Agreement. It has been observed that there is no such provision in the Agreement empowering the Respondent to extend the date of depositing the second installment along with interest after the expiry of 30 days from the due date. It appears that the Respondent was not sure about the due date for depositing the second installment and that

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is why kept on waiting and did not take action against the Claimant immediately after 15.4.2003 or one or two days after this date knowing fully well that the Claimant has not deposited the second installment so far. However, if in the opinion of the Respondent, the second installment was required to be deposited along with interest up to 14.4.2003, then he should have taken action against the Claimant immediately after 15.4.2003. Allowing the Claimant to charge toll from 15.4.2003 to 9.5.2003 itself proves the uncertainty/ ambiguity in the mind of respondent about the due date for depositing the second installment.

- (vii) Respondent has explained that as per provision of para 4(viii) of the Agreement, the decision of the Managing Director, HSRDC for the time being in charge of the toll facility on all questions and matters whatsoever arising of or in relation to or in connection with this contract or as to the interpretation of any of its provisions or clauses either during the subsistence of the contract or at any time thereafter shall be final and binding on both the parties. However, if the Claimant did not agree with the decision of the Respondent, then after depositing the second installment on the due date, the Claimant could have sought arbitration under clauses 28 and 29 of the Agreement which are reproduced below:-

**Clause 28** "In the event the Entrepreneur/Agent disagreeing, with the decision mentioned in the provision of above, he may request the Managing Director, HSRDC, for appointment of an Arbitrator for adjudication of the dispute. On receipt of request from the Entrepreneur/Agent for appointment of Arbitrator, Engineer-in-Chief, Haryana PWD B&R will appoint an Arbitrator for adjudication of the dispute. The arbitrator so appointed shall conduct the arbitration proceedings in accordance with the provision of the contract agreement. Fee of the Arbitrator shall be paid by the party who will seek the arbitration".

**Clause 29.** "Pending appointment of Arbitrator or resolution of the dispute by Arbitrator, the Entrepreneur/Agent will continue to remit the agreed installment of money to the Managing Director, HSRDC "

From the above plea of the Respondent, it is evident that he had full authority to interpret the provision of clauses and on all questions/matters and his decision is final and binding on both the parties. Since the Respondent had

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interpreted the due date for depositing the second installment as 15.3.2003 with out interest and 14.4.2003 along with interest as such there had been no other alternative with the Claimant except to refer the matter to the Arbitrator for adjudication of the dispute as per provision of clause 28 of the Agreement and the Claimant should have continued the payment of installments pending the appointment/decision of the Arbitrator as per provision of clause 29 of the Agreement but there is no provision in these clauses that the Respondent can terminate the Agreement or forfeit the security deposit of the claimant on the basis of his own interpretation of the clauses or due date for depositing the second installment. However, the Claimant had certified to the Respondent that he will be depositing the second installment on 15.5.2003 along with interest. Since the Respondent did not take action against the Claimant immediately after 15.4.2003 and action was taken on 9.5.2003 as such the Respondent could have easily waited for another 6 days i.e up to 15.5.2003 and if the Claimant had failed to deposit the second installment up to 15.5.2003 as certified by him, then action should have been taken against the Claimant thereby leaving no scope for the Claimant to raise any dispute.

In view of the facts explained above, the Dispute no 3.1 is answered in favour of the Claimant meaning thereby that the due date for depositing the second installment with out interest would be 15.4.2003 and along with interest as 15.5.2003. Accordingly Dispute No 3.2 is also decided in favour of the Claimant. Regarding Dispute no 3.5, although as per provision of clause 2 of the Agreement, the Respondent had full authority to take action against the Claimant for not paying the second installment along with interest with in 30 days from the due date but the interpretation of the due dates had been made by the Respondent on its own which was being disputed by the Claimant as such the Claimant should have been informed about the proposed action and advice in accordance with the provisions of clause 28 and 29 of the Agreement.

#### DISPUTE NOS 3.3 AND 3.4 :-

- 3.3 Whether the Respondent had any authority to forfeit the security deposit of the Claimant amounting to Rs. 2,18,70,000/- and withdraw the authorization for the collection of toll without terminating the Agreement in accordance with the provisions of Clause 2 of the Agreement and whether the action of Respondent of forfeiting the security deposit of the claimant with out terminating the Agreement was illegal and contrary to the provisions of the Agreement?

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**3.4 Whether the Respondent had any authority to withdraw the authorization for the collection of toll from the Claimant with out terminating the agreement in accordance with the provisions of clause 2 of the Agreement?**

In support of the claim, the Claimant has explained/ brought out as under:-

- (i) As per provision of clause 2 of the Agreement, the Claimant had agreed to pay to HSRDC all the installments on due dates and of default to pay any of the installments by the due date, the same will be paid along with interest calculated @ 0.05% per day of the delay. Further in case, any installment along with the interest is not paid within 30 days counted from the due date, then the Contract Agreement will be terminated with out any further notice. In such event with out prejudicing the rights and other remedies available to the Haryana State Roads & Bridges Development Corporation Limited, the security deposit and all installments of the contract amount already paid shall stand forfeited with out any claim from the agency. Further any authorization letter issued to the Entrepreneur for the collection of toll shall be treated as cancelled and withdrawn. Further more, Haryana State Roads & Bridges Development Corporation Limited will be at liberty to take over the site and start collection of toll as deemed fit. As per these provisions, the Respondent was fully entitled to terminate the Agreement if the Claimant had failed to deposit the next installment along with interest within 30 days from the due date and after the termination of the Contract agreement the security deposit of the Claimant could be forfeited. The Respondent had not terminated the Agreement but had forfeited the security deposit of the Claimant amounting to Rs. 2,18,70,000/- vide letter no HSRDC/354 dated 9.5.2003 and also got the Bank Guarantee no 07/2002-2003 dated 18.2.2003 of Oriental Bank of Commerce, Urban Estate Hisar encashed from the Bank on 10.5.2003.
- (ii) There is no provision in the Agreement to forfeit the security deposit of the Claimant with out terminating the Agreement. Security deposit can only be forfeited if the Agreement is first terminated. Thus forfeiture of security deposit amounting to Rs. 2,18,70,000/- by the Respondent vide his letter no HSRDC/354 dated 9.5.2003 with out terminating the Agreement is totally illegal, arbitrary and against the provisions of Agreement. Since no event of termination of Agreement occurred as such there was no reason for forfeiting the security deposit of the Claimant with out terminating the Agreement. Claimant further explained that the Respondent had terminated another Agreement No

HSRDC/Toll/2 and thereafter forfeited the security deposit and withdrawn the authorization for the collection of toll but in this case the Agreement had not been terminated.

- (iii) As per provision of the Agreement, the letter of authorization for the collection of toll issued to the Claimant could only be withdrawn and cancelled after the termination of the agreement. Since the Agreement had not been terminated by the Respondent as such letter of authorization issued to the Claimant the collection of toll withdrawn by the Respondent vide letter no HSRDC/354 dated 9.5.2003 is totally illegal. The Claimant was forced to vacate the site for the collection of toll with the help of police with out official intimation to the Claimant. Even the staff of the claimant had been threatened of dire consequences.

**The Respondent has defended the disputes as under:-**

- (a) The Respondent explained that the operating part of clause of the Agreement to terminate the Agreement had been reproduced in para 2 of letter no HSRDC/354 dated 9.5.2003 i.e order of forfeiting the security deposit and withdrawal of authorization for the collection of toll. Moreover, the forfeiture of the security deposit and withdrawal of authorization for the collection of toll automatically means the termination of the Agreement. Thus the version of the Claimant that Agreement has not been terminated is wrong and denied.
- (b) The Claimant had failed to deposit the second installment along with interest after the expiry of 30 days counted from the due date as such the Claimant had become liable for the forfeiture of the security deposit in accordance with the provisions of clause 2 of the Agreement. Since the Respondent had cancelled and withdrawn the authorization for the collection of toll issued to the Claimant by virtue of which he had been authorized to collect toll from the toll point. Thus for all purposes, the Agreement stands terminated even if the word "termination" is used or not
- (c) The Claimant failed to deposit the second installment and violated the provisions of the Agreement as such the order no HSRDC/354 dated 9.5.2003 passed by the Respondent is perfectly legal and in accordance with the clauses of the Agreement.

**After considering written arguments and after hearing oral arguments of both the parties, the dispute is adjudicated/ decided as under:-**

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**Para 2 of the Agreement provides as under:-**

**"AND WHEREAS, the Entrepreneur/Agent hereby agrees that all the above mentioned installments, shall be paid in the shape of demand drafts drawn on any Nationalized Bank/ ICICI / HDFC/ UTI/ IDBI Bank , payable at Chandigarh, in favour of Managing Director, Haryana State Roads & Bridges development Corporation Limited."**

**"Further the Entrepreneur/Agent hereby agrees that he will pay to the HSRDC all installments on due dates in advance as aforesaid and that further he will have no claim for interest on these instalments paid in advance".**

**"And whereas, of default to pay any installment by due dates the same will be paid along with interest calculated @ 0.05% per day of delay. Further in case any installment along with interest is not paid within 30 days counted from the due date, then the contract agreement will be terminated without any further notice. In such event without prejudicing the rights and other remedies available to the Haryana State Roads & Bridges development Corporation Limited, the Security Deposit and all installments of contract amount already paid shall stand forfeited without any claim from the agency."**

**"Further any authorization letter for collection of toll issued shall be treated as cancelled and withdrawn. Further more Haryana State Roads & Bridges development Corporation Limited will be at liberty to take over the site and start collection of toll as deemed fit."**

From the above provisions, it is clear that in case the Entrepreneur fails to deposit any of the installment with in 30 days counted from the due date along with interest, then his Agreement shall be terminated and in such event all other actions i.e forfeiture of the security deposit and withdrawal of authorization for the collection of toll could be taken. If the Respondent had observed that the Claimant has failed to deposit the second installment along with interest with in 30 days from the due date, then first course of action was to terminate the contract Agreement in accordance with the provisions of clause 2 of the Agreement and thereafter should have forfeited the security deposit of the claimant and should have taken action for the withdrawal of authorization for the collection of toll. Although technically speaking, the version of the respondent that the forfeiture of the security deposit and withdrawal of authorization for the collection of toll automatically means the termination of Agreement but legally the Agreement should have been firstly terminated and thereafter the action of forfeiting the security deposit should have been taken. Although in the opinion of the respondent, event of termination of the

Agreement had arisen due to failure on the part of the Claimant to deposit the second installment along with interest within 30 days from the due date but the action of forfeiture of security deposit and withdrawal of authorization for the collection of toll could only be taken after the termination of Agreement. The fact remains that the respondent had not terminated the Agreement though the provisions of Clause 2 of the Agreement were mentioned in the letter no HSRDC/354 dated 9.5.2003. Furthermore, if the Respondent could terminate another Agreement no HSRDC/Toll/2 before forfeiting the security deposit as such the Respondent should have terminated this Agreement before forfeiting the security deposit of the Claimant

As explained above, dispute nos 3.3 and 3.4 are decided in favour of the Claimant because the Respondent should have first terminated the Agreement in accordance with the provisions of the Agreement and thereafter was entitled to forfeit the security deposit of the Claimant and withdrawal of authorization for the collection of toll.

#### DISPUTE NO 3.6 :-

Whether the Respondent had taken illegal action on war footing for encashing the Bank Guarantee of the Claimant with malafide motive with the reasons best known to the respondent and whether the action of the respondent in taking over the possession of the toll site forcibly from the Claimant with the help of police without any intimation to the Claimant was legally valid ?

In support of the claim, the Claimant has explained/ brought out as under:-

- (i) Claimant has explained that the Respondent's letter no HSRDC/354 dated 9.5.2003 indicating the forfeiture of the security deposit of the Claimant and withdrawing the authorization for the collection of toll from the Claimant was dispatched to the Claimant through registered speed post on 10.5.2003 at 10.30 AM from Chandigarh which was received by the Claimant on 13.5.2003 where as the officers of the Respondent approached Manager, Oriental Bank of Commerce Urban Estate Hisar on 10.5.2003 at 10.00 AM for getting the Bank Guarantee of Rs. 2,18,70,000/- encashed from the bank. Evidently the Respondent had taken advance action of encashing the bank guarantee of the claimant before informing the claimant about the same.
- (ii) The letter dated 9.5.2003 of the respondent was received by the Claimant on 13.5.2003 where as the staff of the Respondent had taken the possession of the toll site on 10.5.2003 in the morning itself with

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the help of police with out informing the Claimant. This hasty action of the Respondent clearly proves his malafide motive against the Claimant

The Respondent has not explained any thing in respect of this dispute but has certified that the action of the Respondent was quite legal and in accordance with the provisions of the Agreement.

**After considering written arguments and after hearing oral arguments of both the parties, the dispute is adjudicated/ decided as under:-**

Although from the perusal of the envelope submitted by the Claimant, it is evident that letter dated 9.5.2003 was got dispatched to the Claimant through registered speed post from Chandigarh on 10.5.2003 at 10.30 AM and the security deposit of the Claimant had also been got encashed from the bank on the same day at Hisar. Even the possession of the toll site was taken from the Claimant on 10.5.2003 itself. Although the Respondent had passed the order on 9.5.2003 for forfeiting the security deposit of the Claimant and had also passed order withdrawing the authorization for the collection of toll but the intimation for the same was sent to the Claimant through speed post from Chandigarh on 10.5.2003 at 10.30 AM which was received by the Claimant on 13.5.2003. Thus it is evident that immediate/hasty action had been taken by the Respondent in getting the bank guarantee encashed from the bank on 10.5.2003 and taking over the possession of toll point with the help of police on 10.5.2003 but this hasty action on the part of the Respondent can not be treated/termed as malafide in view of absence of any specific evidence/reasons. Thus this dispute raised by the Claimant is rejected and answered in favour of the Respondent.

**DISPUTE NO 3.7 :-**

**Whether the Claimant is entitled for the rebate in the payment of toll due to nation wide strike of the trucks from 14.4.2003 to 23.4.2003**

**In support of the claim, the Claimant has explained/ brought out as under:-**

- (i) Claimant had intimated to the Respondent vide letter dated 14.4.2003 that due to nation wide strike of the trucks with effect from 14.4.2003, there has been no collection of toll through the toll point from 14.4.2003. It was further intimated to the Respondent vide letter dated 24.4.2003 that this 10 days nation wide strike of the trucks has been called off by the All India Motor transport Congress on 23.4.2003. Accordingly the trucks have started passing through the toll point with effect from 24.4.2003. However, it was also intimated that collection of toll will remain affected for the next few days till the situation becomes

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normal. Although Respondent vide letter no HSRDC/31/02/284 dated 22.4.2003 had intimated to the Claimant that strike of the trucks is incidental and can not be treated as closure of the toll facility or toll point but the Claimant again informed the respondent that as per provision of clause 4(ii) of the Agreement, neither party is liable to the other party for any loss or damage occurred/caused by or arising out of the acts of God and in particular unprecedented floods resulting in disruption of traffic on the road, volcanic eruption, earth quake or other convulsions of the nature and other acts, such as but not restricted to invasion, the act of foreign countries, hostilities or war like operation before or after the declaration of rebellion, military operation which prevent the performance of the contract and which would not have been foreseen or avoided by the prudent person and in such cases, the decision of the Managing Director HSRDC shall be final. It was further indicated by the Claimant that as per provision of clause 5 of the Agreement, in case of closure of toll facility to motor vehicle traffic due to any reason, Entrepreneur/Agent may be granted rebate @1/30 of the installment amount for each day for the number of days of admitted closure as certified by the Managing Director, HSRDC

- (ii) It was intimated by the Claimant that this 10 day nation wide strike by the trucks could not be foreseen by any prudent person at the time of submission of bids and furthermore, due to this strike, toll could not be collected from the toll point for which Claimant has to be compensated for the loss of toll in accordance with the provisions of clause 5 of the Agreement. Thus the Claimant is entitled for the exemption from the payment of toll for the strike period as principle of natural justice.

**The Respondent has defended the dispute as under:-**

The Respondent has explained that neither there had been any interruption in the traffic during the strike period nor the toll facility or toll point had been closed to traffic in accordance with the provisions of clause 5 of the Agreement. Strike by the Trucks could not be treated as closure of toll facility or toll point and therefore such type of eventualities are incidental and no cognizance of the same can be taken in accordance with the provisions of the Agreement.

**The dispute is decided as under:-**

Although as a principle of natural justice, the Trucker's strike could not have been foreseen by the Claimant at the time of submission of bids and he had definitely suffered loss in the toll collection on account of this strike but the matter has to be decided in accordance with the provisions of Agreement. There is no specific provision in the Agreement to deal with such type of eventualities. Concession of toll to the Claimant for the

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affected days could only be admissible. had the toll facility or the toll point had been totally closed in accordance with the provisions of clause 5 of the Agreement but the fact remains that the toll facility or the toll point had not been totally closed to traffic during the strike period and other category of vehicles continued to pass through the toll point during the strike period as such the dispute raised by the Claimant is decided in favour of the Respondent.

#### **CLAIM NO 4.1 ( CLAIM NO-1)**

The Claimant filed claim for Rs.1,21,50,000/- on account of illegally forfeiting the security deposit of the Claimant

Sr. No	Particulars	Amount of claim
1	Security deposit which has been illegally forfeited and got cashed from the bank i.e	Rs 2,18,70,000/-
	Less amount of installment which was to be paid for the period from 20.3.2003 to 9.5.2003( 1 month and 18 days) i.e	Rs. 97,20,000/-
	<b>Net Claim</b>	<b>Rs. 1,21,50,000/-    Rs. 1,21,50,000/-</b>

Claimant explained that the payment of second instalment for the period from 20.3.2003 to 19.4.2003 was due to be deposited by the Claimant up to 15.4.2003 with out interest and up to 15.5.2003 along with interest. Failure on the part of the Claimant to deposit the second installment up to 15.5.2003 along with interest, then only the respondent could have terminated the Agreement and could have forfeited the security deposit of the Claimant. As per provision of Clause 2 of the Agreement, the cause of action for terminating the Agreement and forfeiture of security deposit could only arise on 15.5.2003 if the claimant had failed to deposit the second installment up to 15.5.2003. Furthermore, as explained in para 3.3, security deposit could only be forfeited after terminating the Agreement. Since the Agreement had not been terminated as such security deposit of the Claimant could not have been forfeited. In view of these facts, forfeiture of the security deposit amounting to Rs. 2,18,70,000/- by the respondent vide his letter no HSRDC/354 dated 9.5.2003 with out terminating the Agreement is totally arbitrary, illegal and against the provisions of Agreement. The Claimant has raised claim for a sum of Rs. 1,21,50,000/- in this regard.

Respondent has explained that the Claimant was required to deposit the second installment up to 15.3.2003 with out interest and up to 14.4.2003 along with interest but the Claimant failed to deposit the second installment within 30 days counted from the due date along with interest as such the respondent had full authority to terminate the Agreement, forfeit the security deposit of the Claimant and withdraw the authorization for the collection of toll from the

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Claimant in accordance with the provisions of Clause 2 of the Agreement. Even otherwise, the Claimant had been given two notices i.e vide letter dated 10.4.2003 and 22.4.2003 before passing the order of forfeiting the security deposit. The Respondent further argued that the Claimant was required to deposit 23 remaining installments and not 24 remaining installments as is being explained by him. Furthermore, clause 28 and 29 of the Agreement makes it abundantly clear that in case the claimant disagrees with the interpretation of the provisions/clauses of the agreement by the Respondent in accordance with the provision of clause 4(viii) of the Agreement, then the Claimant through written submission, could have requested the Managing Director HSRDC for the appointment of the Arbitrator for the adjudication of the dispute. Furthermore, as per provision of clause 29 of the Agreement, pending appointment of the Arbitrator or resolution of dispute by the Arbitrator, the Claimant was required to deposit the instalments on the due dates as interpreted by the Respondent. The provision of this clause of the Agreement leaves no room for the Claimant to interpret the clauses on its own and start acting accordingly. Furthermore, even as per provision of clause-6 of the Instructions to Bidders, the Claimant was to collect toll from the toll point and thereafter remit the same to the respondent. Since he had paid the first installment in advance and thereafter was required to deposit the remaining installments in advance after collecting toll in accordance with the provision of clause 2 of the Agreement and no interest was payable. Regarding Clause 10(b) of the Agreement, although no notice was required to be given to the Claimant in this regard in accordance with the provision of clause 2 of the agreement, but even then two notices were given by the respondent to the Claimant on 10.4.2003 and 22.4.2003 in this regard. Furthermore, as per provision of clause 4(iv) of the Agreement, in the event of any default, the Respondent had the right to forfeit the entire or part of the security deposit and the decision of Managing Director, HSRDC shall be final in respect of such damages, losses, costs and expenses shall be binding on the Entrepreneur. Thus the action of the respondent in forfeiting the security deposit of the Claimant is unquestionable particularly when the Claimant had committed the breach of contract by not paying the installment in spite of issue of notices and therefore the claim is not maintainable.

**This claim is decided as under:-**

As decided in dispute nos 3.1 and 3.2 above that the due date for depositing second installment with out interest would be upto 15.4.2003 and along with interest upto 15.5.2003 as such Respondent could have waited upto 15.5.2003. If the Respondent could wait for 25 days for taking action against the Claimant, then he could have easily waited for another 6 days. Heaven was not going to fall in those 6 days. Had the Respondent taken action against the

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Claimant immediately after 15.5.2003, there would have been no scope for the claimant to raise the claim.

It has also been decided under dispute nos 3.3 and 3.4 that before forfeiting the security deposit of the Claimant and also before withdrawing the authorization for the collection of toll from the Claimant, the Agreement should have been terminated clearly in accordance with the provision of clause 2 of the Agreement thereby creating an event of making the Claimant liable for the forfeiture of security deposit and withdrawal of authorization for the collection of toll

As per provision of clause 10 of the Agreement, the Managing Director, HSRDC shall be entitled to terminate the Agreement at any time

- a) Without assigning any reason thereof after giving to the Entrepreneur/Agent fifteen days prior notice in writing and in that event the Entrepreneur/Agent shall not be entitled to claim, recover or receive from the government any compensation whatsoever on account of such premature termination.
- b) By giving 7 days notice in writing to Entrepreneur/Agent for breach or non observance by Entrepreneur/Agent any terms or conditions of this agreement for which no specific provision is available separately.

In the happening of such an event and agreement being terminated, Entrepreneur/Agent will be liable to pay to Managing Director, HSRDC money proportionately calculated at the rate of 1/30 of the monthly installment @ 1/30 of the monthly installment for each day, the agreement remained in force.

Further in case of the agreement having been terminated under clause (b) above, the Entrepreneur/Agent will further be liable to pay to HSRDC, out of his security deposit any amount or portion thereof of Security Deposit as deemed appropriated by the Managing Director, HSRDC whose decision will be final and binding upon the Entrepreneur/Agent.

Since the authorization for the collection of toll had been withdrawn from the Claimant on 9.5.2003 and thereafter the Respondent started the collection of toll from the toll point with effect from 10.5.2003 and also the work for the collection of toll at this toll point has been re- allotted to another agency as such continuation of this Agreement by the Claimant at this stage is not feasible. However, the Claimant had not deposited any further installment after depositing the first installment as such the Claimant is liable to make payment to the Respondent proportionate installment calculated @ 1/30 of the monthly installment for the number of days the claimant continued to collect toll after the expiry of period of first

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instalment. Although full amount of security deposit amounting to Rs.2,18,70,000/- of the Claimant had been forfeited by the Respondent but the claimant is liable to pay a sum of Rs 1,01,97,900/- to the Respondent is detailed below:-

Sr. No	Particulars	Amount to be paid by the Claimant to the Respondent
1	(i) Amount of installment which was to be paid for the period from 20.3.2003 to 19.4.2003 (1 month)	Rs. 60,75,000/-
	(ii) Amount of installment which was to be paid for the period from 20.4.2003 to 9.5.2003 (20 days)	Rs 40,50,000/-
	(iii) Interest on second installment of Rs 60,75,000/- @ 0.05% per day for the period from 16.4.2003 to 9.5.2003(24 days)	Rs. 72,900/-
<b>Total amount to be paid by the Claimant</b>		<b>R s 1,01,97,900/-</b>

Thus the Claimant is entitled for the refund of balance amount of Rs 1,16,72,100/- against the claim of Rs. 1,21,50,000/- raised by the Claimant. I hereby award claim of Rs 1,16,72,100/- (Rupees one crore sixteen lacs seventy two thousand only) to the claimant in respect of this claim.

#### CLAIM NO 4.2 ( CLAIM NO-2)

The Claimant has raised claim of Rs 20,25,000/- on account of loss of toll collection on account of strike of the trucks from 14.4.2003 to 23.4.2003(10 days)

The Claimant has explained in dispute no 3.7 that he is entitled to the rebate in the toll instalment for the number of days there had been strike of the trucks.

The Respondent explained that as per provision of clause 5 of the Agreement, the Claimant is entitled for the rebate @ 1/30 per day of the monthly instalment if the toll facility or the toll point is closed for the traffic. In this case during the strike of trucks, the toll facility or the toll point did not remain closed. Furthermore, the claimant was supposed to furnish details of his intended claim for the rebate by 10<sup>th</sup> of the following month and by not doing so, the Claimant is not entitled for any rebate.

**This claim is decided as under:-**

It has already been decided in dispute no 3.7 that as a principal of natural justice, the Trucker's strike could not have been foreseen by the Claimant at the time of submission of bids and he had definitely suffered loss in the toll collection on account of this strike but the matter has to be decided in accordance with the provisions of Agreement. There is no specific provision in the Agreement to deal with

such type of eventualities. Concession of toll to the Claimant for the affected days could only be admissible, had the toll facility or the toll point had been totally closed in accordance with the provisions of clause 5 of the Agreement. Although the Claimant had not been given an opportunity to submit claim for the rebate by 10<sup>th</sup> of the following month because authorization for the collection of toll had been withdrawn from him on 9.5.2003, but whatever the case may be, the fact remains that the toll facility or the toll point had not been totally closed to traffic during the strike period and other category of vehicles continued to pass through the toll point during the strike period and thus the claim raised by the Claimant is rejected.

#### CLAIM NO 4.3 ( CLAIM NO-3)

The Claimant had raised claim for Rs 8,10,000/- on account of loss of collection of toll on account after effects of the trucker's strike from 14.4.2003 to 23.4.2003

This claim is related to claim no 4.2 ( Claim no-2). Since the dispute no 3.7 has not been decided in favour of the Claimant and furthermore, the claim no 4.2( Claim no-2) raised by the Claimant has been rejected as such this claim of the claimant is also rejected.

#### CLAIM NO 4.4 ( CLAIM NO-4)

The Claimant has raised claim for Rs. 1,30,00,500/- on account of loss of profit due to reduction in the turn over of the Claimant on account of illegal withdrawal off authorization for the collection of toll from the Claimant on 9.5.2003.

The Claimant has explained the facts as under:-

- (i) The work for the collection of toll at toll point near UP border on UP border-Sonipat-Gohana Road was awarded to the Claimant for Rs. 14,58,00,000/- to be deposited in 24 monthly installments. The Agreement was executed by the Claimant with the Respondent on 19.2.2003. This Agreement was for the period of two years from 20.2.2003 to 19.2.2005
- (ii) The work for the collection of toll was for 24 months and the Claimant had planned to carry out the work accordingly in 24 months and had made all arrangements. It was planned that the turn over of the Claimant would be Rs 14.58 crores for the period of two years and he would be able to earn reasonable profit on the turn over during the currency of the contract. Due to illegal forfeiture of the security deposit of the Claimant and due to withdrawal of authorization for the collection of toll from the Claimant on

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9.5.2003, the turn over of the Claimant has been restricted to Rs. 1,57,95,000/- against the planned turn over of Rs. 14,58,00,000/-. Thus the Claimant had been deprived of the turn over of Rs 13,00,05,000/- during the period from 10.5.2003 to 19.2.2005. As per judgment of the Hon'ble Supreme Court of India, the Claimant is entitled to the profit for the remaining period of the Agreement

Claim is as under

Sr. No	Particulars	Amount of claim
(i)	Total amount of the Agreement=	Rs 14,58,00,000/-
(ii)	Amount of turn over from 20.2.2003 to 9.5.2003 = Rs. 1,57,95,000/-	
(iii)	Amount of loss of turn over=	Rs 13,00,05,000/-
(iv)	Loss of profit on turn over i.e 10% of the anticipated turn over=	Rs 1,30,00,500/-
		Rs 1,30,00,500/-

The Respondent has refuted the claim and explained the same facts which have been explained in Claim no 4.1 ( Claim No-1). However, the respondent has further brought out that in this case the breach of contract has been caused by the Claimant by not depositing the second installment on the due date or even after 30 days from the due date along with interest. The judgment clearly stipulates that the party who causes the breach of contract is liable to compensate the other party and the judgment is in favour of the Respondent. Thus what to talk of claiming compensation, the respondent has suffered loss of Rs.4,84,32,435/- which should be compensated by the Claimant.

**The Claim is decided as under:-**

The work for the collection of toll at toll point near UP border on UP border-Sonipat-Gohana Road was awarded to the Claimant for Rs. 14,58,00,000/- to be deposited in 24 monthly installments. The Agreement was executed by the Claimant with the Respondent on 19.2.2003. This Agreement was for the period of two years from 20.2.2003 to 19.2.2005. The authorization for the collection of toll was withdrawn from the claimant on 9.5.2003. Since the work for the collection of toll has been re- allotted to another agency at much lower rate i.e for about Rs. 8 crores for the period of two years against this Agreement amount of Rs 14.58 crores allotted to the Claimant. Evidently the Claimant might have been incurring huge loss in this work. Thus the Claimant is not entitled to any profit for the remaining period of the Agreement and therefore, the Claim of the Claimant is rejected.

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**CLAIM NO 4.5 (CLAIM NO-5):-**

The Claimant has raised claim for Rs 3,28,326/- on account of loss of expenses incurred for establishing toll plaza, loss of wages of the contracted persons, additional administrative expenses, additional bank charges and idling of equipment and machinery arranged for the collection of toll.

The Claimant has explained as under:-

Due to illegal forfeiture of the security deposit of the Claimant and illegal withdrawal of the authorization for the collection of toll on 9.5.2003, the Claimant suffered loss in respect of the arrangements which he had already made for running the toll point for the entire period of two years. The Claimant had even paid advance for the fulfillment of the Agreement. The arrangement made for the erection of toll plaza had gone waste due to premature withdrawal of authorization. Thus the Claimant suffered huge loss on this account as detailed below which should be compensated:-

Sr. No	Particulars	Amount of claim
(i)	Loss of arrangement made for establishing/ erection of toll plaza Rs 1,00,000/- x 13/14.58	89,163/-
(ii)	Loss of wages of contracted persons 1,00,000/- x 13/14.58	89,163/-
(iii)	Additional administrative expenses	50,000/-
(iv)	Additional bank charges and loss of bank commission paid for getting the bank guarantees	50,000/-
(v)	Loss on account of idle equipment and machinery	50,000/-
<b>Total claim</b>		<b>Rs 3,28,326/-</b>

The Respondent has refuted the claim. He has explained that the Claimant has not constructed the toll plaza which was to be constructed by the Claimant as per the design approved from the Respondent in accordance with the provisions of clause 20 of the agreement. This Toll plaza was to be handed over to the respondent after the expiry of the Agreement period. In fact, the respondent has suffered loss of Rs. 10 lacs for the construction of toll plaza which should be compensated by the Claimant.

The Claim is decided as under:-

There is no specific provision in the Agreement where in the Respondent is liable to pay any such charges to the Claimant in case of withdrawal of authorization for the collection of toll from the claimant. In view of the above, the claim of the Claimant in this regard is rejected.

**CLAIM NO 4.6 ( CLAIM NO- 6)**

The Claimant has raised claim of Rs 2,18,70,000/- on account of compensation and damages on account of illegal action of the HSRDC for

**forfeiture of security deposit of the Claimant with out terminating the Agreement and on account of illegal withdrawal of authorization for the collection of toll from the Claimant on 9.5.2003.**

**The Claimant has explained the facts as under:-**

Forfeiture of security deposit of the Claimant amounting to Rs. 2,18,70,000/- and withdrawing the authorization for the collection of toll from the Claimant vide letter no HSRDC/354 dated 9.5.2003 was totally illegal and contrary to the provisions of Agreement. This illegal action on the part of the Respondent has caused considerable/immense damage to the reputation of the Claimant in the eyes of the other departments, banks and public. Although loss of reputation can not be compensated, yet the Respondent is liable to pay damages amounting to Rs. 2,18,70,000/- equal to the amount of the security deposit which had been illegally forfeited by the respondent.

The respondent has refuted the claim of the Claimant. He has explained that action against the Claimant was taken in accordance with the provision of clause 2 of the Agreement and therefore the action taken by the Respondent was fully valid and legal. This claim is neither based on any contractual provision nor has any logic and legal justification.

**The Claim is decided as under:-**

There is no specific provision in the Agreement for claiming such type of damages. As observed in Claim no 3.4, the Claimant may not have been earning any profit but would have been incurring huge losses in running the toll point. Evidently the hasty action taken by the Respondent in violation of the provisions of the Agreement proved to be blessing in disguise to the Claimant. Since the claim raised by the Claimant is not supported with any contractual provisions and seems to be hypothetical as such the claim of the claimant is therefore rejected.

#### **CLAIM NO 4.7 ( CLAIM NO-7)**

The Claimant has raised the claim for the payment of interest on Rs. 1,49,85,000/- ( Claim no 4.1 to 4.3) from the date of illegal forfeiture of bank guarantee to the date of payment @ 18% per annum as per section 31 sub section 7(a) and 7(b) of the Arbitration and Reconciliation Act 1996.

**The Claimant has explained about this claim as under:-**

- (i) After coming into force, the Indian Contracts Act 1978, interest has become payable on all payments which are either delayed or due to be paid but not paid in time. In this case, forfeiture of the security deposit of the claimant amounting to Rs. 2,18,70,000/- by the respondent vide letter no HSRDC/354 dated 9.5.2003 was totally illegal and contrary to the provisions of the Agreement.

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- (ii) It is trade practice in the industry to charge interest at the rate of 18 percent per annum on the due payments. Even according to the provision of section 31(7) of the Arbitration and Reconciliation Act 1996, 18 percent interest has been allowed for future payments.
- (iii) As per provision of clause 2 of the Agreement, if there is delay on the part of the Entrepreneur in depositing the installment, then interest @ 0.08% per day or 18% per annum is payable by the Entrepreneur as such same rate of interest @ 18% per annum should be awarded on the security deposit amount which has been illegally forfeited.
- (iv) The Claimant is entitled to the payment of interest on Rs. 1,49,85,000/- (amount of claim nos 4.1 to 4.3) from the date of illegal forfeiture of the security deposit i.e. from 10.5.2003 till the date of payment. The learned Arbitrator is entitled to award interest @ 18 percent per annum from the date on which the cause of action arose till the date of payment.

The Respondent has refuted the claim. The demand of the interest by the Claimant is absolutely unfounded and without any basis because the claims of the claimant have not been substantiated by any reasons particularly when the Claimant had committed breach of contract. Rather it is the Respondent who had suffered losses.

**The Claim is decided as under:-**

As per Clause no 4.1 (Claim No-1), a sum of Rs. 1,16,72,100/- has been awarded to the Claimant and he is entitled to the interest on this amount from the date of forfeiture of security deposit i.e. from 10.5.2003 till the date of payment to the Claimant. Although as per provision of the Agreement, the Claimant is liable to pay interest @ 18% for the delay in depositing the installments from the due dates and furthermore, as per trade practice, interest @ 18% per annum is applicable but due to softer interest regime, interest @ 18% per annum is on higher side. Since the Prime Lending rates of the leading banks is around 10 to 11 percent as such I hereby award interest @ 10 % per annum in favour of the Claimant on Rs. 1,16,72,100/- from the date of forfeiture of security deposit i.e. from 10.5.2003 till the date of announcement of the award and also @ 10% per annum from the next day of date of announcement of the award till the payment is actually made to the Claimant.

**CLAIM NO 4.8 (CLAIM NO-8)**

The Claimant has raised claim of Rs 1,00,000/- as cost for reference to the Arbitrator

The Claimant has explained as under:-

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The Respondent has openly committed breach of contract by illegally forfeiting the security deposit of the Claimant and had also illegally withdrawn the authorization for the collection of toll from the Claimant. There was no other alternative for the Claimant except to seek adjudication of the dispute through the Arbitrator in accordance with the provisions of clause 28 of the Agreement.

The Respondent has refuted the claim. He has explained that in fact, the Claimant has committed the breach of contract and heavy loss has been caused by the Claimant to the Respondent. The action taken by the Respondent in respect of forfeiture of security deposit of the Claimant and withdrawal of authorization for the collection of toll was strictly in accordance with the provisions of the Agreement as such the Claimant has entered into unnecessary litigation. Since the arbitration has been sought by the Claimant as such the cost has to be borne by him in accordance with the provisions of the Agreement.

**The Claim is decided as under:-**

**Clause 28 of the Agreement provides that - In the event the Entrepreneur/Agent disagreeing, with the decision mentioned in the provision of above, he may request the Managing Director, HSRDC, for appointment of an Arbitrator for adjudication of the dispute. On receipt of request from the Entrepreneur/Agent for appointment of Arbitrator, Engineer-in-Chief, Haryana PWD B&R will appoint an Arbitrator for adjudication of the dispute. The arbitrator so appointed shall conduct the arbitration proceedings in accordance with the provision of the contract agreement. Fee of the Arbitrator shall be paid by the party who will seek the arbitration.**

From the above provisions, it is evident that the arbitration has been sought by the Claimant as such the fee of the Arbitrator is to be borne by the Claimant. Furthermore, the Claimant has not attached any evidence/proof in support of the claim but had made general claim. Thus the Claim of the claimant is rejected.

### **COUNTER CLAIMS FROM THE RESPONDENT**

#### **COUNTER CLAIM NO-1**

The respondent has raised counter claim amounting to Rs. 10,00,000/- on account of non construction of the toll plaza by the Claimant. The respondent explained that the Claimant was bound to construct Toll Plaza at the site of toll at his own cost. However no such toll plaza was constructed by the Claimant at Km 2.4 of the toll barrier. The claimant then backed out from the contract and the department shall have to construct the toll plaza and other amenities by spending Rs 10 lacs at the time of running the toll point. Thus the Claimant should pay Rs 10 lacs along with interest @ 18 percent interest from 30.7.2003 till the realization of this amount

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**The Claimant explained as under:-**

Although the Claimant was required to construct toll plaza in accordance with the design approved by the HSRDC but neither any design for the construction of toll plaza was supplied by the respondent nor any such design had been approved by the respondent. In fact, the Claimant had constructed temporary structure for facilitating the collection of toll which was duly approved by the Respondent Executive Engineer in charge of the toll point and other officials of the respondent Corporation had been inspecting the toll point very frequently and also on regular intervals. They had never raised this issue of erecting temporary structure for the collection of toll and for all purposes the structure erected by the Claimant for the collection of toll was considered by the Respondent as Toll Plaza. It is incorrect that the Claimant had backed out from the contract. In fact, the respondent had taken illegal action of forfeiting the security deposit of the Claimant and withdrawal of authorization for the collection of toll. Actually the Respondent from the very beginning had started threatening the Claimant on one pretext or the other. However, the claim should be rejected.

**The Counter claim is decided as under:-**

The Respondent has not raised the counter claim properly. It appears that the claim related to some other Agreement because neither the Claimant was required to construct the toll plaza in Km 2.4 i.e site of the toll barrier nor the Claimant had backed out from the Contract. Furthermore, the Respondent has not supported his claim with the evidence i.e vouchers, bills/estimate for the construction of toll plaza

The work was awarded to the Claimant on 19.2.2003 where as Respondent had withdrawn the authorization for the collection of toll from the Claimant on 9.5.2003. Evidently the Claimant had been allowed to run the toll plaza from 20.2.2003 to 9.5.2003. The Respondent has failed to show any evidence directing the Claimant for the construction of toll plaza during this period. Evidently the Respondent was satisfied about the structure put up by the Claimant for facilitating the collection of toll. Furthermore, the respondent has not supplied any evidence indicating the supply of standard drawing to the Claimant for the construction of toll plaza or had accorded approval for the construction of toll plaza. In view of these facts, the counter claim raised by the Respondent against the Claimant is hereby rejected.

**COUNTER CLAIM NO-2**

The respondent has furnished counter claim no-2 in respect of loss amounting to Rs 4,84,32,435/- suffered by the respondent due to the breach of contract by the Claimant as detailed below

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(x)	Unpaid amount for the period from 20.3.2003 to 9.5.2003 ( for the period toll point remained with the Claimant ( 1 month 20 days ) i.e 5/3 months @Rs 60.75.000/- per month	Rs 1,01,25,000/- (x)
(y)	loss in toll collection by the department from 10.5.2003 to 12.12.2003 (i) Amount of toll collected departmentally from 10.5.2003 to 12.12.2003 = Rs. 2,44,72,850/- (ii) less 10% collection and supervision charges = Rs. 24,47,285/- Net toll collection = Rs 2,20,25,565/- Amount due from the Claimant for the period from 10.5.2003 to 12.12.2003 = Rs. 4,31,32,500/-  Loss on account of less collection = Rs. 2,11,06,935/-	(y) Rs. 2,11,06,935/-
(z)	Loss of toll collection through the new Entrepreneur from 13.12.2003 to 19.2.2005  (i) Total contract amount of the Claimant for two years:- Rs. 14,58,00,000/- (ii) Anticipated toll collection by the new Entrepreneur M/s Prince Toll Associates from 13.12.2003 to 12.12.2005 = Rs. 7,98,20,000/- (iii) Loss of toll = Rs. 6,58,80,000/- (iv) Loss due to less toll for the period from 13.12.2003 to 19.2.2005 i.e 14.7/30 months = Rs. 3,90,70,500/-  Loss on account of less collection = Rs. 3,90,70,500/-	(z) Rs. 3,90,70,500/-
	Total recoverable amount from M/s Wazir Singh & Co	Rs. 7,03,02,435/-
	Security deposit of the Claimant forfeited	Rs. 2,18,70,000/-
	<b>Balance amount recoverable from the Claimant</b>	<b>Rs 4,84,32,435/-</b>

There is provision in the Agreement under clause 4 (v) , that balance recoverable amount shall be paid by the Entrepreneur forthwith to HSRDC on demand and the Corporation has to the right to recover the recoverable amount from the land revenue of the Entrepreneur in accordance with the provision of clause 4(vii) of the Agreement. The respondent further stated that this counter claim amounting to Rs 4.84.32.435/- may be considered and accepted as counter claim no-2 in terms of provisions of Section 23 of the Arbitration and Reconciliation Act 1996.

The Claimant explained that no such facts were mentioned by the Respondent in his letter dated 9.5.2003 at the time of withdrawing the authorization for the collection of toll from the Claimant. Furthermore, this issue was never raised by the Respondent during arguments and therefore the counterclaim made now on 27.9.2004 is after thought and should not be entertained. Furthermore, the submissions made in the counter claim can not be considered as counter claim because there is no such provision in the Agreement itself that the Respondent Corporation can file counter claims.

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**This counter claim is decided as under:-**

- (i) The Respondent had not mentioned about the additional losses, damages or counterclaims in his letter dated 9.5.2003 to the Claimant while withdrawing the authorization for the collection of toll from the Claimant.
- (ii) The Respondent had raised counter claim no-2 only on 27.9.2004 when the matter was already under arguments
- (iii) Although as per provision of clause 28 of the Agreement, the aggrieved person can seek arbitration and there is no provision in the Agreement indicating that the Respondent can raise the counter claim but the fact remains that as per provision in the Arbitration and Reconciliation Act, 1996, the other party i.e Respondent is entitled to submit counter claims before the Arbitrator even if he had not sought the arbitration originally.
- (iv) The Respondent has made the counter claim in three parts i.e (i) loss due to unpaid installments which were required to be deposited by the Claimant for the period toll point remained with him (ii) loss due to less collection of toll collected departmentally (iii) loss due to less toll collection collected through another agency. The claim to the extent of Rs.1,01,25,000/- is admitted to the fact that the Claimant had run the toll point from 20.2.2003 to 9.5.2003 but had paid the first instalment for the period from 20.2.2003 to 19.3.2003 where as the Claimant is required to deposit the remaining amount for the period from 20.3.2003 to 9.5.2003 amounting to Rs. 1,01,25,000/-. This amount is due to the Respondent and accordingly credit for Rs. 1,01,25,000/- has been given to the Respondent while deciding Claim No 4.1 ( Claim No-1) and thus after the adjustment of Rs 1,01,97,900/- including interest from the security deposit of the Claimant, there would be no claim of the Respondent on this account. Regarding the other parts of the losses claimed by the Respondent, the Claimant can not be held liable for any short collection or excess collection of toll after the authorization for the collection of toll is withdrawn from him. There is no provision in the Agreement for carrying out the work of collection of toll from any other agency at the risk and cost of the original agency. Had the anticipated/future toll collection been more than the amount of installments of the Claimant, then whether the Respondent would have paid the excess amount so collected to the Claimant. This part of the claim of the Respondent is hypothetical and the same is rejected.

**CONCLUSION**

Now, I R. P. Bansal, the Sole Substituted Arbitrator-cum Chief Engineer ( Roads ) Haryana PWD B&R Branch, Chandigarh having duly /carefully considered the whole matter submitted before me by both the parties, do hereby announce the award. I, accordingly

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award a sum of Rs 1,16,72,100/- ( Rs. one crore sixteen lacs seventy two thousand one hundred only ) to the Claimant i.e M/s WAZIR SINGH & COMPANY, 67, Arya Samaj Complex, Raj Guru Market, Hisar to be paid by the Respondent i.e Managing Director, Haryana State Roads & Bridges Development Corporation Limited. The Claimant is further entitled for the simple interest @ 10 % per annum on Rs. 1,16,72,100/- ( amount of award) from the date of forfeiture of security deposit i.e from 10.5.2003 up to the date of announcement of award i.e up to 11.10.2004 ( 1 year 155 days ) and I award a sum of Rs 16,62,874/- ( Rs Sixteen lacs sixty two thousand eight hundred seventy four only) to the Claimant (amount matter of calculation). Furthermore, the Claimant is also entitled simple interest @ 10 % per annum on Rs 1,16,72,100/- ( principal amount only) from 12.10.2004 (amount matter of calculation) till the date of actual payment of the award to the Claimant and I award the same to the Claimant.

Both the parties will bear their own cost for contesting the arbitration case.

The non judicial papers for writing the award were supplied by the Claimant for writing the award

In witness thereof, I R. P. Bansal acting as Sole Substituted Arbitrator have signed this on the day of 11th October, 2004 at Chandigarh'

Place : Chandigarh  
Dated : 11<sup>th</sup> October, 2004

*R.P. Bansal*  
( R.P.Bansal) 11/10/04  
Sole Substituted Arbitrator  
-cum Chief Engineer (Roads)  
Haryana PWD B&R Branch,  
Chandigarh

Registered  
Endst No 44-46/PA/CE(R) dated 11-10-2004

Copy of the above award is forwarded for information and further necessary action to the following:-

1. M/s WAZIR SINGH & COMPANY. 67, Arya Samaj Complex, Raj Guru Market, Hisar
2. The Managing Director, Haryana State Roads & Bridges Development Corporation Limited, SCO-23, Sector 7-C, Madhya Marg, Chandigarh-160019
- ✓ 3. Engineer-in- Chief, Haryana PWD B&R branch, Chandigarh with reference to his memo no HHUP-II/344 dated 14.9.2004.

Place : Chandigarh  
Dated : 11<sup>th</sup> October, 2004

*R.P. Bansal*  
( R.P.Bansal) 11/10/04  
Sole Substituted Arbitrator  
-cum Chief Engineer (Roads)  
Haryana PWD B&R Branch,  
Chandigarh

Subject:

Arbitration Award in the matter of arbitration regard  
arising out of the contract for the work of collection of toll at toll point  
near Punjab Border on Budhlada-Ratia-Fatehabad road (Contract  
No.HSRDC/Toll-10)

Annexure IV

1. An Agreement for the work of toll collection at toll point near Punjab Border on Budhlada-Ratia-Fatehabad road (Contract No.HSRDC/Toll-10) was signed on 19<sup>th</sup> February, 2003 between HSRDC and M/s Wazir Singh & Co. (Agent-Entrepreneur) for a period of two years. Copy of Agreement placed below as Annexure-I.
2. As per Letter of Acceptance dated 7.2.2003 (Page 20 to 22 of the Agreement), the Entrepreneur was required to deposit Bank Guarantee of Rs.15,01,200/- as security deposit and an amount of Rs.4,17,000/- in the form of Bank Draft as first instalment. The remaining 23 instalments of Rs.4,17,000/- were required to be deposited upto 15<sup>th</sup> of every calendar month. The entrepreneur submitted the requisite security deposit and Bank draft of first instalment and thereafter the agreement was signed on 19.2.2003 for a contract price of Rs.1,00,08,000/- to be deposited in 24 monthly instalments of Rs.4,17,000/- each and accordingly M/s Wazir Singh & Co. was issued Letter of Authorisation by the MD, HSRDC vide memo No.HSRDC /180 dated 19.2.2003 authorising him for collecting toll from toll point for period upto 2 years (Page 33 of the Agreement).
3. As per provision of Clause 2 of the Agreement, the M/s Wazir Singh & Co. had agreed to deposit remaining 23 instalments of Rs.4,17,000/- each upto 15<sup>th</sup> of each calendar month and on default to pay an instalment by the due date, the same will be paid along with interest calculated @ 0.05% per day of delay within 30 days counted from the due date.
4. M/s Wazir Singh & Co. had deposited the first instalment before entering into Agreement on 19.2.2003 and remaining 23 instalments were to be deposited upto 15<sup>th</sup> of every calendar month falling in the period of instalment. M/s Wazir Singh & Co. had deposited first instalment on 19.2.2003 and the 2<sup>nd</sup> instalment was to be deposited upto 15<sup>th</sup> of March, 2003 without interest and on 15.4.2003 alongwith interest. But M/s Wazir Singh & Co. (hereinafter called agency) did not submit the 2<sup>nd</sup> advance instalment due upto 15.3.2003 (1<sup>st</sup> advance instalment in the month of February, 2003). Therefore, MD, HSRDC in communication to M/s Wazir Singh & Co. vide memo No.HSRDC 246 dated 10.4.2003 (Annexure-II) intimated that the next instalment falls due on 15.3.2003 and they were advised to deposit the instalment. It was also made clear that in case instalment alongwith interest is not paid within 30 days counted from the due date then the contract agreement will be terminated without further notice and the security deposit will be forfeited. However, the agency informed the Managing Director HSRDC vide letter dated 12.4.2003 and 15.4.2003 (Annexure-III & IV) that payment of next instalment falls due on 15.4.2003 without interest and upto 15.5.2003 alongwith

interest as they have deposited first instalment on 19.2.2003 with interest upto the period from 20.2.2003 to 19.3.2003. In response to this letter of the agency, MD, HSRDC further directed them vide letter dated 22.4.2003 (Annexure-V) to deposit the 2<sup>nd</sup> instalment due to be paid upto 15.3.2003 alongwith interest immediately but not later than 30.4.2003. It was clarified to the agency that the remaining 23 instalments were to be deposited by 15<sup>th</sup> of every calendar month and as the agreement was executed on 19.2.2003, the 2<sup>nd</sup> instalment became due to be paid in the next calendar month i.e. by 15<sup>th</sup> March, 2003 and not by 15<sup>th</sup> April, 2003 as stated by them. It was also made clear that if the instalment is not deposited by them upto 30.4.2003, the agreement executed with them would be terminated and security deposit shall be forfeited.

5. However, M/s Wazir Singh & Co. again intimated the MD, Haryana State Roads & Bridges Development Corporation Ltd. vide letter dated 29.4.2003 (Annexure-VI) that the interpretation of calculating the due date for depositing the 2<sup>nd</sup> instalment by him is totally contrary to the provisions of the agreement because nowhere it is mentioned in the agreement that the 2<sup>nd</sup> instalment is to be deposited in the next month of the execution of agreement.
6. As the agency failed to deposit the 2<sup>nd</sup> instalment due to be paid upto 15.3.03 (to be paid with interest upto 14.4.03), MD, HSRDC forfeited the security deposit of agency amounting to Rs.2,18,70,000/- vide letter No.HSRDC /360 dated 9.5.2003 (Annexure-VII) and got the same encashed from the Bank on 10.5.2003. Also the Letter of Authorization for the collection of toll issued to M/s Wazir Singh & Co. vide memo No.HSRDC/180 dated 19.2.2003 was also withdrawn and cancelled vide memo No.HSRDC/360 dated 9.5.2003 (Annexure-VIII). Consequently Haryana State Roads & Bridges Development Corporation Ltd. also took over the possession of toll point on 10.5.2003 and started the collection of toll departmentally w.e.f. 10.5.2003.
7. M/s Wazir Singh & Co. intimated to the MD, HSRDC vide letter dated 5.6.03 (Annexure-IX) that the action of the forfeiture of security deposit and withdrawal of authorisation letter for the collection of toll on 9.5.2003 is illegal because they observed that the due date for depositing the 2<sup>nd</sup> instalment alongwith interest falls on 15.5.2003 whereas the MD, HSRDC considered the due date for depositing the 2<sup>nd</sup> instalment alongwith interest as 14.4.2003. Furthermore M/s Wazir Singh & Co. observed that the MD, HSRDC had forfeited their security deposit without terminating the agreement which is contrary to the provisions of the agreement and, therefore, they sought arbitration for the adjudication of their disputes.
8. On the request of the agency and the Corporation, E-in-C, Haryana PWD B&R appointed firstly Sh.K.K.Gupta, the then , CE, Housing Board, Haryana as Arbitrator and then consequent upon his posting as MD, HSRDC, Sh.R.C.Mehndiratta, the then CE (NH) as Arbitrator in exercise of the powers

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conferred upon him under the agreement. Sh.R.C.Mehndiratta conducted proceedings of arbitration. He was subsequently appointed as substituted Arbitrator after his retirement from the post of CE (NH) and continued the proceedings. Sh.R.C.Mehndiratta, Arbitrator fell seriously ill and intimated the Engineer-in-Chief, Haryana PWD B&R that he was unable to continue as Arbitrator. Eventually, with the consent of both the parties to the dispute, E-in-C, Haryana PWD B&R appointed Sh.R.P.Bansal, Chief Engineer (Roads), Haryana PWD B&R as Sole Substituted Arbitrator. The Arbitrator announced his award on 11.10.2004 (Copy of Award is placed below as Annexure-X). Page 1 to 5 of the award deal with the background/history of the case. Pages 5 to 17 deal with dispute Nos.3.1, 3.2 and 3.5. Disputes No.3.3 and 3.4 are detailed on pages 17 to 21. Dispute No.3.6 and 3.7 are on pages 21 to 24. Claim No.4.1 has been dealt with from pages 24 to 27. Claim Nos.1, 2, 3, 4, 5, 6, 7 and 8 are at pages 24 to 33 of the award. Counter claims from the respondent have been mentioned at pages 33 to 36. Conclusion of the award is at page 36 and 37. Copy of the claim statement of the agency and the counter claims of the Corporation are placed below as Annexure-XI & XII. The reply of the Corporation to the claim statement of the agency is enclosed as Annexure-XIII.

9. Superintending Engineer, Hisar was the presenting officer in this case and Executive Engineer, HSRDC was the Asstt. Presenting Officer. The Presenting Officer has opined that there seems to be no point which speaks of misconduct on the part of the Arbitrator in his verdict. The Legal Cell of Head Office has opined that he agrees with the opinion of Superintending Engineer, Hisar and it is not a fit case for filing objection/appeal against the award.
10. A perusal of the case would reveal that the following clauses/sections of the agreement were contested by the parties during proceedings:-

**Clause 2 of the agreement (relevant part at page 7 of the agreement);**

"Further the Entrepreneur/Agent hereby agrees that he will pay to the HSRDC all instalments on due dates in advance as aforesaid and that further he will have to claim for interest on these instalments paid in advance.

And whereas, of default to pay any instalment by due date the same will be paid along with interest calculated @ 0.05% per day of delay. Further in case any instalment along with interest is not paid within 30 days counted from the due date, then the contract agreement will be terminated without any further notice. In such event without prejudicing the rights and other remedies available to the Haryana State Roads & Bridges Development Corporation Ltd., the Security Deposit and all instalments of contract amount already paid shall stand forfeited without any claim from the agency.

Further any authorization letter for collection of toll issued shall be treated as cancelled and withdrawn. Further more Haryana State Roads & Bridges

Development Corporation Ltd. will be at liberty to take over the <sup>M</sup> site and start collection of toll as deemed fit".

**Clause 4 (iv) of the agreement at page 10);**

"In the event of any default on the part of the Entrepreneur/Agent to comply with any of the terms of this contract or in the event of termination of contract by the HSRDC under any provision, the HSRDC shall have the right to forfeit the entire or part amount of security deposit furnished by the Entrepreneur/Agent and to appropriate the security deposit or any part thereof in or towards the satisfaction of any claim of the HSRDC any or damage, losses, costs charges of expenses, or otherwise however. The decision of Managing Director HSRDC shall be final binding on the Entrepreneur/Agent.

(viii) Except where otherwise provided or specified in the contract and subject also to such power as may be delegated to him from time to time by the government, the decision of the Managing Director, HSRDC for the time being in charge of the said toll facility on all questions and matter whatsoever arising out of or in relation to or in connection with this contract or as to the interpretation of any of its provisions of clause/s either during the subsistence of this contract or at any time thereafter shall be final and binding on the parties to this contract."

**Clause 28**

"In the event the Entrepreneur/Agent disagreeing, with the decision mentioned in the provision of above, he may request the Managing Director, HSRDC, for appointment of an Arbitrator for adjudication of the dispute. On receipt of request from the Entrepreneur/Agent for appointment of Arbitrator, Engineer-in-Chief, Haryana PWD B&R will appoint an Arbitrator for adjudication of the dispute. The arbitrator so appointed shall conduct the arbitration proceedings in accordance with the provisions of the contract agreement. Fee of the Arbitrator shall be paid by the party who will seek the arbitration."

**Clause 29.**

"Pending appointment of Arbitrator or resolution of the dispute by Arbitrator, the Entrepreneur/Agent will continue to remit the agreed instalment of money to the Managing Director, HSRDC."

11. The crucial disputes decided by the Arbitrator to be examined critically from angle of legal scrutiny are dispute No.3.1, 3.2, 3.3 and 3.4 which are reproduced below.

3.1 What would be the due date for depositing second instalment without interest and with interest and what would be the due dates for depositing further instalments without interest and with interest?

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- 3.2 As intimated in para 3.1 above, if the due date for the payment of second instalment without interest and with interest is considered as 15<sup>th</sup> April, 2003 and 15<sup>th</sup> May, 2003, then the action of the respondent in forfeiting the security deposit amounting to Rs.15,01,200/- vide letter No.HSRDC/360 dated 9.5.2003 is illegal and against the provisions of the Agreement?
- 3.3 Whether the respondent had any authority to forfeit the security deposit of the claimant amounting to Rs.15,01,200/- and withdraw the authorisation for the collection of toll without terminating the agreement in accordance with the provisions of clause 2 of the agreement and whether the action of respondent of forfeiting the security deposit of the claimant without terminating the agreement was illegal and contrary to the provisions of the agreement?
- 3.4 Whether the respondent had any authority to withdraw the authorisation for the collection of toll from the claimant without terminating the agreement in accordance with the provisions of clause 2 of the agreement?
12. It is brought out that by accepting the contention of the claimant that the due date of 2<sup>nd</sup> instalment is 15.4.2003 instead of 15.3.2003, the Arbitrator has ignored Clause 2 of the Agreement that the agency agrees to pay instalments on due dates in advance. If due date of 2<sup>nd</sup> instalment is taken as 15.4.2003 then the due date of last instalment becomes 15.2.2005 without interest and 15.3.2005 with interest whereas the agreement was valid upto 19.2.2005. So the decision of the Arbitrator implies that the agency could pay the instalment even after the expiry of the agreement which is a contradiction in itself. The instalments were required to be deposited in advance and the agency could not be expected to pay the instalment after the expiry of agreement.
13. Further it is stated that withdrawal of authorization for collection of toll from the agency and forfeiture of security was not at all connected with the termination of the agreement under any provision of the agreement. So the decision of the Arbitrator in this respect seems to be incorrect.
14. As per conclusion of the award, the Arbitrator has awarded the claimant i.e M/s Wazir Singh & Co. a sum of Rs.8,01,196/- (Claim No.1 as arbitrated/decided at page 27). Further simple interest @ 10% per annum on this amount of Rs.8,01,196/- from the date of forfeiture of security deposit i.e. from 10.5.2003 upto the date of announcement of award i.e. 11.10.2004 amounting to Rs.1,14,142/- has been awarded. Furthermore, the claimant has also been awarded simple interest @ 10% per annum on Rs.8,01,196/- from 12.10.2004 till the date of actual payment of the award.

15. In view of the position explained above, it is requested that the LR & Secretary to Government of Haryana, may kindly be requested to render legal advice/considered opinion as to whether it is a fit case for filing objections under Section 34 of the Arbitration and Conciliation Act, 1996.

*R.K. Verma*  
(R.K. Verma)  
EE, HSRDC

*Mahabir Singh*  
(Mahabir Singh)  
SE (WBP-I)

*H.S. Chahal*  
(H.S. Chahal)  
MD, HSRDC

*S.C. Chaudhary*  
(S.C. Chaudhary)  
CPW

SE (WBP-I)

MD (HSRDC)

No. 96-HSRDC

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LAW AND LEGISLATIVE DEPARTMENT HARYANA

Before tendering any advice in the matter, the Administrative Department is requested to intimate/communicate to this department, as to what objection, the Administrative Department wants to <sup>take</sup> ~~take~~, so as to facilitate proper examination.

*R. S. Sa*  
A.L.R. (Lit.)

for Legal Remembrancer & Secretary to Government, Haryana.

C.P.W.

U.O.No. 73322 /Co.23(214)2004

Dated:- 10/12/04

*S.C. Chaudhary*  
13-12-04

*H.S. Chahal*  
13/12/04

*EXC*  
*MD HSRDC*  
*SECRETARY I*  
6/8

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*R.K.*

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*13-12-2004*

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This is with reference to the observations of LR Office vide note dated 10.12.2004 at NP-6.

(copy - sent)

In this connection, it is brought out that the comments/objection of the Corporation regarding award were given under para 12 and 13 on NP-5 etc. It is to be seen as to whether the decision of the Arbitrator regarding dispute No.3.1 and dispute No.3.3 in particular stand to the test of legal scrutiny in view of the provisions of contract and arguments submitted before the Arbitrator. The Arbitrator has decided w.r.t. dispute No.3.1 that the due date of 2<sup>nd</sup> instalment was 15.4.2003 instead of 15.3.2003 ignoring Clause 2 of the agreement view which the agency agreed to pay instalment on due dates in advance. As explained under para 12 on NP-5, this decision of Arbitrator implies that the agency could pay the instalment even after expiry of the agreement which is a contradiction in itself.

Regarding dispute No.3.3, the Arbitrator has decided that the respondent i.e. the Corporation should have first terminated the agreement and thereafter was entitled to forfeit the security deposit of the claimant whereas withdrawal of authorization for collection of toll from the agency and forfeiture of security was not at all connected with the termination of agreement under any provision of the agreement.

The other disputes and claims decided by Arbitrator are as a consequence of the decision of above ~~two~~ <sup>three</sup> disputes primarily. So these ~~two~~ <sup>three</sup> disputes are to be seen from legal angle in particular.

In view of above, case is submitted for orders/decision as solicited under para 15 on NP-6. please.

*Rakesh Verma*  
(R.K.Verma) 14/12/04  
EE, HSRDC

SE (WBP-1)

*Mahabir Singh*  
(Mahabir Singh)  
SE (WBP-1)

MD (HSRDC)

*H.S. Chahal*  
(H.S.Chahal) 14/12/04  
MD, HSRDC

CPW

*S.C. Chaudhary*  
(S.C.Chaudhary)  
CPW

14/11/04 LR  
3-11/04  
24/12/04  
14/12/04

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LAW AND LEGISLATIVE DEPARTMENT HARYANA

Perusal of the facts of the case, <sup>reveals that the disputes as pointed</sup> the Administrative Department, <sup>on which A.D</sup> wants to file objections under section 34 of the Arbitration and Conciliation act, 1996, are as under:-

- 3.1 What would be the due date for depositing second installment with out interest and with interest and what would be the due dates for depositing further installments without interest and with interest.
- 3.3. Whether the Respondent had any authority to forfeit & the security deposit of the Claimant amounting to Rs. 17,82,200/- and withdraw the authorization for the collection of toll without terminating the Agreement in accordance with the provisions of Clause 2 of the Agreement and whether the action of respondent of forfeiting the security deposit of the Claimant with out terminating the agreement was illegal and contrary to the provisions of the Agreement ?
- 3.4 Whether the Respondent had any authority to ~~not~~ withdraw the authorisation for collection of toll from the Claimant with out terminating the agreement in accordance with the provisions of clause 2 of the agreement.

The above disputes were decided by the Arbitrator in favour of M/s Wazir Singh & Company, Claimant, within the terms of reference, in accordance with the Agreement of parties. It is admitted by the Administrative Department that there seems

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to be no point which speaks of the misconduct on the part of the Arbitrator in his verdict. It is also pointed out in the reference made by the Administrative Department that Legal Cell of the Head Office had also agreed with the opinion of the Superintending Engineer, Karnal, in this regard and opined that it is not a fit case for filing objections/appeal against the Award. The Administrative Department availed reasonable opportunity to represent its case with regard to the above disputes before the Arbitrator. No ground, as mentioned in section 34 of the Arbitration and Conciliation act, 1996 against the Arbitral Award is made out. It is, therefore, not a fit case for filing application under section 34 of the Arbitration and Conciliation act, 1996 for setting aside the Arbitral Award. If the Administrative Department so desires it may obtain the opinion of the Advocate General, Haryana.

*R.L. Saw* 20/11/04

A.L.R. (Lit.)  
for Legal Remembrancer & Secretary  
to Government, Haryana.

2093  
20/11/04

C.P.W.

U.O.No. 749 RS

/Co.23(2/5)2004

Dated:- 20/11/04

*[Signature]*  
20-12-04

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20/12

SE (S.D) J

EE/INDC

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20/11/04

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Subject: Arbitration award in the matter of arbitrator regarding dispute arising out of the contract for the work of collection of 300 <sup>litre</sup> at <sup>point</sup> near Purgat Border on Badhalde-Kated - Fatehabad road (Contract No. HSNOC/TN-10).

Kindly refer NP 1 to 9 for detailed history of the case. The advice of LR and Secretary to Govt of Haryana is available at NP 8 and 9.

The advice of Advocate General, Haryana is solicited, with suggestion of LR in the matter in view of the comments of the Corporation under para 12 and 13 on NP 5 ante and at NP 7 ante as to whether it is a fit case or not for filing objections under section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the award.

Mahabir Singh  
22/11/09  
(MAHABIR SINGH)  
SE/WO/3

H. S. Chahal  
24/11/09  
(H. S. CHAHAL)  
MD/HNDC

S. D. Chaudhary  
(S. D. CHAUDHARY)  
CPW

MD/HNDC

110,106-HNDC  
12-2009

CPW

Advocate General

As per the direction of the Ad. A.G. I have perused the file and I am of the opinion that there is nothing to disagree with the opinion of Legal Remuneration, Haryana. So it is not a fit case for filing appeal under section 34 of the Arbitration and Conciliation Act 1996.

Arjun  
30/11/09  
(Assistant Advocate General)  
Haryana

Arjun  
30.12

Arjun  
30/12

110,106  
12/10/09

MD/HNDC  
30/12  
3912  
Haryana

ES/HNDC  
FIS (VSD) I

137

**Subject: Arbitration Award in the matter of arbitration regarding dispute arising out of the contract for the work of collection of toll at toll point near Himachal Pradesh Border Border on Jagadhari-Chhachhrauli-Poanta road (Contract No.HSRDC/Toll-11)**

1. An Agreement for the work of toll collection at toll point near Himachal Pradesh Border Border on Jagadhari-Chhachhrauli-Poanta road (Contract No.HSRDC Toll-11) was signed on 19<sup>th</sup> February, 2003 between HSRDC and M/s Wazir Singh & Co. (Agent Entrepreneur) for a period of two years. Copy of Agreement placed below as Annexure-I.
2. As per Letter of Acceptance dated 7.2.2003 (Page 20 to 22 of the Agreement), the Entrepreneur was required to deposit Bank Guarantee of Rs.17,82,200/- as security deposit and an amount of Rs.4,95,000/- in the form of Bank Draft as first instalment. The remaining 23 instalments of Rs.4,95,000/- were required to be deposited upto 15<sup>th</sup> of every calendar month. The entrepreneur submitted the requisite security deposit and Bank draft of first instalment and thereafter the agreement was signed on 19.2.2003 for a contract price of Rs.1,18,80,000/- to be deposited in 24 monthly instalments of Rs.4,95,000/- each and accordingly M/s Wazir Singh & Co. was issued Letter of Authorisation by the MD, HSRDC vide memo No.HSRDC /184 dated 19.2.2003 authorising him for collecting toll from toll point for period upto 2 years (Page 33 of the Agreement).
3. As per provision of Clause 2 of the Agreement, the M/s Wazir Singh & Co. had agreed to deposit remaining 23 instalments of Rs.4,95,000/- each upto 15<sup>th</sup> of each calander month and on default to pay an instalment by the due date, the same will be paid along with interest calculated @ 0.05% per day of delay within 30 days counted from the due date.
4. M/s Wazir Singh & Co. had deposited the first instalment before entering into Agreement on 19.2.2003 and remaining 23 instalments were to be deposited upto 15<sup>th</sup> of every calendar month falling in the period of instalment. M/s Wazir Singh & Co. had deposited first instalment on 19.2.2003 and the 2<sup>nd</sup> instalment was to be deposited upto 15<sup>th</sup> of March, 2003 without interest and on 14.4.2003 alongwith interest. But M/s Wazir Singh & Co. (hereinafter called agency) did not submit the 2<sup>nd</sup> advance instalment due upto 15.3.2003 (1<sup>st</sup> advance instalment in the month of February, 2003). Therefore, MD, HSRDC in communication to M/s Wazir Singh & Co. vide memo No.HSRDC/242 dated 10.4.2003 (Annexure-II) intimated that the next instalment falls due on 15.3.2003 and they were advised to deposit the instalment. It was also made clear that in case instalment alongwith interest is not paid within 30 days counted from the due date then the contract agreement will be terminated without further notice and the security deposit will be forfeited. However, the agency informed the Managing Director HSRDC vide letter dated 12.4.2003 and 15.4.2003 (Annexure-III & IV) that payment of next

continued

instalment falls due on 15.4.2003 without interest and upto 15.5.2003 alongwith interest as they have deposited first instalment on 19.2.2003 which was for the period from 20.2.2003 to 19.3.2003. In response to this letter of the agency, MD, HSRDC further directed them vide letter dated 22.4.2003 (Annexure-V) to deposit the 2<sup>nd</sup> instalment due to be paid upto 15.3.2003 alongwith interest immediately but not later than 30.4.2003. It was clarified to the agency that the remaining 23 instalments were to be deposited by 15<sup>th</sup> of every calendar month and as the agreement was executed on 19.2.2003, the 2<sup>nd</sup> instalment became due to be paid in the next calendar month i.e. by 15<sup>th</sup> March, 2003 and not by 15<sup>th</sup> April, 2003 as stated by them. It was also made clear that if the instalment is not deposited by them upto 30.4.2003, the agreement executed with them would be terminated and security deposit shall be forfeited.

5. However, M/s Wazir Singh & Co. again intimated the MD, Haryana State Roads & Bridges Development Corporation Ltd. vide letter dated 29.4.2003 (Annexure-VI) that the interpretation of calculating the due date for depositing the 2<sup>nd</sup> instalment by him is totally contrary to the provisions of the agreement because no where it is mentioned in the agreement that the 2<sup>nd</sup> instalment is to be deposited in the next month of the execution of agreement.
6. As the agency failed to deposit the 2<sup>nd</sup> instalment due to be paid upto 15.3.03 (to be paid with interest upto 14.4.03). MD, HSRDC forfeited the security deposit of agency amounting to Rs.2,18,70,000/- vide letter No.HSRDC /366 dated 9.5.2003 (Annexure-VII) and got the same encashed from the Bank on 10.5.2003. Also the Letter of Authorization for the collection of toll issued to M/s Wazir Singh & Co. vide memo No.HSRDC/184 dated 19.2.2003 was also withdrawn and cancelled vide memo No.HSRDC/366 dated 9.5.2003 (Annexure-VIII). Consequently Haryana State Roads & Bridges Development Corporation Ltd. also took over the possession of toll point on 10.5.2003 and started the collection of toll departmentally w.e.f. 10.5.2003.
7. M/s Wazir Singh & Co. intimated to the MD, HSRDC vide letter dated 5.6.03 (Annexure-IX) that the action of the forfeiture of security deposit and withdrawal of authorisation letter for the collection of toll on 9.5.2003 is illegal because they observed that the due date for depositing the 2<sup>nd</sup> instalment alongwith interest falls on 15.5.2003 whereas the MD, HSRDC considered the due date for depositing the 2<sup>nd</sup> instalment alongwith interest as 14.4.2003. Furthermore M/s Wazir Singh & Co. observed that the MD, HSRDC had forfeited their security deposit without terminating the agreement which is contrary to the provisions of the agreement and, therefore, they sought arbitration for the adjudication of their disputes.
8. On the request of the agency and the Corporation, E-in-C, Haryana PWD B&R appointed firstly Sh.K.K.Gupta, the then , CE, Housing Board, Haryana as Arbitrator and then consequent upon his posting as MD, HSRDC, Sh.R.C.Mehndiratta, the then CE (NH) as Arbitrator in exercise of the powers

conferred upon him under the agreement. Sh.R.C.Mehndiratta conducted proceedings of arbitration. He was subsequently appointed as substituted Arbitrator after his retirement from the post of CE (NH) and continued the proceedings. Sh.R.C.Mehndiratta, Arbitrator fell seriously ill and intimated the Engineer-in-Chief, Haryana PWD B&R that he was unable to continue as Arbitrator. Eventually, with the consent of both the parties to the dispute, E-in-C, Haryana PWD B&R appointed Sh.R.P.Bansal, Chief Engineer (Roads), Haryana PWD B&R as Sole Substituted Arbitrator. The Arbitrator announced his award on 11.10.2004 (Copy of Award is placed below as Annexure-X). Page 1 to 5 of the award deal with the background/history of the case. Pages 5 to 17 deal with dispute Nos.3.1, 3.2 and 3.5. Disputes No.3.3 and 3.4 are detailed on pages 17 to 21. Dispute No.3.6 and 3.7 are on pages 21 to 24. Claim No.4.1 has been dealt with from pages 24 to 27. Claim Nos.1, 2, 3, 4, 5, 6, 7 and 8 are at pages 24 to 33 of the award. Counter claims from the respondent have been mentioned at pages 33 to 36. Conclusion of the award is at page 36 and 37. Copy of the claim statement of the agency and the counter claims of the Corporation are placed below as Annexure-XI & XII. The reply of the Corporation to the claim statement of the agency is enclosed as Annexure-XIII.

9. Superintending Engineer, Chandigarh was the presenting officer in this case and Executive Engineer, HSRDC was the Asstt. Presenting Officer. The Presenting Officer has opined that there seems to be no point which speaks of misconduct on the part of the Arbitrator in his verdict. The Legal Cell of Head Office has opined that he agrees with the opinion of Superintending Engineer, Chandigarh and it is not a fit case for filing objection/appeal against the award.
10. A perusal of the case would reveal that the following clauses/sections of the agreement were contested by the parties during proceedings:-

**Clause 2 of the agreement (relevant part at page 7 of the agreement);**

"Further the Entrepreneur/Agent hereby agrees that he will pay to the HSRDC all instalments on due dates in advance as aforesaid and that further he will have to claim for interest on these instalments paid in advance.

And whereas, of default to pay any instalment by due date the same will be paid along with interest calculated @ 0.05% per day of delay. Further in case any instalment along with interest is not paid within 30 days counted from the due date, then the contract agreement will be terminated without any further notice. In such event without prejudicing the rights and other remedies available to the Haryana State Roads & Bridges Development Corporation Ltd., the Security Deposit and all instalments of contract amount already paid shall stand forfeited without any claim from the agency.

Further any authorization letter for collection of toll issued shall be treated as cancelled and withdrawn. Further, more Haryana State Roads & Bridges

Development Corporation Ltd. will be at liberty to take over the site and start collection of toll as deemed fit".

Clause 4 (iv) of the agreement at page 10);

"In the event of any default on the part of the Entrepreneur/Agent to comply with any of the terms of this contract or in the event of termination of contract by the HSRDC under any provision, the HSRDC shall have the right to forfeit the entire or part amount of security deposit furnished by the Entrepreneur/Agent and to appropriate the security deposit or any part thereof in or towards the satisfaction of any claim of the HSRDC any or damage, losses, costs charges of expenses, or otherwise however. The decision of Managing Director HSRDC shall be final binding on the Entrepreneur/Agent.

(viii) Except where otherwise provided or specified in the contract and subject also to, such power as may be delegated to him from time to time by the government, the decision of the Managing Director, HSRDC for the time being in charge of the said toll facility on all questions and matter whatsoever arising out of or in relation to or in connection with this contract or as to the interpretation of any of its provisions of clause/s either during the subsistence of this contract or at any time thereafter shall be final and binding on the parties to this contract."

#### Clause 28

"In the event the Entrepreneur/Agent disagreeing, with the decision mentioned in the provision of above, he may request the Managing Director, HSRDC, for appointment of an Arbitrator for adjudication of the dispute. On receipt of request from the Entrepreneur/Agent for appointment of Arbitrator, Engineer-in-Chief, Haryana PWD B&R will appoint an Arbitrator for adjudication of the dispute. The arbitrator so appointed shall conduct the arbitration proceedings in accordance with the provisions of the contract agreement. Fee of the Arbitrator shall be paid by the party who will seek the arbitration."

#### Clause 29.

"Pending appointment of Arbitrator or resolution of the dispute by Arbitrator, the Entrepreneur/Agent will continue to remit the agreed instalment of money to the Managing Director, HSRDC."

11. The crucial disputes decided by the Arbitrator to be examined critically from angle of legal scrutiny are dispute No.3.1, 3.2, 3.3 and 3.4 which are reproduced below.

3.1 What would be the due date for depositing second instalment without interest and with interest and what would be the due dates for depositing further instalments without interest and with interest?

Contd--5



- 3.2 As intimated in para 3.1 above, if the due date for the payment of second instalment without interest and with interest is considered as 15<sup>th</sup> April, 2003 and 15<sup>th</sup> May, 2003, then the action of the respondent in forfeiting the security deposit amounting to Rs.2,18,70,000/- vide letter No.HSRDC 354 dated 9.5.2003 is illegal and against the provisions of the Agreement?
- 3.3 Whether the respondent had any authority to forfeit the security deposit of the claimant amounting to Rs.2,18,70,000/- and withdraw the authorisation for the collection of toll without terminating the agreement in accordance with the provisions of clause 2 of the agreement and whether the action of respondent of forfeiting the security deposit of the claimant without terminating the agreement was illegal and contrary to the provisions of the agreement?
- 3.4 Whether the respondent had any authority to withdraw the authorisation for the collection of toll from the claimant without terminating the agreement in accordance with the provisions of clause 2 of the agreement?
12. It is brought out that by accepting the contention of the claimant that the due date of 2<sup>nd</sup> instalment is 15.4.2003 instead of 15.3.2003, the Arbitrator has ignored Clause 2 of the Agreement that the agency agrees to pay instalments on due dates in advance. If due date of 2<sup>nd</sup> instalment is taken as 15.4.2003 then the due date of last instalment becomes 15.2.2005 without interest and 15.3.2005 with interest whereas the agreement was valid upto 19.2.2005. So the decision of the Arbitrator implies that the agency could pay the instalment even after the expiry of the agreement which is a contradiction in itself. The instalments were required to be deposited in advance and the agency could not be expected to pay the instalment after the expiry of agreement.
13. Further it is stated that withdrawal of authorization for collection of toll from the agency and forfeiture of security was not at all connected with the termination of the agreement under any provision of the agreement. So the decision of the Arbitrator in this respect seems to be incorrect.
14. As per conclusion of the award, the Arbitrator has awarded the claimant i.e M/s Wazir Singh & Co. a sum of Rs.9,51,260/- (Claim No.1 as arbitrated/decided at page 27). Further simple interest @ 10% per annum on this amount of Rs.9,51,260 - from the date of forfeiture of security deposit i.e. from 10.5.2003 upto the date of announcement of award i.e. 11.10.2004 amounting to Rs.1,35,521/- has been awarded. Furthermore, the claimant has also been awarded simple interest @ 10% per annum on Rs.9,51,260/- from 12.10.2004 till the date of actual payment of the award.



This is with reference to the observations of LR Office vide note dated 10.12.2004 at NP-6.

In this connection, it is brought out that the comments/objection of the Corporation regarding award were given under para 12 and 13 on NP-5 ante. It is to be seen as to whether the decision of the Arbitrator regarding dispute No.3.1 and dispute No.3.3 in particular stand to the test of legal scrutiny in view of the provisions of contract and arguments submitted before the Arbitrator. The Arbitrator has decided w.r.t. dispute No.3.1 that the due date of 2<sup>nd</sup> instalment was 15.4.2003 instead of 15.3.2003 ignoring Clause 2 of the agreement view which the agency agreed to pay instalment on due dates in advance. As explained under para 12 on NP-5, this decision of Arbitrator implies that the agency could pay the instalment even after expiry of the agreement which is a contradiction in itself.

Regarding dispute No.3.3, the Arbitrator has decided that the respondent i.e. the Corporation should have first terminated the agreement and thereafter was entitled to forfeit the security deposit of the claimant whereas withdrawal of authorization for collection of toll from the agency and forfeiture of security was not at all connected with the termination of agreement under any provision of the agreement.

The other disputes and claims decided by Arbitrator are as a consequence of the decision of above ~~two~~<sup>three</sup> disputes primarily. So these ~~two~~<sup>three</sup> disputes are to be seen from legal angle in particular.

In view of above, case is submitted for orders/decision as solicited under para 15 on NP-6, please.

*R.K. Verma*  
(R.K. Verma)  
EE, HSRDC/12

*Mahabir Singh*  
(Mahabir Singh)  
SE (WBP-I)

*H.S. Chahal*  
(H.S. Chahal)  
MD, HSRDC

*S.C. Chaudhary*  
(S.C. Chaudhary)  
CPW

SE (WBP-I)

No. 100/HSRDC  
14-12-04

MD (HSRDC)

CPW

L.R.



*Amber - 8/12*

(from pre-page)

-3-

LAW AND LEGISLATIVE DEPARTMENT HARYANA

Perusal of the facts of the case, <sup>reveals that the disputes as pointed out by</sup> the Administrative Department <sup>on which the A.D.</sup> wants to file objections under section 34 of the Arbitration and Conciliation act, 1996, are as under:-

- 3.1 What would be the due date for depositing second installment with out interest and with interest and what would be the due dates for depositing further installments without interest and with interest.
- 3.3. Whether the Respondent had any authority to forfeit the security deposit of the Claimant amounting to Rs. 2,18,70,000/- and withdraw the authorisation for the collection of toll without terminating the Agreement in accordance with the provisions of Clause 2 of the Agreement and whether the action of respondent of forfeiting the security deposit of the Claimant with out terminating the agreement was illegal and contrary to the provisions of the Agreement ?
- 3.4 Whether the Respondent had any authority to not withdraw the authorisation for collection of toll from the Claimant with out terminating the agreement in accordance with the provisions of clause 2 of the agreement.

The above disputes were decided by the Arbitrator in favour of M/s Wasir Singh & Company, Claimant, within the terms of reference, in accordance with the Agreement of parties. It is admitted by the Administrative Department that there seems

*R.Sa*  
20/11/04

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(from pro-page)

to be no point which speaks of the misconduct on the part of the Arbitrator in his verdict. It is also pointed out in the reference made by the Administrative Department that Legal Cell of the Head Office had also agreed with the opinion of the Superintending Engineer, Karnal, in this regard and opined that it is not a fit case for filing objections/appeal against the Award. The Administrative Department availed reasonable opportunity to represent its case with regard to the above disputes before the Arbitrator. No ground, as mentioned in section 34 of the Arbitration and Conciliation act, 1996 against the Arbitral Award is made out. It is, therefore, not a fit case for filing application under section 34 of the Arbitration and Conciliation act, 1996 for setting aside the Arbitral Award. If the Administrative Department so desires it may obtain the opinion of the Advocate General, Haryana.

*R. J. Saw*  
20/12/04

A.L.R. (Idg.)  
for Legal Counsellor & Secretary  
to Government, Haryana.

*ms*  
20/12/04

G.P.W.

U.O.No. 74984

No. 23(214)2004

Dated:- 20/12/04

PAID

*ms*  
20/12/04

*E/c*  
*CE (H.A.)*  
20/12

*SEC (WRA) I*

*Omav*  
20/12

*EE/INDL*  
146

*ms*  
20/12/04



FPP

Subject: Arbitration award in the matter of arbitrator regarding dispute arising out of the contract for the work of collection of toll at toll point near Himachal Pradesh border on Jagadhari Chakrabarti Poonia Road (Contract No. HSNDC/Tol-11).

Kindly refer NP 1 to 9 for detailed history of the case. The advice of LR and Secretary to Govt of Haryana is available at NP 8 and 9.

The advice of Advocate General, Haryana is solicited, more especially of LR, in the matter in view of the comments of the Commission under para 12 and 13 on NP 5 ante and at NP 7 ante as to whether it is a fit case or not for filing objection under section 34 of the Arbitration and Conciliation Act 1996 for setting aside the award.

anand  
28.12.04  
(MANAGING SECRETARY)  
(SE/WBP-2)

Chahal  
(H.S. CHAHAL) 24/12/04.  
MD/HARDC

MD/HARDC

CPW

10107-HSADC  
12-2004

(S.C. CHAUDHARY)  
CPW

Ad. Advocate General

As per the direction of the Ad. A.G., I have explicated the file and am of the opinion that there is nothing to disagree with the opinion of Legal Remembrancer, Gt. So, it is not a fit case for filing appeal u/s 34 of the Arbitration and Conciliation Act 1996.

Wally  
23/12/04  
(Assistant Advocate General)  
ty

Wally  
30.12

PA/EC  
20/12/04

Wally  
30/12

Chahal  
30/12/04

any  
31/12/04

Prepare agenda for QOD meeting after discussing

SG (WBP-1)  
EE/HARDC

147

Subject:

Arbitration Award in the matter of arbitration regarding dispute arising out of the contract for the work of collection of toll at toll point near Uttar Pradesh Border on UP Border-Sonipat-Gohana road (Contract No.HSRDC/Toll-14)

- 1 - (No 13/59) 4 - 2003  
Annex VI

1. An Agreement for the work of toll collection at toll point near Uttar Pradesh Border on UP Border-Sonipat-Gohana road (Contract No.HSRDC/Toll-14) was signed on 19<sup>th</sup> February, 2003 between HSRDC and M/s Wazir Singh & Co. (Agent Entrepreneur) for a period of two years. Copy of Agreement placed below as Annexure-I.
2. As per Letter of Acceptance dated 7.2.2003 (Page 20 to 22 of the Agreement), the Entrepreneur was required to deposit Bank Guarantee of Rs.2,18,70,000/- as security deposit and an amount of Rs.60,75,000/- in the form of Bank Draft as first instalment. The remaining 23 instalments of Rs.60,75,000/- were required to be deposited upto 15<sup>th</sup> of every calendar month. The entrepreneur submitted the requisite security deposit and Bank draft of first instalment and thereafter the agreement was signed on 19.2.2003 for a contract price of Rs.14,58,00,000/- to be deposited in 24 monthly instalments of Rs.60,75,000/- each and accordingly M/s Wazir Singh & Co. was issued Letter of Authorisation by the MD, HSRDC vide memo No.HSRDC /188 dated 19.1.2003 authorising him for collecting toll from toll point for period upto 2 years (Page 33 of the Agreement).
3. As per provision of Clause 2 of the Agreement, the M/s Wazir Singh & Co. had agreed to deposit remaining 23 instalments of Rs.60,75,000/- each upto 15<sup>th</sup> of each calendar month and on default to pay an instalment by the due date, the same will be paid along with interest calculated @ 0.05% per day of delay within 30 days counted from the due date.
4. M/s Wazir Singh & Co. had deposited the first instalment before entering into Agreement on 19.2.2003 and remaining 23 instalments were to be deposited upto 15<sup>th</sup> of every calendar month falling in the period of instalment. M/s Wazir Singh & Co. had deposited first instalment on 19.2.2003 and the 2<sup>nd</sup> instalment was to be deposited upto 15<sup>th</sup> of March, 2003 without interest and on 14.4.2003 alongwith interest. But M/s Wazir Singh & Co. (hereinafter called agency) did not submit the 2<sup>nd</sup> advance instalment due upto 15.3.2003 (1<sup>st</sup> advance instalment in the month of February, 2003). Therefore, MD, HSRDC in communication to M/s Wazir Singh & Co. vide memo No.HSRDC/244 dated 10.4.2003 (Annexure-II) intimated that the next instalment falls due on 15.3.2003 and they were advised to deposit the instalment. It was also made clear that in case instalment alongwith interest is not paid within 30 days counted from the due date then the contract agreement will be terminated without further notice and the security deposit will be forfeited. However, the agency informed the Managing Director HSRDC vide letter dated 12.4.2003 and 15.4.2003 (Annexure-III & IV) that payment of next

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instalment falls due on 15.4.2003 without interest and upto 15.5.2003 alongwith interest as they have deposited first instalment on 19.2.2003 which was for the period from 20.2.2003 to 19.3.2003. In response to this letter of the agency, MD, HSRDC further directed them vide letter dated 22.4.2003 (Annexure-V) to deposit the 2<sup>nd</sup> instalment due to be paid upto 15.3.2003 alongwith interest immediately but not later than 30.4.2003. It was clarified to the agency that the remaining 23 instalments were to be deposited by 15<sup>th</sup> of every calendar month and as the agreement was executed on 19.2.2003, the 2<sup>nd</sup> instalment became due to be paid in the next calendar month i.e. by 15<sup>th</sup> March, 2003 and not by 15<sup>th</sup> April, 2003 as stated by them. It was also made clear that if the instalment is not deposited by them upto 30.4.2003, the agreement executed with them would be terminated and security deposit shall be forfeited.

5. However, M/s Wazir Singh & Co. again intimated the MD, Haryana State Roads & Bridges Development Corporation Ltd. vide letter dated 29.4.2003 (Annexure-VI) that the interpretation of calculating the due date for depositing the 2<sup>nd</sup> instalment by him is totally contrary to the provisions of the agreement because nowhere it is mentioned in the agreement that the 2<sup>nd</sup> instalment is to be deposited in the next month of the execution of agreement.

6. As the agency failed to deposit the 2<sup>nd</sup> instalment due to be paid upto 15.3.03 (to be paid with interest upto 14.4.03), MD, HSRDC forfeited the security deposit of agency amounting to Rs.2,18,70,000/- vide letter No.HSRDC /354 dated 9.5.2003 (Annexure-VII) and got the same encashed from the Bank on 10.5.2003. Also the Letter of Authorization for the collection of toll issued to M/s Wazir Singh & Co. vide memo No.HSRDC/188 dated 19.2.2003 was also withdrawn and cancelled vide memo No.HSRDC/354 dated 9.5.2003 (Annexure-VIII). Consequently Haryana State Roads & Bridges Development Corporation Ltd. also took over the possession of toll point on 10.5.2003 and started the collection of toll departmentally w.e.f. 10.5.2003.

M/s Wazir Singh & Co. intimated to the MD, HSRDC vide letter dated 5.6.03 (Annexure-IX) that the action of the forfeiture of security deposit and withdrawal of authorisation letter for the collection of toll on 9.5.2003 is illegal because they observed that the due date for depositing the 2<sup>nd</sup> instalment alongwith interest falls on 15.5.2003 whereas the MD, HSRDC considered the due date for depositing the 2<sup>nd</sup> instalment alongwith interest as 14.4.2003. Furthermore M/s Wazir Singh & Co. observed that the MD, HSRDC had forfeited their security deposit without terminating the agreement which is contrary to the provisions of the agreement and, therefore, they sought arbitration for the adjudication of their disputes.

8. On the request of the agency and the Corporation, E-in-C, Haryana PWD B&R appointed firstly Sh.K.K.Gupta, the then , CE, Housing Board, Haryana as Arbitrator and then consequent upon his posting as MD, HSRDC.

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Sh.R.C.Mehndiratta, the then CE (NH) as Arbitrator in exercise of the powers conferred upon him under the agreement. Sh.R.C Mehndiratta conducted proceedings of arbitration. He was subsequently appointed as substituted Arbitrator after his retirement from the post of CE (NH) and continued the proceedings. Sh.R.C.Mehndiratta, Arbitrator fell seriously ill and intimated the Engineer-in-Chief, Haryana PWD B&R that he was unable to continue as Arbitrator. Eventually, with the consent of both the parties to the dispute, E-in-C, Haryana PWD B&R appointed Sh.R.P.Bansal, Chief Engineer (Roads), Haryana PWD B&R as Sole Substituted Arbitrator. The Arbitrator announced his award on 11.10.2004 (Copy of Award is placed below as Annexure-X). Page 1 to 5 of the award deal with the background history of the case. Pages 5 to 17 deal with dispute Nos.3.1, 3.2 and 3.5. Disputes No.3.3 and 3.4 are detailed on pages 17 to 21. Dispute No.3.6 and 3.7 are on pages 21 to 24. Claim No.4.1 has been dealt with from pages 24 to 27. Claim Nos.1, 2, 3, 4, 5, 6, 7 and 8 are on pages 24 to 33 of the award. Counter claims from the respondent have been mentioned at pages 33 to 36. Conclusion of the award is at page 36 and 37. Copy of the claim statement of the agency and the counter claims of the Corporation are placed below as Annexure-XI & XII. The reply of the Corporation to the claim statement of the agency is enclosed as Annexure-XIII.

9. Superintending Engineer, Karnal was the presenting officer in this case and Executive Engineer, HSRDC was the Asstt. Presenting Officer. The Presenting Officer has opined that there seems to be no point which speaks of misconduct on the part of the Arbitrator in his verdict. The Legal Cell of Head Office has opined that he agrees with the opinion of Superintending Engineer, Karnal and it is not a fit case for filing objection/appeal against the award.
10. A perusal of the case would reveal that the following clauses/sections of the agreement were contested by the parties during proceedings:-

**Clause 2 of the agreement (relevant part as page 7 of the agreement);**

"Further the Entrepreneur/Agent hereby agrees that he will pay to the HSRDC all instalments **on due dates in advance** as aforesaid and that further he will have to claim for interest on these instalments paid in advance.

And whereas, of default to pay any instalment by due date the same will be paid along with interest calculated @ 0.05% per day of delay. Further in case any instalment along with interest is not paid within 30 days counted from the due date, then the contract agreement will be terminated without any further notice. In such event without prejudicing the rights and other remedies available to the Haryana State Roads & Bridges Development Corporation Ltd., the Security Deposit and all instalments of contract amount already paid shall stand forfeited without any claim from the agency.

- 3.1 What would be the due date for depositing second instalment without interest and with interest and what would be the due dates for depositing further instalments without interest and with interest?
  - 3.2 As intimated in para 3.1 above, if the due date for the payment of second instalment without interest and with interest is considered as 15<sup>th</sup> April, 2003 and 15<sup>th</sup> May, 2003, then the action of the respondent in forfeiting the security deposit amounting to Rs.2,18,70,000/- vide letter No.HSRDC 354 dated 9.5.2003 is illegal and against the provisions of the Agreement?
  - 3.3 Whether the respondent had any authority to forfeit the security deposit of the claimant amounting to Rs.2,18,70,000/- and withdraw the authorisation for the collection of toll without terminating the agreement in accordance with the provisions of clause 2 of the agreement and whether the action of respondent of forfeiting the security deposit of the claimant without terminating the agreement was illegal and contrary to the provisions of the agreement?
  - 3.4 Whether the respondent had any authority to withdraw the authorisation for the collection of toll from the claimant without terminating the agreement in accordance with the provisions of clause 2 of the agreement?
12. It is brought out that by accepting the contention of the claimant that the due date of 2<sup>nd</sup> instalment is 15.4.2003 instead of 15.3.2003, the Arbitrator has ignored Clause 2 of the Agreement that the agency agrees to pay instalments on due dates in advance. If due date of 2<sup>nd</sup> instalment is taken as 15.4.2003 then the due date of last instalment becomes 15.2.2005 without interest and 15.3.2005 with interest whereas the agreement was valid upto 19.2.2005. So the decision of the Arbitrator implies that the agency could pay the instalment even after the expiry of the agreement which is a contradiction in itself. The instalments were required to be deposited in advance and the agency could not be expected to pay the instalment after the expiry of agreement.
13. Further it is stated that withdrawal of authorization for collection of toll from the agency and forfeiture of security was not at all connected with the termination of the agreement under any provision of the agreement. So the decision of the Arbitrator in this respect seems to be incorrect.
14. As per conclusion of the award, the Arbitrator has awarded the claimant i.e M/s Wazir Singh & Co. a sum of Rs.1,16,72,100/- (Claim No.1 as arbitrated/decided at page 27). Further simple interest @ 10% per annum on this amount of Rs.1,16,72,100/- from the date of forfeiture of security deposit i.e. from 10.5.2003 upto the date of announcement of award i.e. 11.10.2004 amounting to



15. In view of the position explained above, it is requested that the LR & Secretary to Government of Haryana, may kindly be requested to render legal advice considered opinion as to whether it is a fit case for filing objections under Section 34 of the Arbitration and Conciliation Act, 1996.

*R.K. Verma*  
 (R.K. Verma)  
 EE, HSRDC

SE (WBP-I)

*Mahabir Singh*  
 (Mahabir Singh)  
 SE (WBP-I)

*H.S. Chahal*  
 (H.S. Chahal) 6/12/04  
 MD, HSRDC

*S.C. Chaudhury*  
 (S.C. Chaudhury)  
 CPW

MD (HSRDC)

LR

4480  
 8-12-04

LAW AND LEGISLATIVE DEPARTMENT HARYANA

Before tendering any advice in the matter, the Administrative Department is requested to intimate/communicate to this department, as to what objection, the Administrative Department wants to take, so as to facilitate proper examination.

*R.L. Saini* 10/12/04  
 A.L.R. (Lit.)  
 for Legal Remembrancer & Secretary  
 to Government, Haryana. 10/12/04

C.P.W.

U.O.No. 73320 / Co. 23 (213) 2004 Dated:- 10-12-04

15/PAEC  
 DL 13-12-2004

*[Signature]*  
 12-12-04

EYC  
 MD, HSRDC

*[Signature]*  
 13/12  
 SE (WBP) I.

*H.S. Chahal*  
 13/12/04

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15/12/04  
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 CPW  
 LR



CPW No. 2482  
 15/12

This is with reference to the observations of LR Office vide note dated 10.12.2004 at NP-6.

In this connection, it is brought out that the comments/objection of the Corporation regarding award were given under para 12 and 13 on NP-5 ante. It is to be seen as to whether the decision of the Arbitrator regarding dispute No.3.1 and dispute No.3.3<sup>3,4</sup> particular stand to the test of legal scrutiny in view of the provisions of contract and arguments submitted before the Arbitrator. The Arbitrator has decided w.r.t. dispute No.3.1 that the due date of 2<sup>nd</sup> instalment was 15.4.2003 instead of 15.3.2003 ignoring Clause 2 of the agreement view which the agency agreed to pay instalment on due dates in advance. As explained under para 12 on NP-5, this decision of Arbitrator implies that the agency could pay the instalment even after expiry of the agreement which is a contradiction in itself.

Regarding dispute No.3.3<sup>3,4</sup> the Arbitrator has decided that the respondent i.e. the Corporation should have first terminated the agreement and thereafter was entitled to forfeit the security deposit of the claimant whereas withdrawal of authorization for collection of toll from the agency and forfeiture of security was not at all connected with the termination of agreement under any provision of the agreement.

The other disputes and claims decided by Arbitrator are as a consequence of the decision of above ~~two~~<sup>three</sup> disputes primarily. So these ~~two~~<sup>three</sup> disputes are to be seen from legal angle in particular.

In view of above, case is submitted for orders/decision as solicited under para 15 on NP-6, please.

SE (WBP-I)  
10/09-115 JDC  
12-04  
MD (HSRDC)

CPW

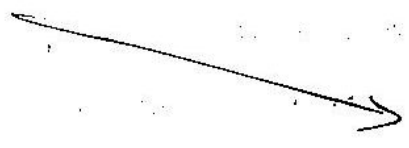
11/12/04  
L.B.

*R.K. Verma*  
(R.K. Verma)  
EE, HSRDC

*Mahabir Singh*  
(Mahabir Singh)  
SE (WBP-I)

*H.S. Chahali*  
(H.S. Chahali)  
MD, HSRDC

*S.C. Chaudhary*  
(S.C. Chaudhary)  
CPW



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(from pre-page)

-8-

LAW AND LEGISLATIVE DEPARTMENT BAKYANA

Perusal of the facts of the case <sup>reveals that the disputes as pointed out by</sup> the Administrative Department <sup>on which the A.D.</sup> wants to file objections under section 34 of the Arbitration and Conciliation Act, 1996, are as under:-

- 3.1 What would be the due date for depositing second installment with out interest and with interest and what would be the due dates for depositing further installments without interest and with interest.
- 3.2. Whether the Respondent had any authority to forfeit the security deposit of the Claimant amounting to Rs.15,01,200/- and withdraw the authorization for the collection of toll without terminating the Agreement in accordance with the provisions of Clause 2 of the Agreement and whether the action of Respondent of forfeiting the security deposit of the Claimant with out terminating the agreement was illegal and contrary to the provisions of the Agreement ?
- 3.4 Whether the Respondent had any authority to withdraw the authorization for collection of toll from the Claimant with out terminating the agreement in accordance with the provisions of clause 2 of the agreement.

The above disputes were decided by the Arbitrator in favour of M/s Wasir Singh & Company, Claimant, within the terms of reference, in accordance with the Agreement of parties. It is admitted by the Administrative Department that there seems

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(from pre-page)

to be no point which speaks of the misconduct on the part of the Arbitrator in his verdict. It is also pointed out in the reference made by the Administrative Department that Legal Cell of the Head Office had also agreed with the opinion of the Superintending Engineer, Karnal, in this regard and opined that it is not a fit case for filing objections/appeal against the Award. The Administrative Department availed reasonable opportunity to represent its case with regard to the above disputes before the Arbitrator. No ground, as mentioned in section 34 of the Arbitration and Conciliation act, 1996 against the Arbitral Award is made out. It is, therefore, not a fit case for filing application under section 34 of the Arbitration and Conciliation act, 1996 for setting aside the Arbitral Award. If the Administrative Department so desires it may obtain the opinion of the Advocate General, Haryana.

*R. S. Arora*  
20/11/04

A.L.R. (Lit.)  
for Legal Remembrance & Secretary  
to Government, Haryana.

*galt*  
20/12/04

C.P.V.

U.O.No. 74986

/Co.23(213)2004

Dated:- 20/12/04

*[Signature]*  
20-12-04

*[Signature]*  
20/12/04  
*[Signature]*  
20/12/04  
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20/12/04  
156

SE (W&A) I  
EE/MDL

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*[Handwritten notes]*

... award of the matter of arbitrator  
 ... awarding ... awarding one of the ...  
 ... after ...  
 ... Board of JP ...  
 ...

... refer ... 2 to 9 ... details ...  
 case. The advice of LR and Secretary to Govt. ...  
 is available at NP 2 and 9.

The advice of Advocate General, Haryana is solicited, viz.  
 suggestions, on the matter in view of the comments of the Corporation  
 under para 12 and 13 on NPS rule and at NP 7 ante as to  
 whether it is a fit case or not for filing objections  
 under Section 34 of the Arbitration and Conciliation Act 1996  
 for setting aside the award.

Manoj  
 23/11/04  
 (MANOJ SINGH)  
 SE/WOPF

Prabhu  
 24/11/04  
 (H.S. CHANDEL)  
 MD/H/ADCL

S.C. Choudhary  
 (S.C. CHAUDHARY)  
 CPW

MD/H/ADCL  
 NP 105-H/SADP  
 12-2004

CPW

Advocate General

As per the direction of the Ad AG., I have perused the file and  
 I am of the opinion that there is nothing to disagree with  
 the opinion of legal Remembrance, Hy. So it is not a fit  
 case for filing appeal u/s 34 of the Arbitration and Conciliation Act  
 1996.

Lochay P  
 30/11/04  
 (Assistant Advocate General)  
 Hy.

MD  
 30/12  
 E/C

Dr. T. J. ...  
 30/11/04

Prabhu  
 30/11/04  
 (H.S. CHANDEL)  
 MD/H/ADCL



192- Amcaw III

# ARBITRATION AWARD

By

R.P.Bansal , Sole Substituted Arbitrator-cum-  
Chief Engineer (Roads) Haryana PWD B&R,  
Branch Chandigarh

IN THE MATTER OF THE ARBITRATION AND RECONCILIATION  
ACT, 1996

AND

IN THE MATTER OF ARBITRATION REGARDING  
DISPUTE ARISING OUT OF THE CONTRACT FOR THE  
WORK OF COLLECTION OF TOLL AT TOLL POINT IN  
KM 2.4 NEAR GURGAON ON GURGAON-PATAUDI-  
REWARI ROAD

(CONTRACT NO. HSRDC/ TOLL/ 2)

BETWEEN

RAJIV SINGLA,  
30/64, WEST PUNJABI BAGH  
NEW DELHI ( "The Claimant" )

And

The Managing Director,  
Haryana State Roads & Bridges Development  
Corporation Limited,  
SCO-23, Sector 7-C, Madhya Marg,  
Chandigarh- 160019. ( "The Respondent" )

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100Rs.



ARBITRATION AWARD

Before: R.P.Bansal (Sole Substituted Arbitrator)  
Chief Engineer (Roads)  
Haryana PWD B&R Branch  
Chandigarh

IN THE MATTER OF THE ARBITRATION AND RECONCILIATION ACT, 1996

AND

IN THE MATTER OF ARBITRATION REGARDING DISPUTE ARISING OUT  
OF THE CONTRACT FOR THE WORK COLLECTION OF TOLL AT TOLL  
POINT IN KM 2.40 NEAR GURGAON ON GURGAON-PATAUDI-REWARI  
ROAD.

(CONTRACT NO. HSRDC/TOLL/2)

BETWEEN

RAJIV SINGLA  
30/64, West Punjabi Bagh,  
New Delhi

ENTREPRENEUR

herein after referred to as "The Claimant"

The Managing Director,  
Haryana State Roads  
& Bridges Development Corporation Limited,  
SCO-23, Sector 7-C, Madhya Marg,  
Chandigarh-160019.

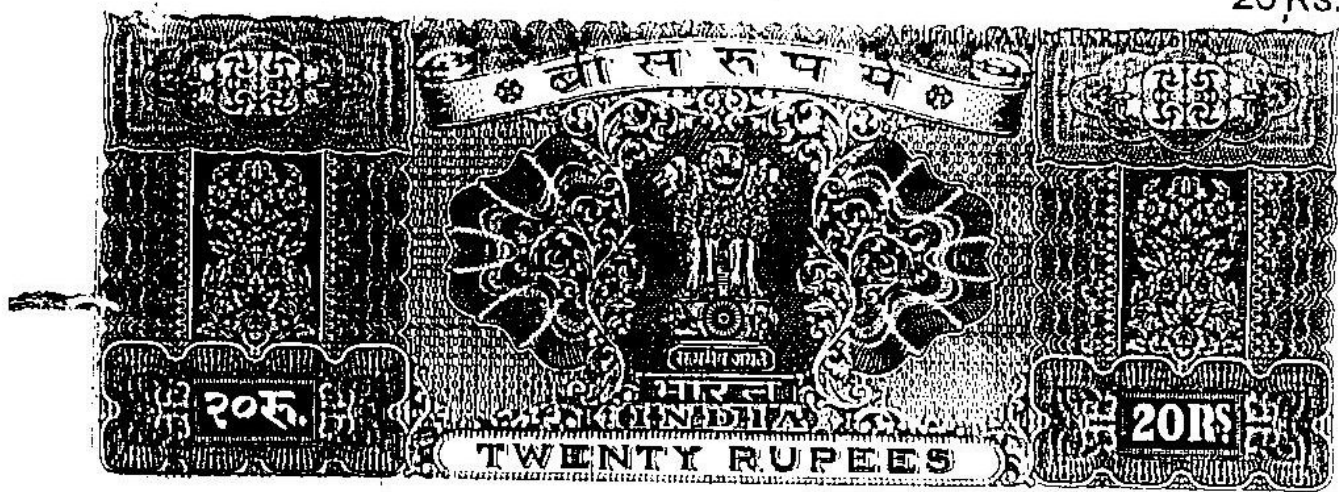
MD HSRDC

herein after referred to as "The Respondent"

Where as in pursuance of the contract No. HSRDC/TOLL/2  
executed between M/s. Rajiv Singh, 30/64, West Punjabi Bagh, New Delhi and  
the Managing Director, Haryana State Roads & Bridges Development  
Corporation Limited, SCO-23 Sector-7 Madhya Marg, Chandigarh for the  
appointment of Arbitrator under Section 11(2) of the Arbitration and  
Reconciliation Act, 1996 and Clause 28 of the Agreement pertaining to the work

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20 Rs.



for the collection of toll at toll point in Km 2.4 near Gurgaon on Gurgaon-Pataudi-Rewari Road (Contract No. HSRDC /Toll/ 2). Engineer-in-Chief, Haryana PWD B&R Chandigarh being the appointing authority in accordance with the provisions of the Agreement had initially appointed Sh. K.K.Gupta, the then Chief Engineer, Haryana Housing Board Chandigarh as Sole Arbitrator vide his memo no HHUP-II/467 dated 18.7.2003 and he conducted two hearings. Later on Sh. K.K.Gupta was appointed by the Haryana Government as Managing Director, Haryana State Roads & Bridges Development Corporation Limited (Respondent) as such on the request of Sh. K.K.Gupta, the Engineer-in-Chief Haryana PWD B&R Chandigarh being the appointing authority in accordance with the provisions of the Agreement appointed Chief Engineer (NH), Haryana PWD B&R branch, Chandigarh as Sole Substituted Arbitrator vide his memo no HHUP-II/689 dated 17.11.2003. Six hearings were conducted by Sh. R. C Mehndiratta Chief Engineer (NH)- cum-Sole Substituted Arbitrator. Although Sh. R.C.Mehndiratta Chief Engineer (NH) retired from Haryana Government service on 30.6.2004, but Engineer-in-Chief, Haryana PWD B&R Chandigarh re-appointed Sh. R.C.Mehndiratta (by name) as Sole Substituted Arbitrator vide his memo no HHUP-II/273 dated 5.7.2004 and he conducted one hearing. However, later on he suffered heart attack and resigned from this assignment. He requested the appointing authority to appoint another substituted arbitrator. Accordingly, Engineer-in-Chief, Haryana PWD B&R Chandigarh appointed the undersigned as Substituted Sole Arbitrator vide his memo no HHUP-II/348 dated 14.9.2004 for the settlement of dispute between the parties arising out of Contract no HSRDC/Toll/2

Accordingly both the parties were directed to attend the hearing along with all the documents and witnesses.

Where as I, R.P.Bansal, the Sole Substituted Arbitrator-cum-Chief Engineer (Roads) Haryana PWD B&R Branch, Chandigarh carefully considered

*(Signature)*  
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the submissions made in writing and orally as well as documents/evidence placed before me by both the parties. After going through the documents produced before me, along with written and oral arguments made by the Representatives and Counsels of both the parties, I hereby make my award as follows:-

### History of the case

1. Haryana Government vide notification No. 9/106/2001-3-B&R (Works) (Toll-2) - dated 02.01.2003 in exercise of the powers conferred by clause (f) of section 2 of the Haryana Mechanical Vehicles (Levy of Tolls) Act, 1996 (Haryana Act 9 of 1996), notified the section of Gurgaon-Pataudi-Rewari Road (State Highway No.26) to be "toll facility" for the purpose of the said Act. Further in exercise of the powers conferred by section 4 of the said Act, the Governor of Haryana had authorized Haryana State Roads and Bridges Development Corporation Limited to demand, collect and retain tolls from the said toll facility at toll point in Km 2.4 near Gurgaon on Gurgaon-Pataudi-Rewari Road.
2. Managing Director, Haryana State Roads & Bridges Development Corporation Limited (Respondent) invited bids for the collection of toll at this toll facility vide Bid Notice No HSRDC/ 02 dated 8.10.2002. Bids were received on 08.11.2002 and "The Claimant" had quoted the highest bid price of Rs.8,54,40,000/- for two years to be deposited in 24 equal monthly installments.
3. The Respondent awarded this work to "The Claimant" and issued Letter of Acceptance to "The Claimant" vide his memo no HSRDC/610 dated 27.12.2002 for contract price of Rs.8,54,40,000/- for period of two years and directed "The Claimant" to deposit Security Deposit of Rs. 1,28,16,000/- (Rupees One Crore twenty eight lacs sixteen thousand only) in the form of Bank Guarantee as stipulated in clause 15, with in 15 days from the date of issue of letter of Acceptance and was also directed to deposit 1<sup>st</sup> installment amounting to Rs. 35,60,000,- in advance with in 15 days from the date of issue of Letter of Acceptance in the form of Bank draft as stipulated in clause 16, and signing of the Agreement as stipulated in clause 17 of Instructions to Bidders.
4. "The Claimant" deposited Security Deposit amounting to Rs. 1,28,16,000/- (Rupees One Crore twenty eight lacs sixteen thousand only) vide BG No 23/02-03 dated 09.01.2003 of State Bank of Patiala, Hisar on 9.1.2003 and also deposited advance first installment to the Respondent amounting to Rs. 35,60,000/- through

16/8'



Bank draft in favour of the Managing Director, Haryana State Roads & Bridges Development Corporation Limited payable at Chandigarh

5. An Agreement was executed between "The Claimant" and the Respondent on 10.01.2003 vide Agreement No HSRDC/Toll/ 2 for a contract price of Rs. 8,54,40,000/- to be deposited in 24 monthly installments of Rs. 35,60,000/- each and accordingly "The Claimant" was issued Letter of Authorization by the Respondent vide his Memo No HSRDC/28 dated 10.01.2003 authorizing "The Claimant" for collecting toll from the toll point in Km 2.40 on Gurgaon- Pataudi-Rewari Road for period of 2 years at the rates specified in the Schedule.
6. As per provisions of Clause-2 of the Agreement, "The Claimant" had agreed to deposit remaining 23 installments of Rs.35,60,000/- each upto 15<sup>th</sup> of every calendar month and on default to pay any installment by the due date, the same will be paid along with the interest calculated @ 0.05% per day of the delay with in 30 days from the due date. "The Claimant" had deposited the first installment before entering into Agreement on 10.01.2003 and remaining 23 installments were to be deposited on 15<sup>th</sup> of every calendar month. "The Claimant" had deposited first installment on 10.01.2003 which was for the period from 11.01.2003 to 10.02.2003 and the period of 2<sup>nd</sup> installment was from 11.02.2003 to 10.03.2003 and the next installment was to be deposited upto 15<sup>th</sup> of every calendar month falling in the period of installment with out any interest. Therefore second installment amounting to Rs. 35,60,000/- was paid by the claimant to the Respondent on 15.2.2003, thereby fulfilling the terms and conditions of the Agreement by the Claimant.
7. As per Agreement, "The Claimant" was authorized to collect toll at Toll point at Km 2.4 near Gurgaon on Gurgaon-Pataudi-Rewari Road with effect from 11.1.2003 but "The Claimant" was not allowed to operate the toll point in Km 2.4 near Gurgaon in accordance with the provisions of the Agreement. It has been claimed by the Claimant that the toll point was got shifted by the District Administration from Km 2.40 to Km 3.00 (Actual RD 3.40 Km) with the help of local police on administrative grounds as is evident from the copies of News papers cuttings dated 13.2.2003 and 14.2.2003. Deputy Commissioner Gurgaon vide Letter no 217/LP dated 8.4.2003 addressed to Executive Engineer, PWD B&R No-1 Gurgaon with copy to "The Claimant" had confirmed/ admitted having got shifted the Toll point from Km 2.4 to Km.3.00 on administrative grounds.



8. The Claimant informed the Respondent vide Letter dated 09.04.2003 about these facts and brought out that due to shifting of toll point from Km 2.4 to km.3.00, there did not remain any valid contract/agreement between both the parties. The Claimant had requested the Respondent for terminating the agreement on account of gross violation of the terms and conditions of the Agreement by the District Administration Gurgaon and "The Claimant" may be compensated of the huge loss already incurred by him on account of deficiency in the toll collection.
9. The Respondent vide Memo No HSRDC/34/02/271 dated 22.04.2003 informed "The Claimant" that no such instructions for shifting of the toll point have been given by the Respondent and taking instructions from the District Administration Gurgaon and thereby complying the same is the responsibility of the Agency. The Respondent also endorsed copy of this letter to the Deputy Commissioner Gurgaon clearly indicating that any contractual implication on account of their interference in the shifting of toll point shall rest upon the Deputy Commissioner Gurgaon.
10. In response to this letter from the Respondent, The Claimant informed the Respondent vide letter dated 2.5.2003 that Haryana Government had issued notification for levying toll at Km 2.4 on Gurgaon- Pataudi-Rewari Road and "The Claimant" had been issued authorization letter for collecting toll from toll point in Km 2.4. While issuing the authorization letter to "The Claimant", copies of the same were also dispatched by the Respondent to the Deputy Commissioner Gurgaon and Senior Superintendent of Police Gurgaon for information and necessary action. Evidently "The Claimant" had to collect toll from the toll point in Km 2.4 and the District Administration had to assist and cooperate with the Entrepreneur/Agent for ensuring smooth collection of toll in accordance with the provisions of the Notification. It was further brought out that no collection of toll is possible in the district at any toll point without the assistance and cooperation of the District Administration. It was also intimated that the District Administration Gurgaon had forcibly got shifted the toll point from Km 2.4 to km 3.40 thereby making the scope of the contract and the notification as invalid. Haryana State Roads & Bridges Development had awarded the contract to "The Claimant" for the collection of toll at toll point in Km 2.4 but has totally failed to perform its obligations and responsibilities for ensuring proper collection of the toll at toll point in Km 2.4 in accordance with the provision of the contract and notification issued by the Haryana Government in this regard. Since no collection of toll was possible without the assistance and cooperation of the District Administration Gurgaon. Respondent had again been requested that

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this Agreement may please be terminated on account of fundamental breach of contract by the District Administration Gurgaon/ HSRDC

11. The Respondent vide Letter No HSRDC/34/02/382 dated 15.5.2003 intimated that the Respondent had not breached the Contract and the Agreement will not be terminated on this account. This plea was totally considered hypothetical by the Claimant because "The Claimant" had no authority to collect toll at toll point in Km 3.40 in violation of the provisions of the Notification date 2.1.2003 issued by the Haryana Government in this regard. However the Respondent through this letter again threatened the Claimant that if next installment is not paid by the due date, then the security shall be forfeited. The Claimant had deposited the next installment amount of Rs.35,60,000/- on 15.5.2003 vide letter dated 15.5.2003. This installment had been deposited under protest subject to the condition that The Claimant reserves the right to claim the refund of this installment on account of fundamental breach of Agreement by the Respondent
12. The Claimant claimed that he had been collecting toll at toll point in Km 3.40 in violation of the provisions of notification dated 2.1.2003 due to forcible shifting of the toll point from Km 2.40 to Km 3.40 by the District Administration Gurgaon though "The Claimant" had the authority of collecting toll at toll point in Km 2.40 in view of the authorization issued by the Respondent in this regard. Since no immediate relief was expected from the Respondent as such "The Claimant" had no other option except to seek the arbitration of this dispute and accordingly "The Claimant" requested the Respondent vide letter no Spl/4 dated 22.5.2003 for appointing the Arbitrator in accordance with the provisions of Clause 28 of the Agreement.
13. Next installment was also deposited by the Claimant on 11.6.2003 vide his letter dated 11.6.2003. It was again pointed out by the Claimant that the Respondent has committed fundamental breach of Agreement due to shifting of the toll point. Neither Agreement had been terminated by the Respondent on this account nor had the Arbitrator been appointed as such the Respondent had again been informed that installment is being deposited under protest and "The Claimant" reserves the right to claim the refund of this amount along with interest.
14. Deputy Commissioner Gurgaon vide letter no 255/Lp dated 18.6.2003 had again directed "The Claimant" for shifting of the toll point to its original location at Km 2.40 near Gurgaon-Pataudi Road.

8. 164

15. The Respondent vide Letter no HSRDC/34/02/512 dated 4.7.2003 had again intimated that the Respondent had not breached the provisions of the Contract because they had not asked "The Claimant" for shifting of this toll point.
16. The Claimant claimed that the letter date 18.6.2003 from Deputy Commissioner Gurgaon was received by "The Claimant" on 9.7.2003 and thereafter "The Claimant" was threatened by the District Administration for shifting of the toll point to its original position at Km. 2.40 near Gurgaon. However, the District Administration got removed toll point from Km 3.40 on 16.7.2003 and directed for shifting of the toll point at Km 2.4. "The Claimant" tried to establish the toll point at Km 2.4 in accordance with the provisions of the Agreement and also as directed by the District Administration Gurgaon on 16.7.2003 but "The Claimant" was unable to establish toll point at Km 2.40 because of stiff resistance from the local people with the result that "The Claimant" had to abandon the collection of toll. Accordingly "The Claimant" had informed the Respondent about these facts vide letter dated 18.7.2003 and the Respondent had been requested to release the security deposit and also compensate the loss already suffered on account of deficit toll collections.
17. The Respondent proceeded to terminate the Agreement vide his Letter no HSRDC/536 dated 18.7.2003 and also forfeited the security deposit amount of Rs.1,28,16,000/- in the form of Bank Guarantee no 23/02-03 dated 9.1.2003 of State Bank of Patiala, Hisar. The authorization issued to "The Claimant" for collecting toll had also been withdrawn through this letter though "The Claimant" had already closed the toll point on 16.7.2003 itself on its own due to reasons explained above.

#### CLAIM NO - 1

The Claimant filed claim for Rs. 3,27,68,240/- due to reduction in the volume of traffic on account of the judgment of the Hon'ble Apex Court banning mining activities in Arawali Range after the submission of bid by the claimant and also loss of toll collection on account of shifting of toll point on NH-8 located before the Bilaspur crossing Chowk to after Bilaspur Chowk by the National Authority of India with effect from 1.1.2003.

In support of the claim, the Claimant has explained/ brought out as under:-

- (i) The Claimant submitted the bids for this work on 8.11.2002 and the same was accepted on 27.12.2002. He was not aware of the facts that Supreme Court had banned the mining activities in Gurgaon district.

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Rates were submitted by the claimant considering that mining activities in the Gurgaon district are as usual thereby considering the same volume/intensity of traffic at the toll point on Gurgaon-Pataudi- Rewari Road. The fact of ban of mining activities in Gurgaon district should have been disclosed by the Respondent at the time of acceptance of Agreement. The Claimant further explained that bids for the collection of toll on Gurgaon-Sohna Road were also invited along with the bid for the work in question and the highest bidder had quoted the bid price of Rs 20 crores for two years but when the Bidder came to know that the mining activities have been banned in the Gurgaon district, he backed out from his offer. Later on bids for one year were called and the highest bid was for Rs 4.32 crores. Evidently the bid price reduced from Rs. 10 crore for one year before the ban on mining activities in Gurgaon district reduced to Rs. 4.32 crores after the ban of mining in the Gurgaon district. Evidently the claimant has suffered loss of revenue/toll collection on this account.

- (ii) The Respondent had got carried out traffic census before the ban on mining and after the ban on mining and the comparison is as under:-

Sr. No	Category of vehicles	Number of vehicles per day before the ban on mining as per traffic census i.e before calling tenders	Number of vehicles per day before the ban on mining as per traffic census i.e before opening of tenders
1	Buses	204	189
2	Trucks	5198	4274
3	Multi-axled vehicles	906	1280
4	Cranes	17	17
5	Road Rollers	10	10
6	Bull Dozers	4	4

- (iii) There is Bilaspur Chowk on National Highway no-8. National Highway Authority of India had located the toll point before the crossing near Bilaspur Chowk and no vehicle bound for Rewari or Pataudi could pass from the toll point with out paying the toll to NHA but later on the National Highway Authority of India shifted the toll point beyond Bilaspur Chowk on 1.1.2003 with the result that vehicles bound for Pataudi or Rewari could escape the toll point. Evidently the vehicles bound for Pataudi or Rewari, who were earlier required to pay toll either on toll point of NHA on NH-8 or at the toll point in Km 2.4 near Gurgaon, but due to shifting of the toll point beyond the Bilaspur Chowk, the vehicles bound for Rewari or Pataudi escaped from the

payment of toll by diverting the vehicles through Bilaspur- Patatudi Road.

- (iv) The Claimant had anticipated the toll collections from toll point in Km 2.4 to the extent of Rs 3.50 lacs per day, where as the anticipated toll collections on the basis of traffic survey worked out to Rs 2.26 lacs per day. Furthermore on account of shifting of toll point by the National Highway Authority of India, the number of vehicles passing through the toll point reduced drastically. The Claimant could collect toll to the extent of Rs 59,83,300/- during the period from 11.1.2003 to 12.2.2003 at toll point in Km 2.4 near Gurgaon which works out to Rs. 1,81,312/- per day as compared to the anticipated toll collection of Rs 2,26,200/- per day. Accordingly anticipated toll collection for 730 days @ Rs 2,26,200/- per day works out to Rs 16,51,26,000/- where as anticipated toll collection for 730 days on the basis of actual toll collection of Rs 1,81,312/- per day works out to Rs. 13,23,57,760/-. Thus the Claimant is entitled for the claim of Rs 3,27,68,240/- on this account which should be awarded.

**The Respondent defended /refuted the claim as under:-**

- (i) The claim of the Claimant is misleading and has no relevancy. As per terms and conditions of the bid document i.e clause 3 of the Instructions to Bidders, the bidder has to assess the toll revenue at his own before quoting the bid and furthermore, the mining activity in Gurgaon district was banned by the Hon'ble Supreme Court of India vide orders dated 29/30-10-2002, where as the bids were received on 8.11.2002 i.e after the ban of mining by the Apex Court.
- (ii) The collection of toll at toll point on Gurgaon-Sohna Road has no relevancy because that Entrepreneur failed to deposit the security deposit within stipulated period and also did not sign the Agreement as such his bid security amounting to Rs. 50 lacs was forfeited in accordance with the provisions of the bid documents.
- (iii) Shifting of the toll point by the National Highway Authority of India does not have bearing on the present contract.
- (iv) Respondent pointed out that the anticipated toll collections projected by the Claimant is mere imagination and has no bearing on the Agreement. Moreover, as regards the anticipated toll collections, the Respondent had already stipulated in the bid documents that bidder should assess the toll on his own. Furthermore, the Claimant has not run the toll barrier for 730 days and how he is claiming the loss for 730 days.



- (v) Claimant should have raised the claim with in the currency of the Agreement, giving reference of the particular clause of the Agreement under which the claim has been raised. The claim of the Claimant is not supported with the reference of clause of the Agreement and hence the same is baseless. It has no merit and mere hypothetical calculation and therefore the claim may be rejected.

**After considering written arguments and after hearing oral arguments of both the parties, the claim is decided as under:-**

1. Bids for the collection of toll at toll point in Km 2.4 near Gurgaon on Gurgaon-Pataudi- Rewari Road were received on 8.11.2002 where as the Hon'ble Supreme Court of India vide orders dated 29/30-10-2002 had prohibited and banned the mining activities in the entire Aravali hills. This ban extended to the entire hill range of Aravali from Haryana to Rajasthan. However, Hon'ble Supreme Court of India considered the report dated 14.12.2002 of the Central Empowered Committee and issued further orders dated 16.12.2002 clarifying that for the time being, no mining shall be permitted with in the areas of Gurgaon district in the state of Haryana where the mining is regulated under the notification dated 7.5.1992 issued under section 3 of the Environment (protection) Act, pursuant to permission granted after 29<sup>th</sup> November, 1999. Evidently it was known to the Claimant that Hon'ble Supreme Court of India had banned the mining activities in the entire Aravali range in Haryana vide orders dated 29/30-10-2002 though the same were further clarified by the Apex court vide orders dated 16.12.2002. Since the bids were received on 8.11.2002 as such it was the responsibility of the Claimant to have based his bid price on the basis of his assessed toll collection in accordance with the provisions of bid documents. There is no evidence to prove at this stage whether the claimant had taken the impact of ban in the mining activities in the Aravali range at the time of submission of bids or not. Thus this part of the claim is rejected.
2. Regarding the impact on the toll collection of the Claimant due to shifting of the toll point by the National Highway Authority of India near Bilaspur Chowk with effect from 1.1 2003, the Claimant has failed to furnish any concrete evidence/documents to prove the impact on his toll collections at toll point in Km 2.4 near Gurgaon due to shifting of the toll point by the National Highway Authority of India near Bilaspur Chowk. Merely intimating the apprehension about the impact/reduction of his toll collections due to shifting of toll by the NHAI with out any documentary evidence does not entitle the

Claimant to make any claim on this account. Thus, this part of the claim raised by the Claimant is rejected.

### CLAIM NO 2.

The Claimant has raised claim for a sum of Rs 1,42,47,910/- on account of shifting of toll point from Km 2.4 to Km 3.4 by the District Administration, Gurgaon with the help of local police and the PWD department (though in the letter Km 3 is written).

In support of the claim, the Claimant has explained/ brought out as under:-

1. The Claimant started their work at Km 2.4 on Gurgaon-Pataudi-Rewari Road on 11.1.2003 but there was lot of hue and cry by the Transporters and the Deputy Commissioner, Gurgaon ultimately asked the Claimant to shift the toll point from Km 2.4 to 3.4 and got the same shifted on 13.2.2003 with the help of local police and PWD officers/officials, though written orders from the Deputy Commissioner Gurgaon, confirming the shifting of toll point from Km 2.4 to Km 3.00 were received by the Claimant on 8.4.2003. No notification was got issued from the Haryana Government for the shifting of toll point from Km 2.4 to km 3.4. The action of the Government in asking the Claimant to shift the toll point was illegal and unauthorized. In fact, the Agreement came to end when the toll point was forcibly got shifted from Km 2.4 to Km 3.4.
2. The Claimant state that as per Agreement, "The Claimant" was authorized to collect toll at Toll point at Km 2.4 near Gurgaon on Gurgaon-Pataudi-Rewari Road with effect from 11.1.2003 but "The Claimant" was not able to operate the toll point in Km 2.4 near Gurgaon from the very beginning due to objections/interference from the District Administration Gurgaon. "The Claimant" was not at all allowed to operate the toll point in Km 2.4 near Gurgaon in accordance with the provisions of the Agreement and the Notification issued by the Haryana Government. The toll point was got shifted by the District Administration, Gurgaon from Km 2.40 to Km 3.00 (Actual RD 3.40 Km) with the help of local police and PWD B&R officers on administrative grounds as is evident from the copies of News papers cuttings dated 13.2.2003 and 14.2.2003 thereby putting "The Claimant" at huge loss of collection of Toll. Deputy Commissioner, Gurgaon vide Letter no 217/LP dated 8.4.2003 addressed to Executive Engineer, PWD B&R No-1 Gurgaon with copy to "The Claimant" has clearly confirmed/ admitted having got shifted the Toll point from Km 2.4 to Km.3.00 on administrative grounds.
3. "The Claimant" informed the Respondent vide Letter dated 09.04.2003 about these facts and had also intimated that The Claimant had made assessment of anticipated toll collection at Toll point in Km.2.4 near

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Gurgaon while submitting bids for the collection of toll where as now the toll point has been got shifted to Km 3.40 and the toll collections have reduced drastically. Furthermore, as per terms and conditions of the contract and the Notification issued by the Haryana Government, "The Claimant" is only authorized to collect toll at Toll point in Km 2.40 near Gurgaon on Gurgaon-Pataudi-Rewari Road and not at all authorized to collect toll at Toll point in Km.3.00 or Km 3.4 near Gurgaon. In view of the these facts, the Agreement had been frustrated and "The Claimant" was not being allowed to collect toll at toll point in km 2.4 near Gurgaon in accordance with the provisions of the Agreement. Due to shifting of toll point from Km 2.4 to km.3.00, there did not remain any valid contract/agreement between both the parties. Claimant further requested the Respondent to terminate the Agreement on account of gross violation of the terms and conditions of the Agreement by the District Administration Gurgaon and "The Claimant" may be compensated of the huge loss already incurred by him on account of deficiency in the toll collection.

- 4 Respondent vide Memo No HSRDC/34/02/271 dated 22.04.2003 had informed "The Claimant" that no such instructions for shifting of the toll point have been given by the Respondent and taking instructions from the District Administration Gurgaon and thereby complying the same is the responsibility of the Agency. The Respondent also endorsed copy of this letter to the Deputy Commissioner Gurgaon clearly indicating that any contractual implication on account of their interference in the shifting of toll point shall rest upon the Deputy Commissioner Gurgaon. In response to this letter from the Respondent, The Claimant had clearly informed the Respondent vide letter dated 2.5.2003 that Haryana Government had issued notification for levying toll at Km 2.4 on Gurgaon- Pataudi- Rewari Road and "The Claimant" had been issued authorization letter for collecting toll from toll point in Km 2.4. While issuing the authorization letter to "The Claimant", copies of the same were also dispatched by the Respondent to the Deputy Commissioner Gurgaon and Senior Superintendent of Police Gurgaon for information and necessary action. Evidently "The Claimant" had to collect toll from the toll point in Km 2.4 and the District Administration, Gurgaon had to assist and cooperate with the Entrepreneur/Agent for ensuring the smooth collection of toll in accordance with the provisions of the Notification. It was further brought out that no collection of toll is possible in the district at any toll point without the assistance and cooperation of the District Administration. It was also intimated that the District Administration Gurgaon had forcibly got shifted the toll point from Km 2.4 to km 3.40 thereby making the scope of the contract and the notification as invalid. Haryana State Roads & Bridges

Development Corporation had awarded the contract to "The Claimant" for the collection of toll at toll point in Km 2.4 but had totally failed to perform its obligations and responsibilities for ensuring proper collection of the toll at toll point in Km 2.4 by the Claimant in accordance with the provision of the contract and notification issued by the Haryana Government in this regard. Since no collection of toll was possible without the assistance and cooperation of the District Administration Gurgaon as such "The Claimant" was unable to collect toll in accordance with the provisions of the Contract. The Claimant had requested the Respondent that Agreement may please be terminated on account of fundamental breach of contract by the District Administration Gurgaon/HSRDC and "The Claimant" may be compensated of the huge loss already incurred by "The Claimant" on account of deficiency in the toll collection.

5 Respondent vide Letter No HSRDC/34/02/382 dated 15.5.2003 had intimated that the Respondent had not breached the Contract and the Agreement will not be terminated on this account. This plea was totally considered hypothetical by the claimant because "The Claimant" had no authority to collect toll at toll point in Km 3.00 in violation of the provisions of the Notification dated 2.1.2003 issued by the Haryana Government in this regard. However the Respondent through this letter again threatened the Claimant that if next instalment is not paid by the due date, then the security deposit shall be forfeited. Since the payment of next instalment was falling due on 15.5.2003. It was feared that in case of non-payment of instalment by due date though the same was not legally due, the Respondent may proceed to forfeit the security deposit. Thus the Claimant had no other alternative except to deposit the next instalment amount of Rs.35,00,000/- on 15.5.2003 vide letter dated 15.5.2003. The instalment had been deposited under protest subject to the condition that The Claimant reserves the right to claim the refund of this instalment on account of fundamental breach of Agreement by the Respondent

6 The Claimant had been collecting toll at toll point in Km 3.40 in violation of the provisions of notification dated 2.1.2003 due to forcible shifting of the toll point from Km 2.40 to Km 3.40 by the District Administration Gurgaon though "The Claimant" had the authority of collecting toll at toll point in Km 2.40 in view of the authorization issued by the Respondent in this regard. Since no immediate relief was expected from the Respondent as such "The Claimant" had no other option except to seek the arbitration of this dispute and accordingly "The Claimant" requested the Respondent vide letter no Spl/4 dated 22.5.2003 for appointing the Arbitrator in accordance with the provisions of Clause 28 of the Agreement.

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7 Claimant explained that the next installment was also deposited on 11.6.2003 vide Claimant's letter dated 11.6.2003. The Claimant had again pointed out that the Respondent has committed the fundamental breach of Agreement due to shifting of the toll point. Neither Agreement had been terminated by the Respondent on this account nor had the Arbitrator been appointed as such the Claimant again informed the Respondent that installment is being deposited under protest and "The Claimant" reserves the right to claim the refund of this amount along with interest.

8 Deputy Commissioner Gurgaon vide letter no 255/Lp dated 18.6.2003 again directed "The Claimant" for shifting of the toll point to its original location at Km 2.40 near Gurgaon-Pataudi Road. The letter date 18.6.2003 from Deputy Commissioner Gurgaon was received by "The Claimant" on 9.7.2003 and thereafter "The Claimant" was threatened by the District Administration, Gurgaon to shift the toll point to its original position at Km. 2.40 near Gurgaon.

9 Claimant brought out that the District Administration had got removed toll point from Km 3.40 on 16.7.2003 and directed that the toll point be shifted at Km 2.4. "The Claimant" tried to establish the toll point at Km 2.4 in accordance with the provisions of the Agreement and also as directed by the District Administration Gurgaon, on 16.7.2003 but "The Claimant" was unable to establish toll point at Km 2.40 due to stiff resistance from the local public who did not allow "The Claimant" to establish toll point at Km.2.4 and also did not allow "The Claimant" to collect toll at Toll point in Km 2.4. Even the local public manhandled some of the employees of "The Claimant" and inflicted injuries upon them thereby establishing and operating the toll point at Km. 2.4 as totally impossible. "The Claimant" had also got the complaint registered with SHO Sector 10-A Post Station Gurgaon for needful. Since no concrete action had been taken by the District Administration Gurgaon for facilitating "The Claimant" for establishing and operating the toll point at Km 2.4, as such it had become impossible for "The Claimant" to establish and operate the toll point at Km.2.4 with the result that "The Claimant" had to abandon the collection of toll on 16.7.2003 because "The Claimant" was unable to collect toll at toll point in Km 2.4. Accordingly "The Claimant" had informed the Respondent about these facts vide letter dated 18.7.2003 and requested the Respondent to release the security deposit and also compensate the loss already suffered on account of deficit toll collections.

10 Claimant further explained that the Respondent without considering the facts and merits of the case, proceeded to terminate the Agreement vide his Letter no HSRDC/536 dated 18.7.2003 and also forfeited the security deposit amount of Rs.1,28,16,000/- in the form of Bank Guarantee no



23/02-03 dated 9.1.2003 of State Bank of Patiala, Hisar. The authorization issued to "The Claimant" for collecting toll had also been withdrawn through this letter though "The Claimant" had already closed the toll point on 16.7.2003 itself on its own due to reasons explained above. Although the Respondent had been taking the plea that District Administration Gurgaon had nothing to do with the operation of the Agreement, yet the Respondent enclosed copies of his letter no HSRDC/536 dated 18.7.2003 to Deputy Commissioner Gurgaon and Senior Superintendent of Police Gurgaon for information and further necessary action and also for helping the Superintending Engineer PWD B&R Gurgaon in establishing the toll point

11. The Claimant brought out that average toll collection of toll for the period from 11.1.2003 to 12.2.2003 was Rs. 1,81,312/- per day when the toll point was at Km. 2.4 near Gurgaon but when the toll point was got shifted from Km. 2.4 to Km. 3.00 ( actually Km 3.40 ) the collection of toll reduced from Rs 1,81,312/- per day to Rs. 89,390/- per day during the period from 13.2.2003 to 16.7.2003. Thus the Claimant is entitled to the compensation to the extent of Rs 1,42,47,901/- due to reduction in the toll collection from Rs 1,81,312/- per day to Rs. 89,390/- per day when the toll point remained at Km. 3.4. Thus the claim raised by the claimant to the extent of Rs 1,42,47,901/- may be awarded to him

**The Respondent defended /refuted the claim as under:-**

1. Respondent had intimated time and again to the Claimant that the Agreement was executed between the Claimant and the Respondent and the Respondent never asked the Claimant to shift the toll point from Km 2.4 to Km 3.4 and therefore, the Respondent has not committed any breach of contract. The Respondent is not liable for any hurdle or obstacle if created by the antisocial elements. The Claimant was free to follow the legal course. The Deputy Commissioner, Gurgaon who is said to have directed the Claimant for shifting of the Toll point is not a party to this Agreement and it was for the Claimant to have resisted the move.
2. Respondent further explained that as per the version of the Claimant, Deputy Commissioner, Gurgaon had got shifted the toll point during the month of February 2003 but the Claimant did not bring to the notice of the Respondent immediately after 13.2.2003 about the shifting of the toll point from Km 2.4 to Km 3.40. In fact, the Claimant chose to remain silent and informed the Respondent about the shifting of toll point vide his letter dated 9.4.2003 after written confirmation about the shifting of toll point was communicated by the Deputy Commissioner Gurgaon to the

Executive Engineer, Provincial Division No 1, PWD B&R Gurgaon vide letter dated 8.4.2003 with copy to the Claimant. Furthermore, the Claimant was aware that the Deputy Commissioner has no authority to get the toll point shifted in violation of the provisions of the notification without the express approval of the Haryana Government. Thus the Claimant should have resisted the Deputy Commissioner and should not have shifted the toll point without the concurrence of the Respondent.

3. Respondent further explained that the Claimant had made omission by shifting the toll point at his own sweet will without permission of the Respondent with whom the Claimant was in Agreement and therefore, the Claimant is not entitled to any compensation on this account. Furthermore, no documentary evidence as regards the collection of toll and quantification of the same has been submitted by the Claimant. Thus the claim of the Claimant is imaginary and mere calculation based on assumption and presumption and has no merit. Thus the claim of the claimant may be rejected.

**After considering written arguments and after hearing oral arguments of both the parties, the claim is decided as under:-**

1. Haryana Government vide notification No. 9/106/2001-3-B&R (Works) (Tol.-2) - dated 02.01.2003 had notified the section of Gurgaon-Pataudi-Rewari Road (State Highway No.20) to be "toll facility" for the purpose of the said Act. Further in exercise of the powers conferred by section 4 of the said Act, the Governor of Haryana had authorized Haryana State Roads and Bridges Development Corporation Limited to demand, collect and retain tolls from the said toll facility at toll point in Km 2.4 near Gurgaon on Gurgaon-Pataudi-Rewari Road. Accordingly the Respondent executed an Agreement with the Claimant for the collection of toll at toll point in Km 2.4 near Gurgaon on Gurgaon-Pataudi-Rewari Road for total amount of Rs.8,54,40,000/- to be deposited in 24 monthly installments of Rs. 35,60,000/- each.
2. The Respondent argued that the Claimant in connivance with the Deputy Commissioner, Gurgaon, local police, local persons and Publishers of the News Papers had intentionally got shifted the toll point from Km 2.4 to Km 3.4 with the aim of generating more revenue/ toll collection at toll point in Km 3.4 as compared to the toll point in Km 2.4 Respondent further pointed out that the Agreement was between the Respondent and the Claimant as such the Claimant should not have obeyed the orders of the Deputy Commissioner, Gurgaon about the shifting of the toll point. However, the Claimant brought out that officers of the PWD B&R who were also officers of the Respondent

Corporation and who were assigned the duty of supervising the performance of this Agreement had helped the District administration in getting the toll point shifted from Km 2.4 to Km 3.40 on 13.2.2003. Evidently the officers of the Respondent Corporation had full knowledge of the forcible shifting of the toll point by the district administration and it was also their duty to have informed the Respondent about the shifting of toll point. Since they had not informed the Respondent about the shifting of toll point at Km 3.4 as such, it is evident that toll point had been got shifted by the district administration, Gurgaon with their consent for which they had no authority in accordance with the provisions of the notification and the Agreement.

3. As per letter dated 8.4.2003 of Deputy Commissioner, Gurgaon, he has confirmed having got shifted the toll point from Km 2.4 to Km 3.00 on administrative grounds. Although the Claimant brought out that the toll point was got shifted on 13.2.2003 but the Deputy Commissioner, Gurgaon only confirmed having got shifted the toll point from Km 2.4 to 3.00 with out specifying the date from which the same was got shifted. However, the Complainant has attached photocopies of the press cuttings dated 13.2.2003 and 14.2.2003 to substantiate the actual date of shifting of toll point. Although the Claimant had informed the Respondent about the shifting of toll point vide his letter dated 9.4.2003 by enclosing the copy from the Deputy Commissioner, Gurgaon confirming the shifting of the toll point but the Respondent pointed out that the Claimant should have informed the respondent about the shifting of the toll point immediately after 13.2.2003 and should not have waited for two months. However, Claimant had stated that the toll point had been got shifted by the Deputy Commissioner Gurgaon with the help of police and the PWD officers on 13.2.2003 but had not given any thing in writing at that time and therefore he could only inform the Respondent about the shifting of toll point after receiving confirmation from the Deputy Commissioner Gurgaon. Thus it is proved beyond doubt that the Deputy Commissioner had got the toll point shifted from Km 2.4 to Km 3.00 or 3.40 on administrative grounds. Although it is evident from the copies of press cuttings that toll point had been got shifted from Km 2.4 to 3.4 on 13.2.2003, but the Claimant did not inform the Respondent immediately after 13.2.2003 when the toll point was got shifted by the Deputy Commissioner, Gurgaon. Furthermore, the officers of the PWD B&R at Gurgaon who were also the officers of the Respondent Corporation and who were responsible for supervising the performance of this Agreement were fully involved in the shifting of the

toll point, but they too did not inform the Respondent. They should have resisted the move of the Deputy Commissioner, Gurgaon in getting the toll point shifted in violation of the provisions of the notification and the Agreement. What ever the case may, the fact remains that toll point had been got shifted in violation of the provisions of the Agreement but the date of getting the toll point shifted from Km 2.4 to Km 3.40 had not been mentioned by the Deputy Commissioner, Gurgaon in his letter dated 8.4.2003 as such the date of letter i.e 8.4.2003 is hereby treated as the date from which the toll point is considered as shifted from Km 2.4 to Km 3.00 or 3.40.

4. The Claimant further argued that the Respondent while issuing the authorization for the collection of toll to the Claimant had endorsed copies of the same to the Deputy Commissioner, Gurgaon and also to the Senior Superintendent of Police, Gurgaon for information and further necessary action. Even the copies of the notification issued by the Haryana Government for levying toll at this toll point had also been forwarded by the Government to the Deputy Commissioner, Gurgaon and Senior Superintendent of Police, Gurgaon. Evidently the district administration and the police authorities had to cooperate with the Claimant for smooth collection of toll at toll point in accordance with the provisions of the notification. There is no doubt that collection of toll could only be possible with the cooperation and help of district administration and police authorities at Gurgaon. The fact remains that toll point had been got shifted from Km 2.4 to Km 3.4 by the Deputy Commissioner, Gurgaon with the help of district police and the officers of the Respondent Corporation at Gurgaon for which they were not authorized in accordance with the provisions of the Agreement.
5. Although the Respondent had been taking the plea that the Claimant had got shifted the toll point in connivance with the district administration, district police, local persons and the publishers of the News Papers, but this plea of the Respondent is totally untenable because when the Claimant got the confirmation letter from the Deputy Commissioner Gurgaon on 8.4.2003 confirming the shifting of toll point, the Claimant had clearly informed the Respondent vide letter dated 9.4.2003 that due to shifting of the toll point from Km 2.4 to 3.4, the Agreement has been frustrated because he is not entitled to collect toll at toll point in Km 3.4 which is violation of the provisions of the Agreement and the notification Accordingly the Claimant had requested the Respondent for terminating the Agreement in view of shifting of the toll point. Evidently no connivance or interest on the part

of Claimant can be proved in getting the toll point shifted from Km 2.4 to 3.4.

6. Haryana Government vide notification No. 9/106/2001-3-B&R (Works) (Toll-2) - dated 02.01.2003 had notified the section of Gurgaon-Pataudi-Rewari Road (State Highway No.26) to be "toll facility" for the purpose of the said Act. And had authorized Haryana State Roads and Bridges Development Corporation Limited to demand, collect and retain tolls from the said toll facility at toll point in Km 2.4 near Gurgaon on Gurgaon-Pataudi-Rewari Road. Accordingly the Respondent executed an Agreement with the Claimant for the collection of toll at toll point in Km 2.4 near Gurgaon on Gurgaon-Pataudi-rewari Road for total amount of Rs.8,54,40,000/- to be deposited in 24 monthly installments of Rs. 35,60,000/- each. Since the toll point had been got shifted from Km 2.4 to Km 3.00 or 3.40 with effect from 8.4.2003 in violation of the provisions of the Agreement as such neither the Claimant nor the respondent had any authority to get the collection of toll from toll point in Km 3.00 or 3.4 in violation of the provisions of the notification. Evidently, the moment toll point was got shifted from Km 2.4 as provided in the Agreement, the Agreement had been frustrated and accordingly there did not remain a valid Agreement between the Claimant and the Respondent to comply with the terms and conditions of the Agreement on the basis of which the Claimant had agreed to pay 24 monthly installments of Rs 35,60,000/-. As per AIR 69 of Calcutta High Court page 576, and also under the provision of Agreement, if the performance of the contract becomes impossible, then in that case the parties can not be compelled to perform the contract and the contract will be considered as frustrated by either party. Since the Agreement had become frustrated on 8.4.2003, as such the Claimant could not have been expected to deposit the monthly installments in accordance with the provisions of the Agreement. Although the Claimant was not entitled to collect toll from the toll point in Km 3.00 or 3.4 but he had been asked to collect toll at this toll point and therefore the Claimant could not be expected to retain the same. Since no negotiations were carried out between the parties for the remittance of toll to the Respondent which was to be collected at toll point in Km 3.00 or 3.40 as such the actual amount of toll collected by the Claimant from toll point in Km 3.00 or 3.40 should be remitted by the Claimant to the Respondent after deducting toll collection charges and Profit/Supervision charges. The Claimant has certified through Sh. Rajeev Parkash & Associates i.e their Chartered Accountants that the gross toll collection for the period from 11.1.2003



to 12.2.2003 was Rs 59,83,300/- with the average toll collection of Rs 1,81,312/- per day and the total gross toll collection during the period from 13.2.2003 to 16.7.2003 was Rs 1,37,66,100/- with the daily average of Rs 89,390/- per day. Since it has been considered beyond doubt that the toll point had been got shifted with effect from 8.4.2003 as such the Claimant will not be liable to pay the same amount of monthly installment as provided in the Agreement but would remit the toll @ Rs 72,406/- per day as detailed below:-

- (i) Average daily toll collection from 8.4.2003 Rs 89,390/-
- (ii) Deduct toll collection charges @ 10% of toll (-) Rs. 8,939/-
- 
- (iii) Net average toll collection Rs 80,451/-
- (iii) Deduct profit/supervision charges @ 10% (-) Rs. 8,045/-
- 
- (iv) Net average toll collection considered per day Rs 72,406/-
- for remittance to the Respondent after 8.4.2003

Accordingly the details of total amount are as under, which the Claimant was required to deposit till 18.7.2003 i.e up to the date when authorization for the collection of toll was withdrawn from the Claimant

Sr. No	Period	Amount of Installment already deposited by the Claimant	Amount of installment considered by the Arbitrator to be deposited by the Claimant	Excess deposit or short deposit
1	11.1.2003 to 10.2.2003	35,60,000	35,60,000	Nil
2	11.2.2003 to 10.3.2003	35,60,000	35,60,000	Nil
3	11.3.2003 to 7.4.2003	32,04,000	32,04,000	Nil
4	8.4.2003 to 10.4.2003	3,56,000	2,17,218	1,38,782
5	11.4.2003 to 10.5.2003 (30 days)	35,00,000 (under protest)	21,72,180	13,87,820
6	11.5.2003 to 10.6.2003 (31 days)	35,60,000 (under protest)	22,44,586	13,15,414
7	11.6.2003 to 10.7.2003	Nil	21,72,180	(minus) 21,72,180
8	11.7.2003 to 18.7.2003	Nil	5,79,248	(minus) 5,79,248
<b>Total</b>		<b>1,78,00,000/-</b>	<b>1,77,09,412</b>	<b>90,588</b>

From the above, it is evident that the Claimant was liable to pay to the Respondent total sum of Rs. 1,77,09,412/- for the period from 31.1.2003 to 18.7.2003 as decided in the foregoing para /table, where as the Claimant had already deposited total amount of Rs 1,78,00,000/- to the Respondent up to 18.7.2003. No effect of interest due to excess payment made by the Claimant and also due to delay in making payment of last installment by the Claimant, has been considered up to 18.7.2003 because as per the above calculations, the Claimant had deposited excess amount of Rs 28,42,016/- with the Respondent in respect of earlier installments up to 10.6.2003 where as the Claimant was required to remit a sum of Rs 27,51,428/- to the Respondent for the period from 11.6.2003 to 18.7.2003. Thus no effect of interest has been considered in view of the above facts.

Accordingly the Claimant is entitled for the refund of balance amount of Rs 90,588/- against the claim of Rs. 1,42,47,910/- raised by the Claimant. I hereby award claim of Rs 90,588/- (Rupees Ninety thousand five hundred eighty eight only) to the claimant in respect of this claim.

### CLAIM NO-3

The Claimant has raised claim of Rs 8,93,500/- on account of loss of toll collection on account of strike of the trucks from 14.4.2003 to 23.4.2003 ( 10 days)

In support of the claim, the Claimant has explained/ brought out as under:-

- (i) Claimant claimed that due to nation wide strike of the trucks with effect from 14.4.2003, there had been no collection of toll through the toll point from 14.4.2003. This 10 days nation wide strike of the trucks was called off by the All India Motor transport Congress on 23.4.2003. Accordingly the trucks started passing through the toll point with effect from 24.4.2003. Claimant further explained that as per provision of clause 4(iii) of the Agreement neither party is liable to the other party for any loss or damage occurred/caused by or arising out of the acts of God and in particular unpremeditated events resulting in disruption of traffic on the road, volcanic eruption, earth quake or other convulsions of the nature and other acts, such as but not restricted to invasion, the act of foreign countries, hostilities or war like operation before or after the declaration of rebellion, military operation which prevent the performance of the contract and which would not have been foreseen or avoided by the prudent person and in such cases, the decision of the Managing Director IISRDC shall be final. It was further indicated by the Claimant that as per provision of clause 5 of the Agreement, in

case of closure of toll facility to motor vehicle traffic due to any reason, Entrepreneur/Agent may be granted rebate @1/30 of the Installment amount for each day for the number of days of admitted closure as certified by the Managing Director, HSRDC

- (i) It was intimated by the Claimant that this 10 day nation wide strike by the trucks could not be foreseen by any prudent person at the time of submission of bids and furthermore, due to this strike, toll could not be collected from the toll point for which Claimant has to be compensated for the loss of toll in accordance with the provisions of clause 5 of the Agreement. Thus the Claimant is entitled for the exemption from the payment of toll for the strike period as principle of natural justice.

**The Respondent has defended the dispute as under:-**

The Respondent has explained that neither there had been any interruption in the traffic during the strike period nor the toll facility or toll point had been closed to traffic in accordance with the provisions of clause 5 of the Agreement. Strike by the Trucks could not be treated as closure of toll facility or toll point and therefore such type of eventualities are incidental and no cognizance of the same can be taken in accordance with the provisions of the Agreement!

The Respondent further explained that as per provision of clause 5 of the Agreement, the Claimant is entitled for the rebate @ 1/30 per day of the monthly installment if the toll facility or the toll point is closed for the traffic. In this case during the strike of trucks, the toll facility or the toll point did not remain closed. Furthermore, the Claimant was supposed to furnish details of his intended claim for the rebate by 10<sup>th</sup> of the following month and by not doing so, the Claimant is not entitled for any rebate.

**After considering written arguments and after hearing oral arguments of both the parties, the claim is decided as under:-**

As a principal of natural justice, the Trucker's strike could not have been foreseen by the Claimant at the time of submission of bids and he had definitely suffered loss in the toll collection on account of this strike but the matter has to be decided in accordance with the provisions of Agreement. There is no specific provision in the Agreement to deal with such type of eventualities. Concession of toll to the Claimant for the affected days could only be admissible, had the toll facility or the toll point been totally closed in accordance with the provisions of clause 5 of the Agreement. Furthermore, the Claimant was required to intimate to the Respondent about the claim/rebate up to 10<sup>th</sup> of the following

month but the Claimant did not raise any claim in this regard up to 10<sup>th</sup> of May 2003. Whatever the case may be, the fact remains that the toll facility or the toll point had not been totally closed to traffic during the strike period and other category of vehicles continued to pass through the toll point during the strike period and thus the claim raised by the Claimant is rejected.

#### CLAIM NO-4

The Claimant had raised claim for Rs 3,57,400/- on account of loss of collection of toll on account of after effects of the trucker's strike from 14.4.2003 to 23.4.2003

This claim is related to Claim no-3. Since claim no 3) raised by the Claimant has been rejected as such this claim of the claimant is also rejected.

#### CLAIM NO-5

Claimant has claimed a sum of Rs. 1,28,16,000/- on account of illegal forfeiture of the security deposit of the Claimant. Although the Civil Court has restrained the Respondent in getting the security deposit encashed but if the same is encashed, then the claim of Rs 1,28,16,000/- may be given along with interest and the bank guarantee charges of Rs 10,13,450/-

In support of the claim, the Claimant has explained/ brought out as under:-

1. The Claimant has brought out that this security deposit of Rs 1,28,16,000/- has been illegally forfeited by the Respondent vide his letter dated 18.7.2003 and that is why he had to approach the court and got stay order restraining the Respondent from getting the bank guarantee encashed
2. Complete facts in respect of this claim have already been explained/ incorporated in Claim no.2
3. Claimant further explained that immediately after receiving letter dated 8.4.2003 from the Deputy Commissioner, Gurgaon confirming the shifting of toll point from Km 2.4 to Km 3.00 or 3.40, he had intimated to the Respondent vide letter dated 9.4.2003 that agreement has been frustrated due to shifting of the Toll point from Km 2.4 to Km 3.00 or 3.40 as such there is breach of contract because neither they are authorized

to collect toll at toll point in Km 3.4 nor there is any such provision in the notification issued by the Haryana government at the time of levying toll at this toll facility.

4. Although Deputy Commissioner Gurgaon vide letter dated 18.6.2003 directed the Claimant to shift the toll point back to its original position in Km 2.4 but the Claimant stated that this letter was received by him on 9.4.2003. However, Police authorities got removed the toll point in Km 3.4 on 16.7.2003 forcibly. Although they had tried to establish toll point in Km 2.4 but they could not succeed due to resistance from the local people and no help had been given by the officers of the Respondent Corporation posted at Gurgaon or the district administration/police with the result that they had to disband the collection of toll altogether and accordingly informed the Respondent about the same vide letter dated 18.7.2003. Since the Agreement had already become null and void due to shifting of the toll point no such forfeiture of the security deposit by the Respondent was totally illegal though they had been requesting the Respondent to terminate the Agreement. Thus orders passed by the Respondent in forfeiting the security deposit are illegal and should be set aside.

**The Respondent has defended the dispute as under:-**

- (i) Respondent has explained the facts in detail in claim no-2.
- (ii) No instructions were issued by the respondent for the shifting of toll point from Km 2.4 to 3.00 and therefore the Respondent had not committed any breach of contract. Respondent further argued that the Claimant had got shifted the toll point through the Deputy Commissioner due to his interest for which there were no orders from the Respondent.
- (iii) That as per clause 2 of the Agreement, it has been made clear that claimant shall pay all the installments on due dates in advance and the claimant shall not claim any interest on these installments. The Respondent reproduced the relevant para of the Agreement as under

"Further the Entrepreneur/Agent hereby agrees that he will pay to the HSRDC all installments on due dates in advance as aforesaid and that further he will have no claim for interest on these installments paid in advance".

"And whereas, of default to pay any installment by due date, the same will be paid along with interest calculated @ 0.05% per day of delay. Further in case any installment along with interest is not paid within 30 days counted from the due date, then the contract agreement will be terminated without any further notice. In



such event without prejudicing the rights and other remedies available to the Haryana State Roads & Bridges development Corporation Limited, the Security Deposit and all installments of contract amount already paid shall stand forfeited without any claim from the agency."

"Further any authorization letter for collection of toll issued shall be treated as cancelled and withdrawn. Further more Haryana State Roads & Bridges development Corporation Limited will be at liberty to take over the site and start collection of toll as deemed fit."

Since the Claimant had paid total 5 installments so far and he had been paying the installments even after the shifting of the toll point but when the claimant was asked to revert back to the original toll point, he did not pay the installment which was due on 15.6.2003 with out interest and upto 15.7.2003 along with interest. Since the Claimant failed to deposit the due installment even after the expiry of 30 days from the due date along with interest as such the Respondent had no option except to take action in accordance with the provision of clause 2 of the Agreement and accordingly forfeited the security deposit of the Claimant amounting to Rs 1,28,16,000/- vide letter dated 18.7.2003 and also withdrew the authorization for the collection of toll given to the Claimant vide letter dated 10.1.2003. Since the Claimant had got the stay order from the Civil Court restraining the Respondent in getting the Bank Guarantee encashed, as such the orders passed by the Respondent for forfeiting the security deposit have not been implemented so far. Thus the claim of the Claimant should be rejected.

**After considering written arguments and after hearing oral arguments of both the parties, the claim is decided as under:-**

1. It has been decided in Claim no 2 that the Agreement executed between the Claimant and the Respondent had become frustrated with effect from 8.4.2003 due to shifting of the toll point from Km 2.4 to Km 3.00 or 3.40 as per orders of the Deputy Commissioner Gurgaon on administrative grounds. The Respondent can not take the plea that the Agreement was between the Claimant and the Respondent and therefore Deputy Commissioner Gurgaon has no role to play in this Agreement. In fact, the copy of the notification issued by the Haryana Government for levying toll at the toll point in Km 2.4 was endorsed to the Deputy Commissioner, Gurgaon and Senior Superintendent of Police Gurgaon. Furthermore, copy of the authorization for the collection of toll issued to the claimant was also endorsed to the

Deputy Commissioner, Gurgaon and Senior Superintendent of Police Gurgaon for information. Furthermore, copy of the orders passed by the Respondent for withdrawing the authorization for the collection of toll from the Claimant was also endorsed to the Deputy Commissioner, Gurgaon and Senior Superintendent of Police Gurgaon and they had been requested by the Respondent for stopping the collection of toll from the toll point by the Claimant and also helping the Superintending Engineer, Gurgaon in taking over the collection of toll from the Claimant. Evidently, if the collection beyond the toll point and collection of toll in the district could be possible without the help and cooperation of the Deputy Commissioner, Gurgaon and Senior Superintendent of Police Gurgaon.

2. Although the Claimant had informed the Respondent vide his letter dated 9.4.2003 that toll point had been got shifted from Km 2.4 to 3.00 or 3.4 by the Deputy Commissioner, Gurgaon on administrative grounds with effect from 13.2.2003 with the help of police and PWD B&R officers responsible for ensuring the smooth performance of this Agreement but Respondent instead of getting the toll point shifted back to the original position within one or two days preferred to enter into correspondence. The Respondent should have taken up the matter with the Deputy Commissioner Gurgaon on urgent basis at personal level to ensure the shifting back of the toll point to its original position within one or two days because neither the Claimant nor the Respondent had any authority to collect toll from toll point in Km 3.00 or 3.40.
3. Respondent vide Memo No HSRDC/34/02/271 dated 22.04.2003 had informed "The Claimant" that no such instructions for shifting of the toll point have been given by the Respondent and taking instructions from the District Administration Gurgaon and thereby complying the same is the responsibility of the Agency. The Respondent also endorsed copy of this letter to the Deputy Commissioner Gurgaon clearly indicating that any contractual implication on account of their interference in the shifting of toll point shall rest upon the Deputy Commissioner Gurgaon. Although the Respondent entered into the correspondence with the Claimant and the Deputy Commissioner Gurgaon but did not specifically direct the Claimant to shift back the toll point at its original location i.e. at Km 2.4. However, ultimately the Deputy Commissioner issued letter dated 18.6.2003 directing the Claimant to shift back the toll point to its original location at Km 2.4. (Claimant stated to have received this letter on 19.7.2003). Evidently it took about two and half months in passing the order for shifting of the toll point to its Original

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location. By the time these orders were received, the damage had already been done because Claimant could not be expected to perform the Agreement after the same was frustrated for about two and half months.

4. It has been observed that the officers of the PWD B&R posted at Gurgaon who were also officers of the Respondent Corporation and assigned the responsibility of ensuring/ supervising the smooth performance of the Agreement acted as supervisors and neither informed the Respondent about the shifting of toll point from Km 2.4 to 3.00 or 3.4 in violation of the provisions of the Agreement nor convinced the Deputy Commissioner Gurgaon about the contractual and legal implications of getting the toll point shifted from Km 2.4 to 3.00 or 3.4 because neither the Deputy Commissioner nor the Respondent could violate the provisions of the notification issued by the Haryana Government authorizing the collection of toll from toll point in Km 2.4 near Gurgaon.
5. In fact, the best course of action on the part of the Respondent would have been either to get the toll point shifted back to the original location in Km 2.4 with in one or two days in accordance with the provisions of the Agreement and would have negotiated with the Claimant about the amount of toll to be remitted to the Respondent for the period the toll collection remained at toll point in Km 3.00 or 3.40. or have negotiated with the Claimant about the amount of monthly installment to be remitted by the Claimant for the collection of toll at toll point in Km 3.00 or 3.40 by getting the same verified at the toll point with the help of PWD B&R officers posted at Gurgaon. Evidently no such immediate action had been taken either by the Respondent or by the officers of the Respondent Corporation posted at Gurgaon.
6. Although Deputy Commissioner Gurgaon vide letter no 255/Lp dated 18.6.2003 had again directed "The Claimant" for shifting of the toll point to its original location at Km 2.40 near Gurgaon-Pataudi Road. The letter date 18.6.2003 from Deputy Commissioner Gurgaon was received by "The Claimant" on 9.7.2003 and thereafter "The Claimant" was threatened by the District Administration to shift the toll point to its original position at Km. 2.40 near Gurgaon. But this direction was not bound to be obeyed by the Claimant because it is not a game of musical chair that on one day the Claimant is asked to shift the toll point from one place to another place in violation of the provisions of the Agreement and after about two and half months the Claimant is asked to revert back to the original location by shifting the toll point in Km 2.4.

7. Since there did not remain a valid Agreement between both the parties after 8.4.2003 and therefore no action in accordance with the provision of that Agreement could be taken by the Respondent against the Claimant. Thus the orders passed by the Respondent vide letter no HSRDC/536 dated 18.7.2003 for forfeiting the security deposit of the Claimant amounting to Rs 1,28,16,000/- were not valid and binding

Accordingly, the orders passed by the Respondent vide letter no HSRDC/536 dated 18.7.2003 for forfeiting the security deposit of the Claimant amounting to Rs 1,28,16,000/- are set aside and I award the same in favour of the Claimant. Accordingly the Bank Guarantee no 23/02-03 dated 09.01.2003 of State Bank of Patiala, Hisar amounting to Rs. 1,28,16,000/- (Rupees One Crore twenty eight lacs sixteen thousand only ) furnished by the Claimant as security deposit should be released/ returned to the Claimant. However, the claim about the Bank expenses incurred by the Claimant amounting to Rs 10,13,450/- for getting the Bank Guarantees prepared is hereby rejected.

B.G. is released

#### CLAIM NO - 6

The Claimant has raised claim for Rs. 3,52,65,728/- on account of loss of profit due to reduction in the turn over of the Claimant on account of getting the toll point shifted from the toll point in Km 2.4 to Km 3.00 or 3.4 , thereby frustrated the Agreement.

In support of the claim, the Claimant has explained/ brought out as under:-

- (i) The Respondent awarded this work to "The Claimant" and issued Letter of Acceptance to "The Claimant" vide their memo no HSRDC/610 dated 27.12.2002 for contract price of Rs.8,54,40,000/- for period of two years. An Agreement was executed between "The Claimant" and the Respondent on 10.01.2003 vide Agreement No HSRDC/Toll/ 2 for a contract price of Rs. 8,54,40,000/- to be deposited in 24 monthly instalments of Rs. 35,60,000/- each and accordingly "The Claimant" was issued Letter of Authorization by the Respondent vide his Memo No HSRDC/26 dated 10.01.2003 authorizing "The Claimant" for collecting toll from the toll point in Km 2.40 on Gurgaon- Pataudi- Rewari Road for period of 2 years at the rates specified in the Schedule.
- (ii) The work for the collection of toll was for 24 months and the Claimant had planned to carry out the work accordingly in 24 months and had made all arrangements. It was expected that the turn over of the Claimant would be Rs 9,86,33,728/- for the period for the period from 17.7.2003 to 10.1.2005 with an average toll collection of Rs 1,81,312/- per day and he would be

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able to earn profit to the extent of Rs 3,52,65,728/- after making total payment of remaining monthly installments amounting to Rs 6,33,68,000/- Due to shifting of the toll point from Km 2.4 to Km 3.00 or 3.40, the Agreement could not be performed and accordingly the agreement was terminated there by restricting the amount of turn over and causing loss of profit amounting to Rs 3,52,65,728/- which the Claimant had expected, had he been allowed to collect the toll point in Km 2.4 as per provision of the Agreement for period of two years. Thus the claimant claimed a sum of Rs 3,52,65,728/- on its account. There is authority of the Supreme Court also about the breach of Contract and the Claimant can claim profit and rel, on 1984 AIR, SC page 1703.

The Respondent has defended the dispute as under:-

The Respondent has refuted the claim and explained that the Claimant shifted the toll point from Km 2.4 to Km 3.00 as per orders of the Deputy Commissioner Gurgaon and the Respondent was nowhere in the picture. It appears that he deliberately got the toll point shifted to make ground for the termination of the Agreement and subsequent claims. The Claimant on one hand had been requesting for terminating the Agreement because the collection of toll is in loss but now the Claimant is claiming profit on account of reduction of turn over. In fact, the Claimant wants to claim profit without doing the work which is against the law of justice. Since the Claimant had violated the provisions of Agreement as such Claimant has to compensate the Respondent for double the amount as is mentioned by the Claimant.

After considering written arguments and after hearing oral arguments of both the parties, the claim is decided as under:-

The work for the collection of toll at toll point in Km 2.4 near Gurgaon on Gurgaon- Pataudi- Rowal Road was awarded to the Claimant for Rs. 8,54,40,000/- to be deposited in 24 monthly installments. The Agreement was executed by the Claimant with the Respondent on 10.1.2003. This Agreement was for the period of two years from 11.1.2003 to 10.1.2005. The authorization for the collection of toll was withdrawn from the claimant on 18.7.2003 though the Agreement had become null and void due to shifting of the toll point. Since the work for the collection of toll at this toll point has been re- allotted to another agency at much lower rate i.e Rs. 3.32 crores for the period of two years against this Agreement amount of Rs 8.544 crores allotted to the Claimant as such, it is evident that the Claimant may not have been earning much profit. Thus the Claimant is not entitled to any profit for

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In support of the claim, the Claimant has explained/ brought out as under:-

The Claimant has claimed that interest @ 18% per annum on the amount of claims may be awarded in accordance with the provisions of section 31 sub sections 7(a) and 7(b) of the Arbitration and Reconciliation Act 1996.

The Respondent has defended the dispute as under:-

The Respondent has refuted the claim and brought out that the Claimant is not entitled for any claim of interest because no claim is admissible to the claimant. There is no provision in the Agreement for the payment of interest.

After considering written arguments and after hearing oral arguments of both the parties, the claim is decided as under:-

- (i) As per Indian Contracts Act, Interest is payable on all payments which are either delayed or due to be paid but not paid in time.
- (ii) It is trade practice in the industry to charge interest at the rate of 18 percent per annum on the due payments. Even according to the provision of section 31(7) of the Arbitration and Reconciliation Act 1996, 18 percent interest has been allowed for future payments..
- (iii) As per Claim no-2, a sum of Rs 90,588/- (Rupees Ninety thousand five hundred eighty eight only) has been awarded to the Claimant and he is entitled to the interest on this amount from 19.7.2003 till the date of payment to the Claimant. Although as per trade practice, interest @ 18% per annum is applicable but due to softer interest regime, interest @ 18% per annum is on higher side. Since the Prime Lending rates of the leading banks is around 10 to 11 percent as such I hereby award interest @ 10% per annum in favour of the Claimant on Rs 90,588/- from 19.7.2003 till the date of announcement of the award and also @ 10% per annum from the next day of date of announcement of the award till the payment is actually made to the Claimant.

Interest

### COUNTER CLAIMS FROM THE RESPONDENT

#### COUNTER CLAIM NO-1

The Respondent has made counter claim for Rs 1,28,16,000/- for realization of order no IISRDC/536 dated 18.7.2003, as to forfeit the security deposit in the form of encashment of the Bank guarantee and interest accrued on it @ 18% per annum from the date of order i.e 18.7.2003 to the date of realization of the security deposit.

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In support of the counter claim, the Respondent has explained/ brought out as under:-

1. The Respondent is entitled to terminate the Agreement and forfeit the security deposit and all other installments of the contract amount already paid in the event of default on the part of the Claimant to pay instalment along with interest within 30 days from the due date.
2. The Claimant failed to deposit 6<sup>th</sup> instalment due on 15.6.2003 with out interest and also failed to deposit the same upto 15.7.2003 along with interest as such the Respondent was fully entitled to invoke the said clause of the Agreement and accordingly forfeited the security deposit of the claimant amounting to rs 1,28,16,000/-. However, the Claimant got the stay order from Civil Court Gurgaon and therefore, the Bank Guarantee could not be got cashed from the bank. The stay has not been vacated by the court so far as such the Claimant should pay a sum of Rs 1,28,16,000/- along with interest @ 18 % per annum from the date it was due to be cashed till the time, it is got realized.

The Claimant has defended the counterclaim as under:-

The Claimant has denied the counter claim. He has further explained that he had not been allowed to collect toll from the toll point in Km 2.4 near Gurgaon in accordance with the provisions of the notification issued by the Haryana Government and the Agreement but instead of compensating the Claimant, the Respondent took illegal action of forfeiting the security deposit of the Claimant. Since the Respondent had been taking illegal actions and as such there was no other alternative left with the Claimant except to approach the Civil Court for seeking relief and justice. Since the orders for forfeiting the security deposit of the Claimant were illegal as such the Civil Court had intervened and stayed the action of the Respondent for getting the bank guarantee encashed from the bank. The Claimant further brought out that had the respondent been so sure about the action taken by him in this regard, he could have approached the court for getting the stay order vacated from the court. The Counter claim is not admissible because the stay has been granted by the Civil Court and therefore, the counterclaim may be rejected.

After considering written arguments and after hearing oral arguments of both the parties, the claim is decided as under:-

1. The orders dated 18.7.2003 of the Respondent for forfeiting the security deposit of the Claimant amounting to Rs 1,28,16,000/- and encashing the bank guarantee from the bank have been stayed by the Civil Court

Gurgaon and this stay is still in force. The Claimant can not be liable to make payment in this regard when the matter is sub-judice and stay order has been passed by the Court. Thus Claimant can not be held liable if the Respondent had not been able to get the bank guarantee encashed from the bank.

2. The claim regarding the illegal forfeiture of the security deposit of the claimant amounting to Rs 1,28,16,000/- passed by the Respondent's de letter no HSRDC/636 dated 18.7.2003 has been decided in favour of the Claimant under Claim no-5 because the orders passed by the Respondent for forfeiting the security deposit of the Claimant amounting to Rs 1,28,16,000/- have been set aside. Evidently the security deposit of the claimant is not to be forfeited and bank guarantee is not be got cashed. Thus the counter claim raised by the Respondent is hereby rejected.

### COUNTER CLAIM NO-2

The Respondent has made counter claim for Rs 17,78,999/- on account of loss of toll collection from 15.7.2003 to 29.7.2003 with Interest i.e upto the day of restart of the toll collection by the Respondent.

In support of the counter claim, the Respondent has explained/ brought out as under:-

The Respondent is entitled for the claim of Rs 17,79,999/- on account of loss of toll collection for the period from 15.7.2003 to 29.7.2003 because the claimant backed out from the Agreement and the department had to take time for making preparation for restarting the collection of toll. Thus the Claimant is liable to pay to the Respondent loss of Rs 17,79,999/- along with 18% interest from 30.7.2003 till the realization of the claim amount.

The Claimant has defended the counterclaim as under:-

- (i) As per provision of clause 28 of the Agreement, there is no provision in this clause for the Respondent to file counter claims and therefore, no counterclaim is admissible
- (ii) The Respondent is trying to put blame on the Claimant for his own acts of omission and commission. Since the Agreement had been terminated by the Respondent and authorization for the collection of toll had been withdrawn by the Respondent vide his letter dated 18.7.2003, then who stopped the Respondent to start the collection of toll from 18.7.2003 itself. When in the similar case for the Agreement No HSRDC/Toll/14, the Respondent withdrew the authorization from

the Entrepreneur for the collection of toll and the Respondent started the collection of toll departmentally with effect from 10.5.2003. Thus the Respondent could have started the collection of toll from this toll point also with effect from 18.7.2003 itself. Thus the claim may be rejected.

After considering written arguments and after hearing oral arguments of both the parties, the claim is decided as under:-

- (i) Although as per provision of clause 28 of the Agreement, the aggrieved person can seek arbitration and there is no provision in the Agreement indicating that the Respondent can raise the counter claim but the fact remains that as per provision of the Arbitration and Reconciliation Act, 1996, the other party i.e Respondent is entitled to submit counter claims before the Arbitrator even if he had not sought the arbitration originally.
- (ii) There is no provision in the Agreement that the Claimant is liable for any losses/damages/compensation after the termination of the Agreement and after the authorization for the collection of toll issued to the Claimant is withdrawn by the Respondent.
- (iii) It has been verified that in a similar case, i.e for Agreement no HSRDC/Toll/14 for the work of collection of toll at toll point near UP border on UP border-Sonipat-Gohana Road, the Respondent forfeited the security deposit of the Entrepreneur and withdrawn the authorization for the collection of toll from the claimant on 9.5.2003 but the Respondent started the collection of toll at this toll point with effect from 10.5.2003. Evidently if the Respondent could make arrangement for the collection of toll departmentally at this toll point, then who stopped the Respondent in making arrangement for starting the collection of toll at toll point in Km 2.4 near Gurgaon departmentally with effect from 18.7.2003 itself. Even otherwise, the Respondent had withdrawn the authorization for the collection of toll from the Claimant on 18.7.2003 where as the Respondent has raised claim with effect from 15.7.2003 which is totally hypothetical.

In view of the above facts, the counter claim amounting to Rs. 17,00,000/- raised by the Respondent is hereby rejected.

### COUNTER CLAIM NO-3

The Respondent has made counter claim for Rs 10,00,000/- on account of expenditure incurred by the respondent for the construction of toll plaza.

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Award No. HSRDC/1/1/2003

In support of the counter claim, the Respondent has explained/ brought out as under:-

The respondent has raised counter claim amounting to Rs. 10,00,000/- on account of non construction of the toll plaza by the Claimant. The respondent explained that the Claimant was bound to construct Toll Plaza at the site of toll at his own cost. However, no such toll plaza was constructed by the Claimant at Km 2.4 of the toll barrier. The claimant then backed out from the contract and the department shall have to construct the toll plaza and other amenities by spending Rs. 10 lacs at the time of running the toll point. Thus the Claimant should pay Rs. 10 lacs along with interest @ 19 percent interest from 30.7.2003 till the realization of this amount.

The Claimant has defended the counterclaim as under:-

- (i) Although the Claimant was required to construct toll plaza in accordance with the design approved by the HSRDC but neither any design for the construction of toll plaza was supplied by the respondent nor any such design had been approved by the respondent. In fact, the Claimant had constructed temporary structure for facilitating the collection of toll which was duly approved by the Respondent Executive Engineer in charge of the toll point and other officials of the respondent Corporation had been inspecting the toll point very frequently and also on regular intervals. They had never raised this issue of erecting temporary structure for the collection of toll and for all purposes the structure erected by the Claimant for the collection of toll was considered by the Respondent as Toll Plaza.
- (ii) The site of toll plaza had been got shifted by the Deputy Commissioner Gurgaon from Km 2.4 to Km 3.00 or 3.40 with the help of local police and also with the help of officers of the Respondent Corporation. Evidently the Respondent, Deputy Commissioner, Gurgaon and the officers of the Respondent Corporation at Gurgaon were not sure as where exactly the toll plaza has to be constructed and which particular toll point would ultimately be fixed.

After considering written arguments and after hearing oral arguments of both the parties, the claim is decided as under:-

The work was awarded to the Claimant on 10.1.2003 where as Respondent had withdrawn the authorization for the collection of toll from the Claimant on 18.7.2003. Evidently the Claimant had run the toll point from 10.1.2003 to 18.7.2003 either at toll point in Km 2.4 or Km 3.40. The Respondent has failed to show any evidence directing the Claimant for the construction of toll

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plaza during this period. Evidently the Respondent was satisfied about the structure put up by the Claimant for facilitating the collection of toll. Furthermore, the respondent has not supplied any evidence indicating the supply of standard drawing to the Claimant for the construction of toll plaza or had accorded approval for the construction of toll plaza. Even otherwise also the toll point as specified in the Agreement had been got shifted to Km 3.00 or 3.40 as per directions of the Deputy Commissioner Gurgaon and the same was ordered to be reverted back to the original location after about two and half months. In fact, neither the Respondent nor the Deputy Commissioner Gurgaon were not sure as to which particular toll point would be finally fixed for the collection of toll. In view of these facts, the counter claim raised by the Respondent against the Claimant is hereby rejected.

### CONCLUSION

Now, I R. P. Bansal, the Solo Substituted Arbitrator-cum Chief Engineer ( Roads ) Haryana PWD B&R Branch, Chandigarh having duly /carefully considered the whole matter submitted before me by both the parties, do hereby announce the award.

- (i) I award a sum of Rs 90,588/- ( Rupees Ninety thousand five hundred eighty eight only) to the Claimant i.e Sh. RAJIV SINGLA, 30/64, West Punjabi Bagh, New Delhi to be paid by the Respondent i.e Managing Director, Haryana State Roads & Bridges Development Corporation Limited ( as per claim no -2)
- (ii) The orders passed by the Respondent vide letter no HSRDC/536 dated 18.7.2003 for forfeiting the security deposit of the Claimant amounting to Rs 1,28,16,000/- are set aside and I award the same in favour of the Claimant ( Claim No-6). Accordingly the Bank Guarantee no 23/02-03 dated 09.01.2003 of State Bank of Patiala, Hisar amounting to Rs. 1,28,16,000/- (Rupees One Crore twenty eight lacs sixteen thousand only ) furnished by the Claimant as security deposit should be released/ returned to the Claimant.
- (iii) The Claimant is further entitled for the simple interest @ 10 % per annum on Rs 90,588/- ( amount of award) from 19.7.2003 up to the date of announcement of award i.e up to 18.10.2004 ( 1 year 92 days ) and I award a sum of Rs 11,342/- ( Rs Eleven thousand three hundred forty two only) to the Claimant (amount matter of calculation). Furthermore, the Claimant is also entitled simple

interest @ 10 % per annum on Rs 90,588/- ( principal amount only) from 19.10.2004 (amount matter of calculation) till the date of actual payment of the award to the Claimant and I award the same to the Claimant.

Both the parties will bear their own cost for contesting the arbitration case.

The non judicial papers for writing the award were supplied by the Claimant for writing the award

In witness thereof, I R. P. Bansal acting as Sole Substituted Arbitrator have signed this on the day of 18<sup>th</sup> October, 2004 at Chandigarh.

Place: Chandigarh  
Dated: 18<sup>th</sup> October, 2004

( R.P.Bansal) 18/10/04  
Sole Substituted Arbitrator  
-cum Chief Engineer (Roads)  
Haryana PWD B&R Branch,  
Chandigarh

Registered

Endst No 48-50/PA/CETR) dated 18-10-2004

Copy of the above award is forwarded for information and further necessary action to the following:

1. Sh. RAJIV SINGLA, 30/64, West Punjabi Bagh, Now Delhi
2. ✓ The Managing Director, Haryana State Roads & Bridges Development Corporation Limited, SCO-23, Sector 7-C, Madhya Marg, Chandigarh-160019.
3. Engineer-in- Chief, Haryana PWD B&R branch, Chandigarh with reference to his memo no IIIUP-II/348 dated 14.9.2004.

Place: Chandigarh  
Dated: 18<sup>th</sup> October, 2004

( R.P.Bansal) 18/10/04  
Sole Substituted Arbitrator  
-cum Chief Engineer (Roads)  
Haryana PWD B&R Branch,  
Chandigarh

Arbitration regarding dispute arising out of the Contract for the work of collection of toll at toll point in Km. 2.4 near Gurgaon on Gurgaon Pataudi-Rewari road.

1. Haryana Government vide notification No. 9/106/2001-3-B&R(Works) (Toll-2) dated 02.01.2003 in exercise of the powers conferred by clause (f) of section 2 of the Haryana Mechanical Vehicles (Levy of Tolls) Act 1996 (Haryana Act 9 of 1996) notified the section of Gurgaon-Pataudi-Rewari Road (State Highway No. 26) to be "toll facility" for the purpose of the said Act. Further in exercise of the powers conferred by section 4 of the said Act, the Governor of Haryana had authorized Haryana State Roads and Bridges Development Corporation Limited to demand, collect and retain tolls from the said toll facility at toll point in Km. 2.4 near Gurgaon on Gurgaon-Pataudi-Rewari Road.
2. Managing Director Haryana State Roads & Bridges Development Corporation Limited invited bids for the collection of toll at this toll facility vide Bid Notice No. HSRDC/02 dated 8.10.2002. Bids were received on 08.11.2002 and Sh. Rajiv Singla had quoted the highest bid price of Rs. 8,54,40,000/- for two years to be deposited in 24 equal monthly installments.
3. The Managing Director, Haryana State Roads & Bridges Development Corporation Ltd., awarded this work to Sh. Rajiv Singla and issued Letter of Acceptance Sh. Rajiv Singla vide his memo No. HSRDC/610 dated 27.12.2002 (Copy enclosed Annexure-I) for contract price of Rs. 8,54,40,000/- for period of two years and directed Sh. Rajiv Singla to deposit security Deposit of Rs. 1,28,16,000/- (Rupees one Crore twenty eight lacs sixteen thousand only) in the form of Bank Guarantee as stipulated in clause 15, with in 15 days from the date of issue of letter of Acceptance and was also directed to deposit <sup>1<sup>st</sup></sup> installment amounting to Rs. 35,60,000/- in advance within 15 days from the date of issue of Letter of Acceptance in the form of Bank draft as stipulated in clause 16, and signing of the Agreement as stipulated in clause 17 of instructions of Bidders
4. Sh. Rajiv Singla deposited security Deposit amounting to Rs 1,28,16,000/- (Rupees One Crore twenty eight lacs sixteen thousand only) vide B.G. no . 23/02-03 dated 09.01.2003 of State Bank of Patiala. Hisar on 09.01.2003 and also deposited advance first installment with HSRDC amounting to Rs. 35,60,000/- through Bank draft in favour of the Managing Director Haryana State Roads & Bridges Development Corporation Limited payable at Chandigarh.
5. An agreement was executed between Sh. Rajiv Singla and the Managing Director on 10.01.2003 ( Copy enclosed Annexure-II) vide Agreement No. HSRDC/Toll/2 for a contract price of Rs. 8,54,40,000/- to be deposited in 24 monthly installment of Rs. 35,60,000/- each and accordingly Sh. Rajiv Singla was issued Letter of Authorization by the Managing Director vide his memo No. HSRDC/28 dated 10.01.2003( Copy enclosed Annexure-III) authorizing Sh. Rajiv Singla for collection toll from the toll point in K.M. 2.40 on Gurgaon Pataudi Rewari Road for period of 2 years at the rates specified in the Schedule.
6. As per provisions of Clause-2 of the Agreement, Sh. Rajiv Singla had agreed to deposit remaining 23 installment of Rs. 35,60,000/- each upto 15<sup>th</sup> of every

calendar month and on default to pay any installment by the due date, the same will be paid alongwith with the interest calculated @ 0.05% per day of the delay with in 30 days from the due date Sh. Rajiv Singla had deposited the first installment before entering into Agreement on 10.01.2003 and remaining 23 installments were to be deposited upto 15<sup>th</sup> of every calendar month Sh. Rajiv Singla had deposited first installment on 10.01.2003 which was for the period from 11.01.2003 to 10.02.2003 and the period of 2<sup>nd</sup> installment was to be deposited upto 15<sup>th</sup> of every calendar month failing in the period of installment with out any interest. Therefore, second installment amounting to Rs. 35,60,000/- was paid by the Sh. Rajiv Singla to the Managing Director on 15.2.2003, thereby fulfilling the terms and conditions of the Agreement by Sh. Rajiv Singla.

As per Agreement Sh. Rajiv Singla was authorized to collect toll at Toll point at Km. 2.4 near Gurgaon on Gurgaon-pataudi-Rewari Road with effect from 11.01.2003. It has been claimed by Sh. Rajiv Singla that the toll point was got shifted by the District Administration from K.M. 2.40 to K.M. 3.00 (Actual RD 3.40 Km.) with the help of local police on administrative grounds as is evident from the copies of News papers cutting dated 13.2.2003 and 14.2.2003. Deputy Commissioner, Gurgaon vide Letter No. 217/LP dated 08.04.2003( Copy enclosed Annexure-IV) addressed to Executive Engineer, P.W.D. (B & R) B&R No.-I Gurgaon with copy to Sh. Rajiv Singla had confirmed admitted having got shifted the Toll point from Km. 2.4 to Km. 3.00 on administrative grounds.

8. Sh. Rajiv Singla informed the Managing Director vide Letter dated 09.04.2003( enclosed Annexure-V) about these facts and brought out that due to shifting of toll point from K.M. 2.4 to km.3.00, there did not remain any valid contract/agreement between both the parties. Sh. Rajiv Singla had requested the Managing Director for terminating the agreement on account of gross violation of the terms and conditions of the Agreement by the District Administration Gurgaon and he may be compensated of the huge loss already incurred by him on account of deficiency in the toll collection.

9. The Managing Director vide Memo No. HSRDC/34/02/271 dated 22.04.2003 ( Copy enclosed Annexure-VI) informed Sh. Rajiv Singla that no such instructions for shifting of the toll point have been given by HSRDC and as such taking instructions from the District Administration Gurgaon and thereby complying the same of his own have no bearing on the contract. The Managing Director also endorsed copy of this letter to the Deputy Commissioner Gurgaon clearly indicating that any contractual implication on account of their interference in the shifting of toll point shall rest upon the Deputy Commissioner Gurgaon.

10. In response to the letter from M.D. (HSRDC) Sh. Rajiv Singla informed the Managing Director vide letter dated 02.05.2003 (Copy enclosed Annexure-VII) that Haryana Government had issued notification for levying toll at K.M. 2.4 on Gurgaon-Pataudi Rewari Road and Sh. Rajiv Singla had been issued authorization letter for collecting toll from toll point in K.M. 2.4. While issuing the authorization letter to Sh. Rajiv Singla, copies of the same were also dispatched by the Managing Director to the Deputy Commissioner Gurgaon and Senior Superintendent of Police Gurgaon for information and necessary action. Evidently Sh. Rajiv Singla had to collect toll from the toll point in K.M.2.4 and

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the District Administration had to assist and cooperate with the Entrepreneur/Agent for ensuring smooth collection of toll in accordance with the provisions of the Notification. It was further brought out that no collection of toll is possible in the district at any toll point without the assistance and cooperation of District Administration. It was also intimated that the District Administration Gurgaon had forcibly got shifted the toll point from K.M. 2.4 to km. 3.40 thereby making the scope of the contract and the notification as invalid. Haryana State Roads & Bridges Development had awarded the contract to Sh. Rajiv Singla for the collection of toll at toll point in K. 2.4 in accordance with the provision of the contract and notification issued by the Haryana Government in this regard. Since no collection of toll was possible without the assistance and cooperation of the District Administration Gurgaon. The Managing Director had again been requested that this Agreement may please be terminated on account of fundamental breach of contract by the District Administration Gurgaon:HSRDC.

11. The Managing Director, vide Letter No. HSRDC/34/02/382 dated 15.05.2003 ( Copy enclosed Annexure-VIII) intimated Sh. Rajiv Singla that HSRDC had not breached the Contract and the Agreement will not be terminated on this account. He was, therefore, requested to deposit the monthly instalment which was due to be paid by 15.04.03 alongwith interest @ 0.05% per day of delayed period as per contract agreement besides paying interest of Rs. 19440/- as intimated vide letter No. HSRDC/229-30 dated 04.04.03, with in 30 days counted from the due date, failing which the contract agreement will be terminated without any further notice and security deposit will be forfeited as provided in the agreement. Sh. Rajiv Singla had deposited the next installment amount of Rs. 35,60,000/- on 15.05.2003 vide letter dated 15.05.2003( Copy enclosed Annexure-IX). This installment had been deposited under protest subject to the condition that Sh. Rajiv Singla reserves the right to claim the refund of this installment on account of fundamental breach of Agreement by HSRDC.

12. Sh. Rajiv Singla claimed that he had been collecting toll at toll point in K.M. 3.40 in violation of the provisions of notification dated 02.01.2003 due to forcible shifting of the toll point from K.M. 2.40 to K.M. 3.40 by the District Administration Gurgaon though he had the authority of collection toll at toll point in K.M. 2.40 in view of the authorization issued by the Managing Director in this regard. Since no immediate relief was expected from the Managing Director as such he had no other option except to seek the arbitration of this dispute and accordingly he requested the Managing Director vide letter no Spl./4 dated 22.05.2003( Copy enclosed Annexure-X) for appointing the Arbitrator in accordance with the provisions of Clause 28 of the Agreement.

13. Next installment was also deposited by Sh. Rajiv Singla on 11.06.2003 vide his letter dated 11.06.2003(Copy enclosed Annexure-XI). It was again pointed out by him that HSRDC has committed fundamental breach of Agreement due to shifting of the toll point. Neither Agreement had been terminated by the Managing Director on this account nor had the Arbitrator been appointed as such the Managing Director had again been informed that installment is being deposited under protest and he reserves the right to claim the refund of this amount along with interest.

Deputy Commissioner Gurgaon vide letter No. 255/LP dated 18.06.2003 ( Copy enclosed Annexure-XII) had again directed Sh. Rajiv Singla for shifting of the toll point to its original location at Km. 2.40 near Gurgaon Pataudi road.



15.

The Managing Director vide letter No. HSRDC/34/02/512 dated 04.07.2003 (Copy enclosed Annexure XIII) had again intimated that HSRDC had breached the provisions of the contract because they had not asked Sh. Rajiv Singla for shifting of this toll point.

Sh. Rajiv Singla claimed that the letter dated 18.06.2003 from Deputy Commissioner Gurgaon was received by him on 09.07.2003 and thereafter he was threatened by the District Administration for shifting of the toll point to its original position at K.M. 2.40 near Gurgaon. However, the District Administration got removed toll point from K.M. 3.40 on 16.07.2003 and directed for shifting of toll point at K.M. 2.4 in accordance with the provisions of the Agreement and also as directed by the District Administration Gurgaon on 16.07.2003 but Sh. Rajiv Singla was unable to establish toll point at K.M. 2.40 because of stiff resistance from the local people with the result that he had informed the Managing Director about these facts vide letter dated 18.07.2003 (Copy enclosed Annexure- XIV) and the Managing Director had been requested to release the security deposit and also compensate the loss already suffered on account of deficit toll collections.

16.

The Managing Director proceeded to terminate the Agreement vide his Letter No. HSRDC/536 dated 18.07.2003 (Copy enclosed Annexure -XV) and also forfeited the security deposit amount of Rs. 1,28,16,000/- in the form of Bank Guarantee No. 23/02-03 dated 09.01.2003 of State Bank of Patiala, Hisar. The authorization issued to Sh. Rajiv Singla for collecting toll had also been withdrawn.

17.

On the application of Sh. Rajiv Singla the competent authority appointed Sh. R.P.Bansal, Sole substituted Arbitrator-Cum-Chief Engineer(Roads) Haryana P.W.D. (B & R) B&R Branch, Chandigarh in this dispute to arbitrate the matter between the parties. In the arbitration dispute Sh. Rajiv Singla raised 8 claims, whereas the Managing Director, HSRDC raised 3 counter claims. After due consideration the Learned Sole substituted Arbitrator has rejected claim No. 1 of the Agency claiming Rs. 3,27,68,240/- due to reduction of volume of traffic on account of judgement of Hon'ble Apex court. Against the claim of Rs. 1,42,47,910/- on account of shifting of toll point from 2.40 km. to 3.00/3-40 km. by the Distt. Admn., the Learned Arbitrator awarded an award of Rs. 90,588 with interest @ Rs. 10% from 19.7.2003 against the claim of Rs. 1,42,47,910/-. In claim No. 3 Sh. Rajiv Singla claimed Rs. 9,93,500/- on account of loss of toll collection due to strike of trucks and the same was rejected. The Arbitrator also rejected the claim No. 4 of Rs. 3,57,400/-. In claim No. 5, the agency claimed the refund of security of Rs. 1,28,16,000/- on account of illegal forfeiture of the security alongwith interest and bank guarantee charges of Rs. 10,13,450/-. The Learned sole Arbitrator set aside the order dated 18.07.03 vide which the security was forfeited and rest of the claim of interest and Bank Guarantee charges were rejected. The other claims of agency of Rs. 3,52,65,728/- on account of loss of profit in claim No. 6, Rs. 2,91,604/- on account of loss of expenses for establishing toll plaza in claim No. 7 were rejected by the sole arbitrator. In claim No. 8, the agency claimed interest @ 18% per annum on the claimed amount. The Sole Arbitrator only awarded an interest @ 10% on the amount of Rs. 90,558/- as awarded by the Arbitrator in claim No. 2 from 19.07.2003 till the date of payment. The counter claims of the department for realization of order dated 18.7.2003 and to forfeit the security deposit Rs. 17,77,999/- on account of loss of toll collection from 15.07.03 to 29.07.03 and Rs.

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10,00,000/- on account of construction of toll plaza, were rejected by the Learned Sole Arbitrator.

18. The S.E. Gurgaon Circle P.W.D. (B&R) branch has sent his comments in respect of this Arbitration Award, particularly in respect of claim No. 2 and 5 (Copy enclosed Annexure-XVI). The S.E. Gurgaon is of the view that the award announced by the Sole Arbitrator is based on conjecture and surmises, illegal and discriminatory without jurisdiction and proposed to file objection petition before the competent court.

19. Section 34 of the Arbitration and conciliation Act, 1996 provides the recourse to a court against an Arbitral award for setting aside the Arbitral award only on the grounds as mentioned in sub-sections 2 of section 34 of the Act. In the instant case legal cell of Head Office of Haryana P.W.D. (B & R)-B&R Branch has opined that no such ground, to challenge the award in the court, is visible as mentioned in section 34 of the Act. So keeping in view the above position, this Award is not fit for challenging in the court by filing an application petition for setting aside the award.

20. Since the opinion of legal cell differs with the comments furnished by the Superintending Engineer Gurgaon Circle, therefore, the L.R. and Secretary to Govt. of Haryana may be requested to render Legal advice, considered opinion as to whether it is fit case for filing objections under section 34 of the Arbitration Act, 1996.

(Mahabir Singh)  
S.E. (W.B. P-1)

M.D. (HSRDC)

(H.S. Chahal)  
M.D. (HSRDC)

(S.C. Chaudhary)  
CPW

No. 108/HSRDC

Recd: 24/12/04

No. 108/HSRDC

CPV

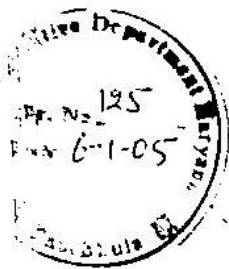
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LAW AND LEGISLATIVE DEPARTMENT HARYANA

In view of the opinion of Legal Cell conceded by the Administrative Department, the comments of ~~the~~ the Superintending Engineer, P.W.D. B&R Circle, Gurgaon are of no avail. The arbitral award is not fit for challenging in the court by filing an application under section 34 of the Act.

*R. J. Salun*

A.L.R. (Lit.)

for Legal Remembrancer & Secretary to Government, Haryana.

6/1/05

C.P.W.

7/1-2005

U.O.No. 627 /Co.9( 4 )2005

Dated:- 7-1-05

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EVC

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MD (H.S.R.D.C.)

SE (H.S.R.D.C.) I

10/1/05  
M.D.  
H.S.R.D.C.

EE/H.S.R.D.C.

Draft Agenda for BOD meeting prepared by C.E. is added for its approval

11/01/05

LEC (H.S.R.D.C.) on Tour

13/1/05

Pl check the contents & draft for BOD meeting

*Handwritten signatures and initials*

to put up as document. The case is submitted please

*Handwritten signature and date*

