

NATIONAL HIGHWAY AUTHORITY

CONFIRMED MINUTES

417th Executive Board Meeting
Islamabad, December 08, 2022

AGENDA ITEMS

<u>Agenda Item</u>	<u>Subject</u>
1.	ICSID Arbitration (ICSID Case No ARB/21/48) Bayindir Insaat Turzim TICARET VE SANAYI A.S (Claimant) Vs Islamic Republic of Pakistan (Respondent): Islamabad – Peshawar Motorway Project (M-1)

NATIONAL HIGHWAY AUTHORITY

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Subject: **The 417th Meeting of the NHA Executive Board Held on December 08, 2022 at Islamabad**

Introduction

The 417th meeting of the National Highway Authority Executive Board was held at 0900 hours on December 08, 2022 at the Auditorium of NHA Headquarters, Islamabad. Capt. (Retd.) Muhammad Khurram Agha, Chairman, NHA presided over the meeting.

The meeting commenced with recitation of verses from the Holy Quran with Urdu translation and Darood Sharif.

Opening Remarks

The Chairman extended warm welcome to the participants of the meeting.

The Chairman allowed Secretary, NHA to start formal Board proceedings on the agenda.

Formal Board Proceedings

Agenda Items

The Secretary, NHA apprised the Board that agenda consists of one (01) item.

Agenda Item 1

ICSID Arbitration (ICSID Case No ARB/21/48) Bayindir Insaat Turzim TICARET VE SANAYI A.S (Claimant) Vs Islamic Republic of Pakistan (Respondent): Islamabad - Peshawar Motorway Project (M-1)

Decision

The NHA Executive Board approved the following on the recommendations of Pakistan's Foreign Counsel and International Law Firm M/s Reed Smith LLP subject to endorsement of the committee:

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- a. Authorized Member (North Zone), NHA to write the letter to the office of Attorney General for Pakistan.
- b. Authorized Director (Legal), NHA to give a Witness Statement.
- c. Authorized Secretary (Board), NHA to convey the above-mentioned authorization/approval of NHA Executive Board in writing to the office of Attorney General for Pakistan covering following points:
 - i. First, that the NHA continues to acknowledge Bayindir's right to a final account under the terms of the (M-1) Contract.
 - ii. Secondly, that the NHA is ready at any time to undertake that final accounting process, subject to Bayindir's meaningful participation without which the process cannot take place.
 - iii. Thirdly, notwithstanding the fact that the NHA considers Mr Siddiqui eminently suitable to act as "the Engineer" in this matter, and denies any allegations of a conflict of interest on his part, the NHA is willing to appoint another individual of its choosing in accordance with (M-1) Contract to act as "the Engineer", who will complete the final accounting process.
 - iv. Fourthly, if Bayindir is not satisfied with any final accounting decision rendered by "the Engineer", then Clause 67 of the (M-1) Contract provides that Bayindir may submit it to arbitration under the terms of the Arbitration Act (No X of 1940).

The Board constituted the following committee:

a.	Member (Engg. Coord)	Convener
b.	Member (Finance)	Member
c.	Member (North Zone)	Member
d.	GM (Finance), KPK	Member
e.	GM (M-1/Construction)	Member
f.	Project Director (M-1)	Member

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g.	GM (Admn)	Member
h.	Director (Legal)	Member
i.	Director (DRC)	Secretary

The TORs of the committee are as under:

- a. To oversee the progress in the case and apprise the Board on quarterly basis.
- b. To coordinate with the office of Attorney General, Pakistan's Foreign Counsels and provide necessary assistance, record, opinion, recommendations and processing of fee invoices, as & when required.
- c. Co-opt any NHA officer as & when required for assistance.
- d. Hire legal/technical/financial expert from the open market, if required for NHA's assistance.
- e. Approve the engagement of any technical/legal/financial or any other expert on the recommendations of the Pakistan's Foreign Counsel and Attorney General for Pakistan.
- f. Authorized to make emergent decision in the case, where timelines are strict.
- g. May submit any matter for decision of the Board, if so decided by the committee.

The Board also approved engagement of shortlisted Quantum Expert Mr. Andrew Yendall, Yendall Hunter as proposed by Attorney General for Pakistan on the advice of M/s Reed Smith LLP on a capped fee of GB Pound 18,000/-. The Quantum Expert shall assist in filing Pakistan's application for bifurcation of the quantum and merits due on December 12, 2022.

Action By : Member (Engg. Coord)/Member (North Zone)

Conclusion

The Chairman wrapped up the meeting by thanking the Board Members for their active participation and useful input.
