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**CONSTRUCTION
FEDERATION OF
INDIA**

Ref: CFI/FINMIN/2024/015

Date: May 31, 2024

To,
Shri Kanwalpreet
Director,
Procurement Policy Division
Department of Expenditure
Room No.264-C, North Block
Ministry of Finance
New Delhi - 110001

Regarding: Vivad se Vishwas II (Contractual Disputes) Scheme Notified by Government of India, Ministry of Finance, Department of Expenditure, Procurement Policy Division dated 29.05.2023, along with Various Amendments till Date: Request to Intervene and pass Appropriate Instructions to "Procuring Entities" to Strictly Adhere to the Listed "Applicability" Under the Scheme for Accepting / Rejecting Various Settlement Applications Filed by "Contractors"

Dear Mr. Kanwalpreet,

1. Construction Federation of India (CFI) is a premiere body representing leading infrastructure construction firms of the country engaged in building Highways, Roads, Bridges, Railways (metro & mono railways), Dams, Power Stations (Hydro, Nuclear), Irrigation & Water Supply projects etc. and other basic infrastructure of national importance. CFI is also working closely with the Government of India in policy formulations including improving the contract conditions to bring in private capital in the construction sector.
2. This has reference to the one-time settlement scheme called **Vivad se Vishwas II** (Contractual Disputes), (**VSV-II**), a well-intended policy framework by Government of India, to reduce the spate of litigations even after the arbitration awards and to clear backlog of litigation cases to bring back the investment into infrastructure sector and to improve the ease of doing business.
3. The Federation has been receiving grievances/representations from its members that the "Applicability" criteria outlined/listed under the VSV-II are not being strictly adhered to by some of the "Procuring Entities" in its true letter and spirit for acceptance/rejection of various settlement applications filed by "Contractors". Therefore, I have been requested on behalf of the Federation to take up the same with the Ministry of Finance and to seek necessary clarifications to the procuring entities to ensure that the full benefit is made available to infrastructure industry.
4. In this regard, the scheme under its various conditions clearly provides as under:



- i) The “**Applicability**” of the said scheme is stated in the paragraph numbers 4, 5, 6, 7, 8 and 9 read with paragraph no. 18 and paragraph no. 19. Paragraph no.18 states that “*In all cases where the claim amount is Rs 500.00 crores or less, procuring entity will have to accept the claim, if the claim is in compliance with these guidelines*”.

On plain reading, it is very clear that the said scheme is applicable for settlement of **awards individually**, which is voluntarily offered for settlement under the scheme by the “Contractor” and each such contractual dispute has to pass the test of “Applicability” as set out in the said VSV-II scheme.

- ii) There is also no provision in the VSV-II Scheme which mandates the Contractor to refer all the disputes/claims under different awards arising from the same Package/Contract/Concession Agreement, for the consideration by the procuring entities.

In fact, Step 1 of paragraph 14 of the said Scheme inter alia states as follows:

“Submission of claims and Time periods

14. Contractors should submit their claims through Government e-Marketplace (GeM), for which GeM will provide a dedicated....

Step 1: The registered Contractor shall list out the eligible disputes which it is willing to settle under this Scheme, on the portal.....”

Thus, the scheme makes it clear that it is the Contractor’s sole discretion to decide which dispute it wants to submit for settlement under the Scheme.

- iii) The VSV-II Scheme also categorically provides for a situation where more than one dispute arises under the same contract. The step 2 of paragraph 14 provides as follows in such cases:

Step 2: Each entry on the portal shall be dispute specific. There can be more than one dispute under same contract which shall be claimed, under this scheme, separately.”

It is thus clear that while the Scheme provides that separate submission should be made in case of more than one dispute under the same contract but it nowhere provides that the contractor would not be eligible for availing the benefit of the Scheme unless all the disputes under the same contract are submitted for settlement.

- iv) That the object behind the Scheme as explained in the Scheme itself makes it clear that the Scheme is case specific and not contract specific. The object behind the scheme is explained in para 3 of the Scheme which reads as under:

“3. It is understood, however, that more efforts are required to clear the backlog of old litigation cases. Such cases are holding back fresh investment, reducing the ease of doing business with the Government, tying up scarce working capital and indirectly reducing competition for newly floated tenders. In this context, after due study of the experience in past cases, Government has decided to implement a onetime settlement scheme called “Vivad se Vishwas II (Contractual Disputes)” to effectively settle pending disputes.”

Thus, each pending Section 34 petition is a pending case and thus the Scheme provides for settlement of such dispute pending in a Section 34 petition provided it meets the other criteria mentioned in the Scheme.



- v) VSV-II scheme also does not mandate the “Procuring Entities” to club two or more disputes/awards/claims in the same project, whether applied for settlement or not, to determine its “Applicability” as per the said scheme. Hence, the scheme envisages each dispute/award/claim as separate from each other (*even if the disputes are originating out of the same project*) for determining its eligibility for acceptance/rejection as per “Applicability” criteria.
5. Earlier when draft scheme was issued for comments/suggestions, it contained in paragraph no.9 under the heading “Notes”, “Net claim amount will be calculated by considering all claims/disputes in the particular contract” and that “Each contract shall be dealt separately as per the scheme”. However, the said condition was consciously excluded from the final scheme notified on 29.05.2023, which provided for applicability of the scheme for individual awards.
6. The basic premise of a settlement is that it has to be voluntary and not forced upon the party. Any kind of force or a mandatory requirement to settle the matter is anathema to a settlement as understood in law. Thus, all awards under the contract shall be settled as a condition cannot be countenanced under a settlement Scheme of Government of India.
7. Therefore, such arbitrariness on the part of the “Procuring entities” in rejection of settlement applications filed by “Contractors” fails to instill confidence among the investors in infrastructure development and fails to free locked funds in the disputes, wherein one of the parties is a government entity. The primary intention of the scheme is that, funds released can be infused back in to the developmental works of the nation or to service the debts in full to their bankers and financial institutions.
8. Just to give as an example of such unfair and arbitrary action in one such case is the claim/dispute filed under the scheme by the member for settlement as per the scheme guidelines is stated to be well below Rs 500.00 crores. However, the erring “Procuring Entity” arbitrarily rejected the settlement application on the vague pretext that the “Contractor” has not filed for settlement of its other disputes/awards and that other disputes/awards clubbed together exceeds pecuniary limit of Rs 500.00 crores. Moreover, such arbitrary rejection was communicated by erring the “Procuring Entity” several months after the 60 days’ time line envisaged in the said scheme.
9. It is submitted that VSV-II (Contractual Disputes) entails “Contractor” to accept substantial discount on Arbitral awards/Court awarded amount, which in turn affects the balance sheet/net worth of the “Contractor”. Even then, the Contractors have opted for time bound settlement of dispute as offered by VSV-II scheme, only for the following reasons:
- a) To improve cash-flows to meet urgent settlement liability/commitments of its lenders/public sector banks and for use as working capital for future projects.
- b) As there is no discretion on the part of “Procuring Entities” under the VSV-II scheme for rejection, if the dispute/award/claim is otherwise qualified under the “Applicability” guidelines outlined in scheme.
10. When Contractors have applied for the scheme, the proceedings in the Court of law, were put on hold. Therefore, after investing appreciable time in the settlement process, the arbitrary rejection of the settlement applications by Procurement Entities, have frustrated the very goal envisaged to be achieved by the VSV-II scheme.
11. Under the circumstances, the Federation most respectfully requests your kind intervention at the earliest to issue a clarification (like in respect of calculation in respect of Court awards dated 05.01.2024) in respect of the scheme being applicable for settlement of individual awards.



12. The Federation trusts that your kind office will promptly intervene in the subject issue to ensure efficacious benefits of the VSV-II scheme by the Procuring Entities in the interest of the infrastructure development of the nation and to further strengthen the Government of India - Industry relationship.

Thank you.

Yours sincerely,
For Construction Federation of India

Ajit Gulabchand
President

Copy to:

Dr. T.V. Somanathan, IAS, Finance Secretary & Secretary (Expenditure), Ministry of Finance, North Block, New Delhi.